# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number_____

Meeting Type: Regular

Meeting Date: 3/22/2012

Action Requested By:
Projects Management

Agenda Item Type
Resolution

Subject Matter:

Resolution Authorizing the Mayor to execute an Agreement between the City of Huntsville and Dunlap Contracting Inc. for the construction of a Dirt Storage Building at Maple Hill Cemetery located at 203 Maple Hill Street.

Exact Wording for the Agenda:

Resolution Authorizing the Mayor to execute an Agreement between the City of Huntsville and Dunlap Contracting Inc. for the construction of a Dirt Storage Building at Maple Hill Cemetery located at 203 Maple Hill Street.

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow
and accomplish and; any other information that might be helpful.

Construction of a Dirt Storage Building at Maple Hill Cemetery located at 203 Maple Hill Street.

Associated Cost: $63,695.00

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: _____

Date: 3/20/12

revised 4/13/2011

# ROUTING SLIP
# CONTRACTS AND AGREEMENTS

Originating Department: **Projects Management** Council Meeting Date: **3/22/2012**

Department Contact: **Chris O'Neil** Phone # **256-427-5281**

Contract or Agreement: **Agreement**

Document Name: **Dirt Storage Building at Maple Hill Cemetery**

City Obligation Amount: **$63,695.00**

Total Project Budget:

Uncommitted Account Balance:

Account Number: **01-6200-0811-5211**

## Procurement Agreements

| | |
|---|---|
| **Not Applicable** | **Not Applicable** |

## Grant-Funded Agreements

| | |
|---|---|
| **Not Applicable** | **Grant Name:** |

| Department | Signature | Date |
|---|---|---|
| 1) Originating | | 03/15/2012 3/16/12 |
| 2) Legal | | 3-15-12 |
| 3) Finance | | 3/19 |
| 4) Originating | Brian R. Walker | 3-14-12 |
| 5) Copy Distribution | | |
| a. Mayor's office (2 copies) | | |
| b. Clerk-Treasurer (Original & 2 copies) | | |
| c. Legal (1 copy) | | |

Revised 04/15/2011

**RESOLUTION NO. 12-_____**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement by and between the City of Huntsville and Dunlap Contracting, Inc. with Architectural Support from Schneider and Associates for construction services for a Dirt Storage Building at Maple Hill Cemetery located at 203 Maple Hill Drive Huntsville, Alabama in the amount of Base Bid of Fifty Nine Thousand Eight Hundred Ninety Five and No/100s ($59,895.00) Plus Alternate #1 (Site Driveway Area) for Three Thousand Eight Hundred and No/100s ($3,800.00) Total Contract amount is Sixty Three Thousand Six Hundred Ninety Five and No/100s ($63,695.00) with Unit Price #1 - Rock Removal for Foundation ($12.00 per Cubic Yard); Unit Price #2 - Rock Excavation for Slab on Grade ($12.00 per Cubic Yard); Unit Price #3 - Removal of Unsuitable Soil ($8.00 per Cubic Yard) on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to the certain document attached hereto and identified as "Fixed Price Agreement between City of Huntsville and Dunlap Contracting Inc." consisting of forty (40) pages, together with the signature of the City Council President and an executed copy of said document being permanently kept on file in the Office of the City Clerk Treasurer of the City of Huntsville, Alabama

**ADOPTED** this the _____ day of _____, 2012.

_____
President of the City Council of
the City of Huntsville, Alabama

**APPROVED** this the _____ day of _____, 2012.

_____
Mayor of the City of Huntsville,
Alabama

# CERTIFICATE OF COMPLIANCE

Pursuant to Code of Alabama, 1975 ("Code"), Section 39-5-1(b), the City of Huntsville, Alabama does hereby certify that the agreement by and between the City of Huntsville and

Dunlap Contracting, Inc.
in the amount of $63,695.00,
for the installation of the Maple Hill Cemetery Storage Building ,
to be awarded March 22, 2012,

is let in compliance with the Code, Title 39 and all other applicable provisions of law; and, only for purposes of a civil action as referenced in Code Section 39-5-1(a), the issuance of this certificate shall constitute a presumption that the contract was let in accordance with the laws.

City of Huntsville, Alabama

By: Randall E. Taylor
Randall E. Taylor

Its: Finance Director

Date: 3/20/12

# FIXED PRICE AGREEMENT BETWEEN THE CITY OF HUNTSVILLE AND DUNLAP CONTRACTING, INC. WITH ARCHITECTURAL SUPPORT FROM SCHNEIDER AND ASSOCIATES

This Agreement is made by and between:

City of Huntsville
P.O. Box 308
Huntsville, Alabama 35804

(hereinafter referred to as the "Owner") and:

Dunlap Contracting, Inc.
P.O. Box 308
Lacey Springs, AL 35754

(hereinafter referred to as the "Contractor") under seal for construction described below to be rendered for the following Project:

Project Title: MAPLE HILL CEMETERY DIRT STORAGE BUILDING
Project Location: MAPLE HILL CEMETERY
Project Address: 203 MAPLE HILL STREE
Account Number: 01-6200-0811-5211
General Description: CONSTRUCTION OF A DIRT STORAGE BUILDING.

Date:_____

President of the City Council:_____

## ARTICLE I
## THE CONTRACT AND THE CONTRACT DOCUMENTS

### 1.1 THE CONTRACT

1.1.1 This Fixed Price Construction Contract between the Owner and the Contractor, of which this Agreement is part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

### 1.2 THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Plans and Project Manual dated **January 6, 2012** addenda(s) **1-4** issued during the bidding and value engineering/cost reduction/quality reduction procedure, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, all of which are hereby incorporated herein by reference and made a part hereof. Documents not included or expressly contemplated in this Article 1 do not, and shall not form any part of this Contract.

### 1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes all prior written or oral discussions, communications, representation, understandings, negotiations, or agreements, if any, between the Owner and Contractor, unless specifically referenced and included in paragraph 1.2 above.

### 1.4 NO PRIVITY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement or relationship between the Owner and any person or entity other than the Contractor.

### 1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contractor Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in the Contract, it shall be interpreted or construed, first, as defined herein: second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

1.5.4 The words "include", includes", "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of the Contract.

1.5.6 Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 Contractor warrants and represents that it has received, reviewed, and examined the documents prepared by Architect using that degree of skill and care as a reasonably prudent Contractor would exercise under similar circumstances in preparing an estimate for work of a similar scope and magnitude. Based upon that examination, Contractor further warrants that it has not discovered any defects or deficiencies in the Contract Documents and that the documents are, to the best of Contractor's knowledge, information, and belief, adequate for constructing the Project. Contractor further agrees that in the event it should discover any defect, inconsistency, or inadequacy in the Contract Documents, it will notify Owner in writing as soon as practicable of such defect, inconsistency, or inadequacy such that Owner may request Architect to remedy the same.

1.5.8 In the event any conflict, discrepancy, or inconsistency among any of the documents which make up this contract, the following shall control: The Contractor is deemed to have based his estimate upon the order of precedence as set froth below of performing the work. As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern: and between larger scale and smaller scale drawings, the larger scale shall govern. Interpretations shall be based on the following order of precedence: 1) This Agreement, 2) Supplementary Conditions, if any, 3) Bid Documents and Addenda, with those Addenda of later date having precedence over those of earlier date, 4) The General Condition of the Contract for Construction, AIA Document A201, 5) Drawings and Specifications. In the event that there is a conflict between the Drawings and Specifications, the Owner shall determine which shall govern and it shall be assumed that the Contractor used the most expensive method of construction in preparing his bid for the Contract. This contract shall be administered based on the aforesaid assumption.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

## 1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them, as well as other documents furnished by the Owner, shall remain the property of the Owner. The contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project, provided, however, that in no event shall Contractor use, or permit to be used, any or all such Contract Documents on other projects without the Owner's prior written authorization.

## ARTICLE II

## THE WORK

**2.1** The Contractor shall perform all the Work required by this Contract.

**2.2** The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishings of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as set forth on page 1 and as set forth in the Contract Documents.

**2.3** The Contractor shall be responsible for the creation and submission to the Owner of detailed and comprehensive as-built drawings depicting all as-built construction. Said as-built drawings shall be submitted along with building equipment operations manuals and all warranty data to the Owner upon final completion of the Project and receipt of same by the Owner shall be condition precedent to final payment to the contractor.

## ARTICLE III

## CONTRACT TIME

**3.1 TIME**

3.1.1 The Contractor shall commence the Work within 10 calendar days after the Owner issues the written notice to proceed and shall diligently continue its performance until final completion of the Project. The contractor shall accomplish Final Completion of all of the Work no later than **60 days** following the Notice to Proceed. The number of calendar days from the date on which the Work is permitted to proceed, through the date set froth for Final Completion, shall constitute the "Contract Time."

3.1.2 The term "Substantial Completion", as used herein, shall mean that point at which, as certified in writing by the Architect, the Project is at a level of completion in strict compliance with his contract, such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of substantial completion.

3.1.3 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

**3.2 LIQUIDATED DAMAGES**

3.2.1 In the event that unexcused delay causes the Contractor to fail to accomplish Substantial Completion of the Work in accordance with the dates set forth herein, for each and every day of delay the Contractor shall pay to the Owner the sum of $100.00 per day for liquidated damages for the loss of use. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise

due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. For liquidated damages pertaining to failure to achieve Final Completion in accordance with the requirements of paragraph 3.1.1. See paragraph 5.7.

## ARTICLE IV
## CONTRACT PRICE

### 4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of all of the Work and obligations required herein, the Fixed Price Agreement of a **$63,695.00.** The price set forth in this paragraph 4.1 shall constitute the Contract Price which shall not be modified except by Change Order or other mutually agreed upon contract modification as provided in this Contract. The contract price as set forth herein shall include the cost of all labor, materials, and supplies to be used or incorporated in the project. The contract price as stated herein, including adjustments such as change orders, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

## ARTICLE V
## PAYMENT AND COMPLETION

### 5.1 SCHEDULE OF VALUES

5.1.1 Within 10 calendar days of the issuance of the notice to proceed, the Contractor shall prepare and submit to the Owner and to the Architect a Contractor's Schedule of Values allocating the Contract Price to the various portions of the Work for the purposes of periodic and final payment. The Contractor's mobilization, cleanup, bonds, insurance, overhead and profit shall be separated from subcontractor and materials costs. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Architect and the Owner.

### 5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 PROGRESS PAYMENTS - The form of the Contractor's Application for Payment shall be supported by AIA Document G703, Continuation Sheet. Based upon the Contractor's Schedule of Values, the Contractor shall submit his applications for payment, in duplicate (each being notarized), to the Architect and to the Owner. After being subsequently certified by the Architect and sent to the Owner by the Architect, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or about the twentieth (20th) of each month after commencement of the Work, but no more frequently than once a month, the Contractor shall submit an Application for Payment to the Architect and to the Owner in such form and manner, and with such supporting data and content, as the Owner or the Architect may require. Therein, the Contractor may request payment for ninety-five percent (95%) of that portion of the Contract Price, less the total amounts of previous payments received from the Owner, which are properly allocable to Contract requirements properly provided, including labor and materials properly incorporated in the Work and including any materials stored on the site or suitably stored and insured off site for subsequent incorporation in the Work. Prior to requesting payment for any materials, the Contractor shall document to the satisfaction of the Owner and the Architect that the Contractor has paid for the materials included in the request for payments or that the materials are currently invoiced and payable. Payment for stored materials and equipment shall also be conditioned upon the Contractor's certification satisfactory to the Owner, that the owner has title to such materials and equipment and shall include proof of required insurance against loss or damage. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. After fifty percent (50%) of the Work has been completed, the Contractor may increase his payment request percentage to be one hundred percent ( 100%) of Work completed for the remaining half of the project instead of the ninety-five percent (95%) set forth above. Should the Contractor elect to calculate the retainage of 5% on a line item basis within the Schedule of Values, the total retainage per pay request shall be not less than 5% until the total pay application exceeds 50% of the Contract value.

5.2.4 The Architect shall determine and certify in writing to the Owner no later than the last day of the month, the amount properly owing to the Contractor. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 herein below. The Owner will make payment to the Contractor pursuant to the Contractor's Application for Payment within thirty (30) days from the date of receipt by the Owner of the Architect's certification of the Contractor's Application for Payment.

5.2.5 The Contractor warrants that title to all Work covered by an Application for Payment will be vested in the Owner no later than the time of payment. The Contractor further represents and warrants that upon submittal of an Application for Payment, all Work for which payments have been previously paid by the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever. As a condition precedent to payment, the Contractor shall provide on a monthly basis to the Owner properly executed waivers of lien, in the form provided by the Owner which is set forth in "Exhibit D" hereto, from all subcontractors, material men, suppliers, or others having lien rights, wherein said subcontractors, material men, suppliers, or others having lien rights, shall acknowledge receipt of all sums due to date pursuant to all prior Applications for Payment and waive and relinquish any liens, lien rights or other claims relating to date to the work site.

5.2.6 When payment is received from the Owner, the Contractor shall promptly pay each Subcontractor, material men, laborers, and suppliers the amounts they are due for the work covered by such payment. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor, material man, laborer, or supplier as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and any such Subcontractor, material man, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.7 No progress payment, nor any use or occupancy of the Project by the Owner, for any purpose, shall be interpreted or construed to constitute an acceptance of any Work not in strict accordance with this Contract.

5.2.8 No progress payment may include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason.

**5.3 WITHHELD PAYMENT**

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

(a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor.

(b) the quality of a portion, or all, of the Contractor's work not being in accordance with the requirements of this Contract.

(c) the quantity of the Contractor's work not being as represented in the Contractor's Application for Payment.

(d) claims made or likely to be made by third parties against the Owner or the Owner's property.

(e) failure by the Contractor to use Contract funds, previously paid the Contractor by the Owner, to pay Contractor's work related obligations including Subcontractors, laborers, material men, material and equipment suppliers or others in a prompt and proper fashion.

(f) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price.

(g) evidence related to the Contractor's rate of Progress which in the Owner's opinion indicates that the Work will not be completed in the time required for substantial or final completion.

(h) the Contractor's persistent failure to carry out the Work or refusal to perform any of its obligations in accordance with the Contract.

(i) damage or loss caused by the Contractor or a Subcontractor, material man, laborer, or supplier to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand.

## 5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within thirty (30) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after seven (7) additional days' written notice to the Owner and the Architect, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the owner have been received.

## 5.5 SUBSTANTIAL COMPLETION

5.5.1 When the Contractor believes that Substantial Completion has been achieved as defined by 3.1.2, the Contractor shall notify in writing the Architect and the Owner and shall submit in writing a list of items to be completed or corrected. When the Architect, on the basis of an inspection, determines that the Work is in fact substantially complete, then the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor as applicable for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. If the Architect, through its inspection, fails to find that the Contractor's work is substantially complete, and is required to repeat all, or any portion of, its Substantial Completion inspection, the Contractor shall bear the cost of such repeat inspections(s) which cost may be deducted by the Owner from any payment then or thereafter due to the Contractor. Guarantees and equipment warranties required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable costs as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all outstanding or threatened unsettled claims.

## 5.6 PARTIAL OCCUPANCY OR USE

5.6.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor or as identified in Article III. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Subparagraph 5.5.1. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

5.6.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

5.6.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## 5.7 COMPLETION AND FINAL PAYMENT

5.7.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Architect confirms that the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.7.2 If the Contractor fails to achieve final completion within the time fixed in paragraph 3.1 , the Contractor shall pay the Owner the sum of $100.00 dollars per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be unexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.7.3 The Contractor shall not be entitled to final payment unless and until it submits to the Owner and the Architect, in a form and manner required by the Owner, if any, its affidavit that all its obligations for payrolls, Subcontractors, laborers, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors, laborers, and suppliers of the Contractor and of any and all other parties required by the Architect or the owner, consent of Surety, if any, to final payment. Additionally, all product warranties, operating manuals, instruction manuals and other record documents, drawings, and things customarily required of the Contractor, or expressly required herein, as a part of or prior to closeout of the work must be delivered prior to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.7.4 The Contractor shall, immediately after the completion of the contract, give notice of the completion by an advertisement in a newspaper of general circulation published within the city or county in which the work has been done for a period of four successive weeks. A final settlement shall not be made upon the contract until the

expiration of thirty (30) days after the completion of the notice. Proof of publication of the notice shall be made by the contractor to the authority by whom the contract was made by affidavit of the publisher and a printed copy of the notice published.

5.7.5 The Owner shall make final payment of all sums due the Contractor subject to 5.3.1 above, within thirty (30) days of the Architect's execution of a final Certificate of Payment.

5.7.6 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

## ARTICLE VI
## THE OWNER

### 6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

6.1.1 The Owner shall furnish to the Contractor, prior to the execution of this Contract , any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Owner shall also furnish, if appropriate and available, surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor or determined to be the responsibility of the Contractor in accordance with this Contract, the Owner shall obtain all easements required for construction and shall pay for aid to construction required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner will furnish the Contractor, free of charge, six (6) copies of the Contract Documents for execution of the Work. Additional copies may be purchased by the Contractor from the printer.

6.1.4 The Owner shall classify all contract modifications in accordance with the categories established in "Exhibit A" entitled "Contract Modification Request" which is attached hereto and incorporated by reference.

### 6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order. However, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

### 6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance

to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the owner may have against the Contractor, proceed to carry out the subject Work with its own forces or with the forces of another. In such a situation, the Contractor shall be fully responsible and be liable for the costs of performing such work by the Owner and an appropriate contract modification shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Owner's Representative's and Architect's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner. The rights set forth herein are in addition to and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

## 6.4 OWNER'S POINT OF CONTACT

6.4.1 The Owner's point of contact shall be **Jeff Martin.** The telephone number on-site is **256-261-9238**

# ARTICLE VII
# THE CONTRACTOR

## 7.1 CONTINUING DUTY

7.1.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without required pre-construction conferences, adequate Contract Documents, Contractor performed Interference Drawings, as defined in the Specifications, or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. The Contractor shall provide to the Owner and Architect written notice of any error, omission, inconsistency, or ambiguity in the Contract Documents at least twenty-one (21) days prior to the scheduled date for performance of the affected portion o f the Work. Failure to provide such written notice to the Owner and Architect in accordance with this paragraph shall result in the Contractor waiving any resulting claim for time delay or any other consequential damages. Upon written notice of said error, omission, inconsistency, or ambiguity in the Contract Documents the Owner will have 21 days to remedy same before starting to count days of delay to the Contractor. If the Contractor performs any of the Work which involves such an error, omission, inconsistency or ambiguity in the Contract Documents without such written notice to the Owner and Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

## 7.2 CONSTRUCTION AND SUPERVISION PROCEDURES

7.2.1 The Contractor shall perform the Work strictly in accordance with this Contract.

7.2.2 The Contractor shall strictly supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

## 7.3 REVIEW OF FIELD CONDITIONS

7.3.1 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information

known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Architect and to the Owner in accordance with provisions defined in Article 7.1.1.

## 7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not strictly conforming to these requirements may be considered defective and shall constitute a breach of the Contractor's warranty.

7.4.2 In addition to any other warranties and guarantees set forth elsewhere in this Agreement, the Contractor, upon request by the Owner or the Architect shall promptly correct all failures or defects in its Scope of the Work for a period of one (1) year after the date of substantial completion. In the event of termination of the Agreement for convenience or for cause prior to substantial completion, the Contractor shall be responsible for the correction of all failure or defects in its Scope of Work as performed and paid for a period of one (1) year after the effective date of the termination. Should the Contractor fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Contractor shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Contractor's failure to correct the failure or defect including, but not limited to, any attorney's fees necessary to remedy the failure or defect, or to obtain reimbursement from the Contractor.

7.4.2.1 The Contractor shall schedule, coordinate and participate in a walk-through inspection of the work one (1) month prior to the expiration of the one-year correction period, and shall notify the Owner, the Professionals, and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.

7.4.3 In addition to the warranties and guarantees set forth elsewhere herein, the Builder expressly warrants and guarantees to the Owner:

7.4.3.1 That its scope of the Work complies with (i) the Construction Documents; and, (ii) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.

7.4.3.2 That all goods, products, materials, equipment and systems incorporated into its scope of the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (i) new (unless otherwise specified or permitted) and without apparent damage; (ii) of quality equal to or higher than that required by the Contract Documents; and (iii) merchantable.

7.4.3.3 That all management, supervision, labor and services required for its scope of the Work shall comply with the Contract and shall be and are performed in a workmanlike manner.

7.4.4 The Contractor shall require that all its subcontractors and suppliers provide written warranties, guaranties and other undertakings to the Owner and the Builder in a form identical to the warranties, guaranties and other undertakings set forth in this Contract,

including the warranties, guaranties, and undertakings set forth in this Article, which warranties, guaranties and undertakings shall run to the benefit of the Owner as well as the Contractor.

7.4.5 The warranties and guaranties set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of, or failure to inspect, the Work and review of the Contract Documents. These warranty provisions shall survive any termination of the contract.

7.4.6 Nothing contained in Paragraph 7.4.2 shall be construed to establish a period of limitation with respect to the Contractor's obligations under the Contract. Paragraph 7.4.2 relates only to the Contractor's specific obligations with respect to the Work, and has no relationship to the time within which the Contractor's contractual obligations under the Contract may be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to any contractual obligations pursuant to Paragraph 7.4.2 or contained elsewhere herein.

7.4.7 Unless otherwise specified herein, all of the Contractor's warranty and guaranty obligations, including the time periods for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

## 7.5 PERMITS, FEES AND NOTICES

7.5.1 The Contractor shall obtain and pay for all permits, fees and licenses, **excluding aid to construction**, necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

## 7.6 AUTHORIZED REPRESENTATIVE AND KEY PERSONNEL

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect.

7.6.2 Key Supervisory personnel assigned by the Contractor to this Project are as follow:

| **Name** | **Function** |
|---|---|
| **Billy Dunlap** | **Project Manager** |

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

## 7.7 SCHEDULE

7.7.1 The Contractor, within 10 days of the issuance of notice to proceed, shall submit to the Owner and the Architect for their information the Contractor's **schedule for**

**completing the Work**. Such Schedule shall be in compliance with the requirements set forth in the Project Manual which is attached hereto and incorporated by reference. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7.1 shall constitute a material breach of this Contract.

## 7.8 DOCUMENTS AND SAMPLES AT THE SITE

7.8.1 The Contractor shall continuously maintain at the site, for the benefit of the Owner and the Architect, one updated record copy of this Contract marked to record on a current basis, amendments, revisions, changes, selections and modifications made during the term of this contract. Additionally, the Contractor shall maintain at the site for the Owner and Architect the approved Shop Drawings, Product Data, Samples and other similar required submittals and interference drawings. All of these record documents shall be available to the Owner and the Architect at all regular business hours. Upon final completion of the Work, all of these record documents shall become the property of and shall be delivered to the Owner.

## 7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Architect. Approval by the Architect or Owner, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract. The Owner and Architect shall have no duty to review partial submittals, unsolicited, or incomplete submittals.

7.9.3 The Contractor shall review, approve and submit to the Architect and Owner, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall maintain a submittal log which shall include, as a minimum, the date scheduled for each submittal, the actual date of each submittal, the date of any resubmittal, the date of an approval or rejection, and the reason for any approval or rejection. The submittal log shall be copied to the Owner and Architect on a weekly basis and presented during the weekly project meeting.

7.9.4 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements 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 the Contract Documents and has performed his duty of carefully reviewing, inspecting, and examining any and all submittals before submitting to the Owner or Architect. Prior to the commencement of work, other than the structural framework, the Contractor shall create interference drawings for the coordination of trades in the mechanical rooms and other congested areas.

Such interference drawings shall be subject to submittal to the Architect and Owner and approval in accordance with paragraph 7.9.

7.9.5 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

7.9.6 The contractor shall direct specific attention in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals to revisions other than those requested by the Architect on previous submittals.

7.9.7 Informational submittals upon which the Architect is not expected to take responsive action shall be so identified in the Contract Documents.

7.9.8 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## 7.10 CLEANING AND USE OF THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site and off-site areas reasonably clean during performance of the Work and is responsible for the trash/debris that is allowed to accumulate onsite or off-site. Upon final completion of the Work, the Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash, and excess materials or equipment, together with all of the Contractor's property therefrom.

7.10.2 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment or impede floodwater flow.

7.10.3 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

7.10.4 **Access to the Site**: The Contractor shall perform its scope of the Work so as not to interrupt or interfere with any on site operations of the Owner or those authorized by the Owner to use the site.

## 7.11 ACCESS TO WORK

7.11.1 The Owner and the Architect shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

## 7.12 ROYALTIES AND PATENTS

7.12.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufactures is required by the Contract Documents. However, if

the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner and Architect.

## 7.13 SAFETY PRECAUTIONS AND PROGRAMS

7.13.1 The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit to the Architect and the Owner for their approval, a written Safety Program which shall address as a minimum their plan for compliance with all federal, state or local requirements for health and safety on the project site.

7.13.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless by written agreement of the Owner and Contractor.

7.13.3 The Contractor shall not be required pursuant to Article 10 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB).

## 7.14 SAFETY OF PERSONS AND PROPERTY

7.14.1 It is acknowledged that the Contractor shall have a duty to protect all personnel, equipment, materials, supplies associated with this project. Damage to property or personnel shall be subject to the indemnification provisions of this Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. employees on the Work and other persons who may be affected thereby.

2. the work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors or in transit; and

3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

7.14.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

7.14.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including fencing, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

7.14.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

7.14.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in paragraph 7.15.1 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under paragraph 7.15.1 , except damage or loss attributable to acts of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Paragraph 7.13.

7.14.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be designated by the Contractor in writing to the Owner and Architect.

7.14.7 The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

## 7.15 EMERGENCIES

7.15.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. In the event that any such emergency occurs, the Contractor shall promptly notify the Owner and the Architect within twenty-four (24) hours of the discovery of the emergency situation. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 8.3.

## 7.16 CONTRACTOR REPRESENTATIONS

In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, the Contractor, by executing this Contract, makes the following express representations to the Owner:

7.16.1 The Contractor is fully qualified to act as the contractor for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the contractor for, and to construct, the Project.

7.16.2 The Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed and operated.

7.16.3 The Contractor has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans, and specifications, soils testing reports of subsurface conditions, and submittals, and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for construction.

## ARTICLE VIII

## CONTRACT ADMINISTRATION

### 8.1 THE ARCHITECT

8.1.1 The Architect for this project is **Schneider and Associates** in the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement Architect and the status role of the replacement Architect shall be that of the former Architect.

### 8.2 ARCHITECT'S ADMINISTRATION

8.2.1 The Architect, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Architect as set forth in this Contract. The Architect shall be the Owner's agent from the effective date of this Contract until final payment has been made. The Architect shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

8.2.2 Unless otherwise directed by the Owner in writing, the Owner and the Contractor shall communicate with each other in the first instance through the Architect.

8.2.3 The Architect shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Architect shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Architect will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Architect deems it necessary or advisable, the Architect shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Architect will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the purpose of determining conformance with the design and Contract Documents.

8.2.7 The Architect will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Architect shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this contract.

8.2.9 The duties, obligations and responsibilities of the Contractor under this Contract shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation or responsibility of the Architect. The Contractor is not a third-party beneficiary of any contract by and between the Owner and the Architect. It is

expressly acknowledged and agreed that the duties of the Contractor to the Owner are independent of, and are not diminished by, any duties of the Architect to the Owner.

## 8.3. CLAIMS BY THE CONTRACTOR

8.3.1 All Contractor claims shall be initiated by written notice and claim to the Owner and the Architect. Such written notice and claim must be received by the Owner and Architect within seven (7) calendar days after occurrence of the event, or the first appearance of the condition, giving rise to the claim and shall set forth in detail all known facts and circumstances supporting the claim. As defined in Article 7.1, the Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without required pre-construction conferences, adequate Contract Documents, Contractor performed Interference Drawings, as defined in the Specifications, or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. The Contractor shall provide to the Owner and Architect written notice of any error, omission, inconsistency, or ambiguity in the Contract Documents at least twenty-one (21) days prior to the scheduled date for performance of the affected portion of the Work. Failure to provide such written notice to the Owner and Architect in accordance with this paragraph shall result in the Contractor waiving any resulting claim for time delay or any other consequential damages. Upon written notice of said error, omission, inconsistency, or ambiguity in the Contract Documents the Owner will have 21 days to remedy same before starting to count days of delay to the Contractor. If the Contractor performs any of the Work which involves such an error, omission, inconsistency or ambiguity in the Contract Documents without such written notice to the Owner and Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the Owner, the Architect and the Contractor.

8.3.3 **CLAIMS FOR CONCEALED AND UNKNOWN CONDITIONS** - Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure being at variance with the conditions indicated by this Contract, or (c) should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted either upward or downward by Change Order As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 **CLAIMS FOR ADDITIONAL COSTS** - If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall strictly comply with the requirements of 8.3.3 above. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, suppliers, material men or laborers, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction.

8.3.5 **CLAIMS FOR ADDITIONAL TIME** - If the Contractor is delayed in performing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work as authorized by the Owner, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or other Acts of God, then the date for achieving Substantial Completion of the Work or as applicable final completion, shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect, for such reasonable time as the Architect may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived. A task is critical within the meaning of this paragraph 8.3.5 if, and only if, said task is on the critical path of the Project Schedule so that a delay in performing such task will delay the ultimate completion of the project. As defined in Article 7.1, The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without required pre-construction conferences, adequate Contract Documents, Contractor performed Interference Drawings, as defined in the Specifications, or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. The Contractor shall provide to the Owner and Architect written notice of any error, omission, inconsistency, or ambiguity in the Contract Documents at least twenty-one (21) days prior to the scheduled date for performance of the affected portion of the Work. Failure to provide such written notice to the Owner and Architect in accordance with this paragraph shall result in the Contractor waiving any resulting claim for time delay or any other consequential damages. Upon written notice of said error, omission, inconsistency, or ambiguity in the Contract Documents the Owner will have 21 days to remedy same before starting to count days of delay to the Contractor. If the Contractor performs any of the Work which involves such an error, omission, inconsistency or ambiguity in the Contract Documents without such written notice to the Owner and Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

8.3.6 **TIME FOR EXTENSION FOR UNUSUALLY ADVERSE WEATHER CONDITIONS**

8.3.6.1 This provision specifies the procedure for determination of time extensions for Unusually Adverse Weather in accordance with paragraph 8.3.5 Claims for Additional Time. In order for the Owner to award a time extension under this clause, the following conditions must be satisfied:

a. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.

b. The unusually severe weather must actually cause a delay to the completion of the project. The delay must be beyond the control and without the fault or negligence of the Contractor.

8.3.6.2 The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The Contractor's progress schedule must reflect these anticipated adverse weather delays in all weather dependent activities. The contractor must include the impact of the lost days in his quotation for the time period he is to be on site in accordance with the following chart:

**MONTHLY ANTICIPATED ADVERSE WEATHER DELAY**
**WORK DAYS BASED ON FIVE (5) DAY WORK WEEK**

| JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 11 | 8 | 6 | 4 | 4` | 5 | 6 | 4 | 4 | 3 | 4 | 8 |

8.3.6.3 Upon receipt of the Notice to Proceed and continuing throughout the contract, the Contractor will record on Daily Report the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for fifty (50) percent or more of the contractor's scheduled work day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred in previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days anticipated in the chart contained in paragraph 8.3.6.2 above, the Owner will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a modification in accordance with Article X - Changes in the Work.

## 8.4 FIELD ORDERS

8.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by field order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

# ARTICLE IX
# SUBCONTRACTORS

## 9.1 DEFINITION

9.1.1 A Subcontractor is an entity, which has a direct contract with the Contractor to perform a portion of the Work.

9.1.2 A sub-subcontractor is an entity which has a direct or indirect contract with a subcontractor to perform a portion of the work.

## 9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner and the Architect, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner against the Contractor herein including those rights of contract termination as set forth by paragraph 12.2 below.

## 9.3 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

9.3.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

9.3.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

9.3.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule and Contract Price deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contract, separate contractors and the Owner until subsequently revised.

9.3.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract.

## 9.4 MUTUAL RESPONSIBILITY

9.4.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

9.4.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with the portion of the Work, promptly report to the Architect and

the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

9.4.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

9.4.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors.

## ARTICLE X
## CHANGES IN THE WORK

### 10.1 CHANGES PERMITTED

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed in strict accordance with applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

### 10.2 CHANGE ORDERS

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time for Performance, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order or other mutually agreed upon Contract modification.

10.2.2 Change orders shall be allowed only under the following conditions; 1) Minor changes for a total monetary amount less than that required by State law for competitive bidding ($15,000); or 2) Changes for matters incidental to the original contract necessitated by unforeseeable circumstances, including but not limited to, errors or omissions in the Contract documents requiring immediate action to forestall secondary damages; or 3) Changes due to emergencies; 4) Changes provided for in the original bidding and original Contract Documents as alternates.

10.2.3 The Contractor or successful bidder is expected to complete the project as bid and specified within the financial parameters stated therein. However, if it shall be determined that a change order is needed in any given case during the performance of a contract, the contractor shall promptly submit to the Architect a completed "Contract Modification Request" (Exhibit A) specifying the change(s) with justification. The Architect shall approve, modify or reject all contract modifications requests within five (5) working days and forward to the Owner, with a Contract Modification Request completed, as necessary, by the Architect, and attached to the Contract Modification Request.

10.2.4 In the event the change order requested by the Contract involves, 1) an increase in the contract sum or construction bid price, 2) an extension of the contract time, or 3) material change the contractor's scope of work or services, the Owner, shall

determine whether this is a change order which can be allowed and, if so, what exception it would fall under. The representative of the Owner shall then document the same by completing a City of Huntsville Resolution Authorizing Change Order" (Exhibit C), attach the same to the "Change Order Request" and "City of Huntsville contract Change Order" and submit to the City Council at its next regularly scheduled Council meeting for approval. The contractor shall not perform any such change until receipt of "City of Huntsville Contract Change Order" (Exhibit B), signed by the Mayor and President of the City Council.

10.2.5 The Owner reserves the right to institute Change Orders as pursuant to the aforesaid terms and conditions.

10.2.6 In no event is a Change Order to be performed prior to approval thereof by Owner, except for emergencies.

10.2.7 No Change Order shall cause the total amount of Change Orders applicable to this contract to exceed 10% of the original, total Contract Price as stated in 4.1.1.

10.2.8 Change Orders increasing the Contract Price by in excess of $5,000, the following allowance for overhead and profit shall be utilized :

1. For the Contractor or Subcontractor , for Work performed by the Contractor's own forces, 10% of the cost.

2. For the Contractor, Subcontractor or sub-Subcontractor for Work performed by others, 5% of the amount due the subcontractor performing the Work.

3. For each Subcontractor or sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, 10 % of the cost.

4. For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, 5 % of the amount due the Sub-subcontractor.

For Change Orders increasing the Contract Price by less than $5,000 or less, increase the above allowances from 5% to 10% and 10% to 15%. There shall be no additional costs included in Change Orders for any field office personnel time related to estimating or layout required by a Change Order or for field superintendent or field office operational costs provided the changes are performed during the orderly sequencing of the work and not requiring a time extension or special crews.

10.2.9 Change Orders decreasing the Contract Price shall contain an allowance for overhead and profit which is 50% of the mark-up percentages for increases established in paragraph 10.2.8.

10.2.10 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.2.11 Any change in the Contract Price resulting from a Change Order shall be determined as follows:

(1) by mutual agreement between the Owner and the Contractor as evidenced by

(a) the change in the Contract Price being set forth in the Change Order,

(b) such change in the Contract Price, together with any conditions or requirements relating thereto, being initialed by both parties and

(c) the Contractor's execution of the Change Order; or,

(2) if no mutual agreement occurs between the Owner and Contractor, the change in the Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions in the work. Such reasonable actual costs or savings shall include a component for direct jobsite overhead and profit but shall not include home-office overhead or other indirect costs or components. Any such costs or savings shall be documented in the format, and with such content and detail as the Owner or the Architect requires.

**10.3 MINOR CHANGES**

10.3.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the Owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

**10.4 EFFECT OF EXECUTED CHANGE ORDER**

10.4.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

**10.5 NOTICE TO SURETY; CONSENT**

10.5.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

## ARTICLE XI
## DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

**11.1 DISCOVERING WORK**

11.1.1 If any of the Work is covered, concealed or obscured contrary to the Architect's request or to any provisions of this Contract, it shall, if required by the Architect or the Owner, be uncovered for the Architect's inspection and shall be properly replaced or reworked at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered, concealed or obscured in a manner not covered by Subparagraph 11.1.1 above, it shall, if required by the Architect or Owner, be uncovered for the Architect's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be

charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

## 11.2 CORRECTING WORK

11.2.1 The Contractor shall, at no cost in time or money to the Owner immediately proceed to correct Work rejected by the Owner or Architect as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and Completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

## 11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of renovating and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

# ARTICLE XII
# CONTRACT TERMINATION

## 12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Architect, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited by Article X above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

## 12.2 TERMINATION BY THE OWNER

### 12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract, in whole or in part, by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 After receipt of notice of the termination for convenience for the terminated Work, the Contractor shall not enter into any new subcontracts, shall not purchase any additional supplies, equipment or materials for the Work, and shall make every effort to mitigate the costs of termination. The Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or Subcontracts to the Owner or its designee. The Owner may direct the Contractor to take steps to preserve the Work in place at the time of the Termination.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4 (a)The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b)The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c)Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

(i) Contract prices for labor, materials, equipment and other services accepted under this Contract.

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount

of compensation shall be reduced to reflect the anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The Total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.1.5 The Owner specifically reserves the right to convert a termination for convenience into a termination for cause within one (1) year after the effective date of the termination for convenience, in the event that the Owner becomes aware of circumstances or conditions with regards to the Work that would have warranted the Owner terminating for default, had those circumstances or conditions been properly known by the Owner, at the time of the termination for convenience. The Owner may, upon written notice to the Contractor of its intention to convert the termination for convenience to a termination for cause, initiate the termination for cause procedures at that time, as set forth in the Performance Bond, and the termination for convenience shall then be converted to a termination for cause.

12.2.2 **FOR CAUSE**

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled or receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the Owner's and the Architect's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

## ARTICLE XIII
## INSURANCE

### 13.1 INSURANCE

The Contractor shall carry insurance of the following kinds and amounts in addition to any other forms of insurance or bonds required under the terms of the contract specifications. The Contractor shall procure and maintain for the duration of the job until final acceptance by the Owner, or as later indicated, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

### A. MINIMUM SCOPE OF INSURANCE:

**1. Commercial General Liability**

Products and Completed Operations
Contractual Liability
Personal Injury and Advertising Injury
Explosion, Collapse and Underground Hazards (X.C. and U)
Broad Form Property Damage Liability
Severability of Interests
Waiver of Subrogation
Per Project Aggregate Limits

**2. Professional Liability:**

Only applies to contracts or subcontracts, consultants, that are architects, engineers, land surveyors or consulting firms

Insurance may be written on a "claims-made" basis, providing coverage for negligent acts, error or omission in the performance of professional services. Coverage will be maintained for three years after completion of the professional services and Certificates of Insurance will be submitted to the City within reasonable economic terms. Such coverage shall be carried on a continuous basis including prior acts coverage to cover the subject project. The professional liability insurance shall contain contractual liability coverage.

**3. Railroad's Protective Bodily Injury Liability and Property Damage Liability Insurance:**

In any case where contract involves work within fifty (50) feet of a railroad right-of-way, the contractor shall carry insurance for himself and insurance in the name of the Railroad Company in the amounts and under the terms specified in the special provisions for each contract.

**4. Automobile Liability:**

Business Automobile Liability providing coverage for all owned, hired and non-owned autos. Coverage for loading and unloading shall be provided under either automobile liability or general liability policy forms. Waiver of subrogation to be included.

5. **Workers' Compensation Insurance:**

Statutory protection against bodily injury, sickness or disease or death sustained by employee in the scope of employment. Protection shall be provided by a commercial insurance company or a recognized self-insurance fund authorized before the State of Alabama Industrial Board of Relations. Waiver of subrogation shall be included.

6. **Employers Liability Insurance:**

Covering common law claims of injured employees made in lieu of or in addition to a worker's compensation claim.

7. **Owner's, Contractors Protective Liability:**

Insurance naming the City of Huntsville, Alabama as the Named Insured.

8. **Property Insurance:**

Builders Risk Coverage, Special Form (including earthquake, sinkhole, and flood unless waived by the City of Huntsville) with a limit of no less than 100% of the completed value. The City of Huntsville and the Contractor should be the Named Insured as their interests may appear in improvements, repairs, and additions. The coverage should extend to all materials relative to the Work wherever located and in transit. The deductible shall not exceed $10,000 per occurrence and shall be borne by the contractor. Higher deductibles for earthquake, sinkhole, and flood may be approved by the City of Huntsville on a case by case basis.

9. **Umbrella (Excess) Liability Insurance:**

B. **MINIMUM LIMITS OF INSURANCE:**

1. **General Liability:**

Commercial General Liability on an "occurrence form" for bodily injury and property damage:

| | |
|---|---|
| $2,000,000 | General Aggregate Limit |
| $2,000,000 | Products - Completed Operations Aggregate |
| $2,000,000 | Personal & Advertising Injury |
| $2,000,000 | Each Occurrence |

2. **Professional Liability:**

Insurance may be made on a "claims-made" basis:

| | |
|---|---|
| $500,000 | Per Claim – Land Surveyors |
| $1,000,000 | Per Claim – Other Professionals |

3. **Railroads Protective:**

$500,000

4. **Automobile Liability:**

$1,000,000 Combined Single Limit per accident for bodily injury and property damage.

5. **Workers' Compensation:**

As Required by the State of Alabama Statute

6. **Employers Liability:**

$100,000 Bodily Injury
$500,000 Policy Limit by Disease

7. **Owner's, Contractors, Protective:**

$1,000,000 Per Occurrence
$1,000,000 Aggregate

8. **Property Insurance:**

Limit equal to the completed value of the construction or renovation.

9. **Umbrella (Excess) Liability Insurance:**

a. For projects or contract values in excess of $5,000,000, Umbrella or Excess Liability Insurance is required in an amount of $5,000,000 per occurrence and $5,000,000 aggregate.

b. For projects with contract value in excess of $10,000,000 Umbrella or Excess Liability insurance is required in an amount of $10,000,000 per occurrence and $10,000,000 aggregate.

C. **OTHER INSURANCE PROVISIONS:**

The Owner is hereby authorized to adjust the requirements set forth in this document in the event it is determined that such adjustment is in the Owner's best interest. If the insurance requirements are not adjusted by the Owner prior to the Owner's release of specifications with regard to the project in question, then the minimum limits shall apply.

The policies are to contain, or be endorsed to contain, the following provisions:

1. **General Liability and Automobile Liability Coverages Only:**

a. The Owner, its agents and their officers, employees, representatives and specified volunteers are to be covered as Additional Insured's, as their interests may appear, as respects: liability arising out of activities performed by or on behalf of the contractor and sub-contractor, if any, for products used by and completed operations of the Contractor, or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Owner, its agents and their officers, employees, representatives or specified volunteers. Waiver of subrogation shall be included.

b. The Contractor's insurance coverage shall be primary insurance as respects the Owner, its agents and their officers, employees, representatives, and specified volunteers, as their interests may appear. Any insurance or self-insurance maintained by the Owner, its agents and their officers, officials, employees, representatives or specified volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

c. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

**2. All Coverages:**

a. The Contractor is responsible to pay all deductibles. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Owner. Cancellation of coverage for non-payment of premium will require ten (10) days' written notice to the Owner b. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner, its officers, employees, agents or specified volunteers.

**D. ACCEPTABILITY OF INSURERS:**

Insurance is to be placed with insurers qualified to do business in the State of Alabama with an A. M. Best's rating of no less than **A- V.**

**E. VERIFICATION OF COVERAGE:**

The Owner and the City of Huntsville shall be indicated as a Certificate Holder and the Contractor shall furnish the Owner and the City of Huntsville with Certificates of Insurance reflecting the coverage required by this document. The A. M. Best Rating and deductibles, if applicable, shall be indicated on the Certificate of Insurance for each insurance policy. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the Owner before work commences. The Owner reserves the right to require complete, certified copies of all required insurance policies at any time.

**F. SUBCONTRACTORS WORKING FOR THE GENERAL CONTRACTOR, OR ARCHITECTS, ENGINEERS, LAND SURVEYORS OR CONSULTING FIRMS WORKING FOR THE ENGINEER OF RECORD:**

The Contractor shall specifically include all subcontractors as insured's under its policies or shall furnish separate certificates and/or endorsements for each subcontractor. The Contractor shall include all architects, engineers, land surveyors or consulting firms working for him as insured under its policies other than professional liability, or shall furnish separate certificates and/or endorsements for each architect, engineer, land surveyor or consulting firm. Subcontractors working for the contractor or architects, engineers, land surveyors or consulting firms working for the Contractor shall be required to carry insurance.

**G. HOLD HARMLESS AGREEMENT:**

**1. Other Than Professional Liability Exposures:**

The Contractor, architect, engineer, land surveyor or consulting firm, to the fullest extent permitted by law, shall indemnify, hold harmless, and defend the City of Huntsville, its elected and appointed officials, employees, agents and specified volunteers against all claims, costs, damages, losses and expenses, including but not limited to, attorney's fees, caused by, arising out of or resulting from or in connection with the performance of the work, provided that any such claim, costs, damage, loss of expense (1) is attributable to personal injury, including bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from and (2) is caused by, in whole or in part, any active

or passive negligent act or omission of the contractor, architect, engineer, land surveyor or consulting firm, or any of their subcontractors, sub consultants, or anyone directly or indirectly employed by any of them or anyone for whose acts they are legally liable. Such obligation should not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

**2. Professional Liability:**

The Contractor agrees that as respects to negligent acts, errors or omissions in the performance of professional services, to indemnify and hold harmless the Owner, its agents and their officers, representatives, employees, and specified volunteers from and against any and all claims, demands, losses and expenses including, but not limited to attorney's fees, liability, or consequential damages of any kind or nature resulting from any such negligent acts, errors, or omissions of the Contractor or any sub-consultants directly or indirectly employed by them or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable.

**3. Indemnity:**

In claims against any person or entity indemnified under this Paragraph by an employee of the Contractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## ARTICLE XIV
## MISCELLANEOUS

### 14.1 GOVERNING LAW

14.1.1 The Contract shall be governed by the law of the place where the Project is located.

### 14.2 SUCCESSORS AND ASSIGNS

14.2.1 The Owner and Contractor bind themselves, their successors and assigns to the other party hereto and to successors and assigns of such other party in respect to covenants, agreements, and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner. In no event shall a contract be assigned to an unsuccessful bidder whose bid was rejected because he or she was not a responsible or responsive bidder.

### 14.3 WRITTEN NOTICE

14.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.

### 14.4. RIGHTS AND REMEDIES

14.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

14.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

## 14.5 TESTS AND INSPECTIONS

14.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall coordinate for such tests, inspections and approvals with an independent testing laboratory or entity as contracted by the Owner or with the appropriate public authority. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded. The Owner will pay for the testing of concrete, soil, mechanical, air and hydronic test and balance. The Owner will test structural steel, frame welding bolted connections, and paint priming of all steel at the Owner's expense. All these tests by the Owner will be to the extent as required by the Contract Documents. The Contractor shall bear all related costs of all other testing, inspections and approval as required by the Contract Documents.

14.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 14.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice within twenty-four (24) hours to the Architect and to the Owner of when and where tests and inspections are to be made so the Architect may observe such procedures.

14.5.3 If such procedures for testing, inspection or approval under Subparagraphs 14.5.1 and 14.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architects, services and expenses.

14.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect and to the Owner.

14.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

14.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## 14.6 EQUAL OPPORTUNITY

14.6.1 The Contractor shall maintain policies of employment as follows:

14.6.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, color, sex or national origin.

The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or 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 agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of non-discrimination.

14.6.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin

**14.7 SURETY BONDS**

14.7.1 The Contractor shall furnish separate performance and payment bonds on the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in forms suitable to the Owner, in conformance with all the requirements of the Code of Alabama (1975), §39, and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

**14.8 PROJECT RECORDS**

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Contractor, or any subcontractor of the Contractor, shall be made available to the Owner or the Architect for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such other authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its construction. Said records expressly include those documents reflecting the cost of construction to the Contractor. Records relating to costs associated with Contract Modification Requests (Change Orders) shall be compiled and maintained on the basis of each request for a change or modification to the contract. These records shall be compiled so as to substantiate all costs and issues associated with each separate change or modification. The Contractor shall maintain and protect these documents for no less than four (4) years after final completion of the Project, or for any longer period of time as may be required by law or good construction practice.

**14.9 ENTIRE AGREEMENT**

14.9.1 This Agreement represents the entire agreement between the Owner and the Contractor and supersedes all prior communications, negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Owner and Contractor.

## 14.10 DOMESTIC PREFERENCES

14.10.1 In the performance of this contract, the contractor shall comply with Ala. Code (1975) §§ 39-3-1 through 39-3-5 in supplying steel, materials, supplies, other products, and labor. Failure to comply with these requirements shall subject the contractor to the penalties set forth in the sections of the Alabama Code set forth above.

## 14.11 DISPOSAL OF CONSTRUCTION DEBRIS AND WASTE

14.11.1 The Contractor shall dispose of all non-hazardous construction debris and waste at Solid Waste Disposal Authority of the City of Huntsville, Alabama. Any construction waste and debris not permitted to be disposed at the Solid Waste Disposal Authority shall be disposed at an alternate location selected by the Contractor.

## 14.12 SURVIVABILITY OF CONTRACT PROVISIONS

14.12.1 Termination of this Contract by either party shall not affect the rights and obligations of the parties that accrued prior to the effective date of the termination. Terms and conditions of the contract that survive termination include, but are not necessarily limited to, provisions regarding payments, insurance, termination, warranty, governing law of the contract, liquidated damages, bonding requirements, notice procedures, waiver, and other requirements necessary and appropriate for the proper resolution of disputes, claims and enforcement of the rights of the parties.

**OWNER**

**SEAL**

**Tommy Battle**
**By:**

**(SIGNATURE)**

**Tommy Battle, Mayor**
**City of Huntsville**
**308 Fountain Circle**
**Huntsville, AL 35801**

**(DATE OF EXECUTION)**

**CONTRACTOR**

**SEAL**

**By:**

**(SIGNATURE)**

**(DATE OF EXECUTION)**

I, the undersigned, a notary public in and for said County, in said State, hereby certify that Tommy Battle whose name as Mayor of The City of Huntsville, are signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, in his official capacity, executed the same with full authority for and as the act of said city on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 2012.

_____
Notary Public
My Commission Expires:
_____

STATE OF ALABAMA )
)
COUNTY OF MADISON )

I, the undersigned, a notary public in and for said County, in said State, hereby certify that _____ _____, whose names as _____ of _____, an Alabama corporation, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, in their capacity as such officers, executed the same with full authority for and as the act of said corporation on the day the same bears day.

GIVEN under my hand and official seal this the _____ day of _____, 2012.

_____
Notary Public
My Commission Expires:
_____

# "EXHIBIT A"

## CONTRACT MODIFICATION REQUEST

**DATE:** _____ **NUMBER:** _____

**PROJECT:**_____
**OWNER:**_____
**ARCHITECT:**_____
**CONTRACTOR:**_____
**DESCRIPTION OF CHANGE ( BY GENERAL CONTRACTOR):**
_____
_____
_____

1. **INITIATED BY :** _____
2. **OWNERS CLASSIFICATION** ( Check Appropriate Item ) :

**CONTRACT MODIFICATION**

_____ **VALUE ENGINEERING OR COST REDUCTION**
_____ **CHANGES IN PROJECT SCOPE OF WORK CHANGE ORDER**

_____**UNFORESEEN CONDITIONS**
_____**TECHNICAL COORDINATION**

3. **THIS CHANGE IS SUBMITTED FOR REVIEW AND APPROVAL AND IS CLASSIFIED AS ONE OF THE FOLLOWING TYPES:**

_____ MINOR CHANGE OF A MONETARY VALUE LESS THAN $15,000 AND NOT REQUIRED FOR COMPETITIVE BIDDING.

_____ CHANGES FOR MATTER RELATIVELY MINOR AND INCIDENTAL TO THE ORIGINAL CONTRACT NECESSITATED BY UNFORESEEABLE CIRCUMSTANCES ARISING DURING THE COURSE OF THE WORK.

_____ EMERGENCIES ARISING DURING THE COURSE OF THE WORK.

_____ CHANGE ORDER FOR ALTERNATES PROVIDED FOR IN THE ORIGINAL BIDDING WHERE THERE IS NO DIFFERENCE IN PRICE OF THE CHANGE ORDER FROM THE ORIGINAL BEST BID ON THE **ALTERNATE**

_____ CHANGE OF RELATIVELY MINOR TERMS NOT CONTEMPLATED WHEN THE PLANS AND SPECIFICATIONS WERE PREPARED AND THE PROJECT WAS BID AND WHICH IS IN THE PUBLIC INTEREST **AND DOES NOT EXCEED 10% OF THE CONTRACT PRICE.**

4. **TOTAL COST ( CONTRACTOR ATTACH DETAIL BREAKDOWN ):** _____
5. **TIME EXTENSION IN CALENDAR DAYS:**_____
6. **REVIEWED AND RECOMMENDED BY:**
   A. **ARCHITECT** _____
   B. **OWNERS PROJECT REPRESENTATIVE** _____
7. **APPROVED BY :**
   **CONTRACTOR** _____

# "EXHIBIT B"

**CITY OF HUNTSVILLE, ALABAMA**

## CONTRACT CHANGE ORDER

**CHANGE ORDER NO.**

DATE: _____ PROJECT: _____

TO: _____

(Contractor)

**TERMS:** You are hereby authorized, subject to the provisions of your contract for this project, to make the following changes thereto in accordance with the attached Change Order Request and supporting documents and to

**FURNISH** the necessary labor, materials and equipment to _____
(Description of work to be done or changes to be made)

TOTAL ADDITION OR DEDUCTION TO CONTRACT PRICE (NOTE: Numbers in parentheses are deductions).

| | |
|---|---|
| For this Change $_____ | $ |
| ORIGINAL CONTRACT PRICE | $ |
| Net total previous Change Orders | $ |
| Previous revised Contract Price | $ |
| This Change Order No. _____ ADD (DEDUCT) | $ _____ |
| Revised Contract Price this date | $ |

Extension of time resulting from this Change Order _____ (Indicate no. of calendar days).

The amount of this Change Order will be the responsibility of _____ .

This contract modification constitutes full and mutual accord and satisfaction for all time and all cost related to this change. By acceptance of this Contract Modification, the Contractor hereby agrees that the modification represents an equitable adjustment to the Contract, and further, agrees to waive all right to file any father claims or changes arising out of or as a result of this change, or the accumulation of executed Contract Modifications on this Contract.

The Contractor and Owner(s) hereby agree to the terms of this Change Order as contained herein.

**CONSENT OF SURETY**

_____
(Company)

By _____
(Authorized Representative)

**CONTRACTING PARTIES**

_____
(Contractor)

By _____
(Authorized Representative)

**RECOMMENDED**

By _____
(Design Engineer or Architect)

By _____
(COH Facilities Project Manager)

By _____
(Director of General Services)

**CITY OF HUNTSVILLE, ALABAMA**

By _____
(Its Mayor)

By _____
(President of City Council)

Date _____

# "Exhibit C"

**RESOLUTION NO. 2012-__**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, and the Mayor that the contract with_____ _____, approved and executed by the City of Huntsville, Huntsville, Alabama on the _____ _____, be and the same is hereby amended as is reflected on Change Order Number 1 attached hereto.

**BE IT FURTHER RESOLVED** that the total contract amount be hereby is amended from _____ and No/100s ($_____ _____) to _____ 10/100s ($_____ _____) including this Change Order Number 1 in the amount of _____ No/100s ($_____), said Change Order is substantially in word and figures as attached hereto and identified as "Change Order Number 1" to the contract for _____ _____ consisting of (three) 3 pages together with the signature of the City Council President and an executed copy of said document being permanently kept on file in the office of the City Clerk Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the _____ day of _____, 2012

_____
President of the City Council of
The City of Huntsville, Alabama

**ADOPTED** this the _____ day of _____, 2012.

_____
Mayor of the City of Huntsville,
Alabama

# EXHIBIT D
## PARTIAL RELEASE AND WAIVER OF LIENS
FOR CONSTRUCTION OF
FOR
THE CITY OF HUNTSVILLE,
HUNTSVILLE, ALABAMA

On this the ____ day of _____, 2012, the undersigned acknowledges that payment has been received from The City of Huntsville, either directly or through its General Contractor, _____in the amount of _____, through Pay Request No. _____ (previous pay request), excluding retainage, as payment for all work, labor, services, equipment, skill and materials furnished, delivered, and performed by the undersigned for the general contractor for The City of Huntsville, Alabama or anyone in the construction of the_____. This partial release and waiver of liens covers all progress payments received by the undersigned for work, labor, services, equipment, skill and material furnished through the date of _____, other than as specifically described below, toward the construction of the located at the, Huntsville, Alabama, hereinafter referred to as the "Premises".

The undersigned, in consideration for the payments as stated above and acknowledged hereto, affirms that all work, labor, services, equipment, skill or materials furnished, delivered or performed to or for the construction and Premises were furnished by the undersigned or its laborers, vendors, subcontractors, material men, servants, agents, employees, and suppliers and that such laborers, vendors, subcontractors, material men, servants, agents, employees, and suppliers have been paid in accordance with their contracts, or subcontracts with the undersigned, and the undersigned will defend and indemnify _____, the General Contractor, The City of Huntsville, Alabama, above described Premises, and any money or funds in the hands of The City of Huntsville, Alabama, against all mechanics liens or rights against the construction and premises.

For the above stated value received, the undersigned does hereby specifically waive, quitclaim, and release all rights, liens, or claims which the undersigned may now or afterward have or assert for all and any work, labor, services equipment, skill or materials furnished, delivered or performed for the construction and premises, damages, compensation, or extension of time due to delay, hindrance, interference, acceleration, inefficiencies or extra work, or any other claim of any kind it may have against the general contractor, The City of Huntsville, Alabama, or any money or funds in the control of The City of Huntsville, Alabama or any trustee of any such money or funds, or against the improvement, or against all that land, and the buildings on and appurtenances to it located at the, Huntsville, Alabama, or against any officers, agents, employees, independent contractors of The City of Huntsville, Alabama, or any other person or entity having a legal or equitable interest in the Project, arising out of or relating to any act, omission, circumstance or occurrence existing or occurring prior to the date of this Partial Release and Waiver of Liens, excepting only the following (claims not listed separately and specifically described are expressly and irrevocably waived and released)(if an attachment is used please note how many pages):

In witness hereof, the undersigned has caused this document to be signed and duly attested thereto on this the _____ day of _____, 2012.

Name: _____ Witness

By:_____ By:_____
Its:_____

# CITY OF HUNTSVILLE, ALABAMA REPORT OF OWNERSHIP FORM

A. **General Information.** Please provide the following information:

- Legal name(s) (include "doing business as", if applicable): Dunlap Contracting Inc.
- City of Huntsville current taxpayer identification number (if available): 29428.

(Please note that if this number has been assigned by the City and if you are renewing your business license, the number should be listed on the renewal form.)

B. **Type of Ownership.** Please complete the un-shaded portions of the following chart by checking the appropriate box below and entering the appropriate Entity I.D. Number, if applicable (for an explanation of what an entity number is, please see paragraph C below):

| Type of Ownership (*check appropriate box*) | Entity I. D. Number & Applicable State |
|---|---|
| ☐ Individual or Sole Proprietorship | Not Applicable |
| ☐ General Partnership | Not Applicable |
| ☐ Limited Partnership (LP) | Number & State: |
| ☐ Limited Liability Partnership (LLP) | Number & State: |
| ☐ Limited Liability Company (LLC) (Single Member) | Number & State: |
| ☐ LLC (Multi-Member) | Number & State: |
| ☒ Corporation | Number & State: 204-614 Alabama |
| ☐ Other, please explain: | Number & State (if a filing entity under state law): |

C. **Entity I.D. Numbers.** If an Entity I.D. Number is required and if the business entity is registered in this state, the number is available through the website of Alabama's Secretary of State at: www.sos.state.al.us/, under "Government Records". If a foreign entity is not registered in this state please provide the Entity I.D. number (or other similar number by whatever named called) assigned by the state of formation along with the name of the state.

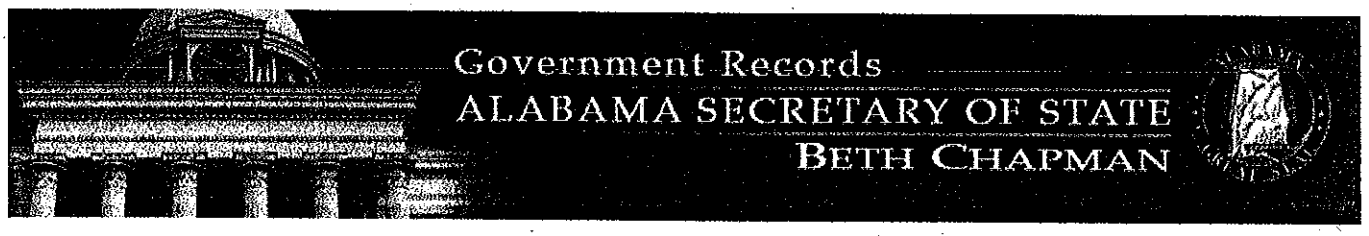
D. **Formation Documents.** Please note that, with regard to entities, the entity's formation documents, including articles or certificates of incorporation, organization, or other applicable formation documents, as recorded in the probate records of the applicable county and state of formation, ***are not required unless:*** (1) specifically requested by the City, or (2) an Entity I.D. Number is required and one has not been assigned or provided.

*Please date and sign this form in the space provided below and either write legibly or type your name under your signature. If you are signing on behalf of an entity please insert your title as well.*

Signature: _____ Title (if applicable): President

Type or legibly write name: William C. Dunlap Jr. Date: 2-28-2012

Revised 12/7/2011






## Business Entity Details

| Dunlap Contracting, Inc. | |
|---|---|
| Entity ID Number | 204 - 614 |
| Entity Type | Domestic Corporation |
| Principal Address | HUNTSVILLE, AL |
| Principal Mailing Address | Not Provided |
| Status | Exists |
| Place of Formation | Madison County |
| Formation Date | 8-12-1999 |
| Registered Agent Name | DUNLAP, WILLIAM C JR |
| Registered Office Street Address | 11019 EVEREST CIR<br>HUNTSVILLE, AL 35803 |
| Registered Office Mailing Address | Not Provided |
| Nature of Business | DEVELOP/BUILD/REMODEL RESIDENTIAL/COMMERCIAL STRUCTURES |
| Capital Authorized | $1,000 |
| Capital Paid In | --- |
| **Incorporators** | |
| Incorporator Name | DUNLAP, WILLIAM C JR |
| Incorporator Street Address | Not Provided |
| Incorporator Mailing Address | Not Provided |
| Incorporator Name | DUNLAP, SONYA R |
| Incorporator Street Address | Not Provided |
| Incorporator Mailing Address | Not Provided |
| **Annual Reports** | |
| Report Year | 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 |
| **Scanned Documents** | |
| Document Date / Type / Pages | 8-12-1999 Articles of Formation 6 pgs. |

Browse Results New Search

P.O. Box 5616
Montgomery, AL 36103-5616



Phone: (334) 242-7200
Fax: (334) 242-4993

# BIDDER INFORMATION & ACKNOWLEDGEMENTS

## BIDDER INFORMATION FORM

Bidder may print this form, complete and turn in with your bid response.

Business Organization

Name of Bidder (exactly as it would appear on an agreement):

Dunlap Contracting, Inc

Doing-Business-As Name of Bidder:

Principal Office Address:

PO Box 189 ; 1815 Hwy 231
Lacey's Spring, AL 35754

Telephone Number: 256-883-7134

Fax Number: 256-880-1542

Form of Business Entity [check one ("X")]

| | |
|---|---|
| Corporation | X |
| Partnership | |
| Individual | |
| Joint Venture | |
| Other (describe): | |

Corporation Statement

If a corporation, answer the following:

Date of incorporation: August 12 1999
Location of incorporation: Huntsville, AL
The corporation is held: Publicly ___ Privately X

Names and titles of corporate officers:

William C. Dunlap - President
Sonya R. Dunlap - Vice President

Partnership Statement

If a partnership, answer the following:

Date of organization: _____
Location of organization: _____
The partnership is: General ___ Limited ___

Name, address, and ownership share of each general partner owning more than five percent (5%) of the partnership:

_____

_____

_____

_____

Joint Venture Statement

If a Joint Venture, answer the following:

Date of organization: _____
Location of organization: _____
JV Agreement recorded? Yes ___ No ___

Name, address of each Joint Venturer and percent of ownership of each:

_____

_____

_____

_____

## CITY OF HUNTSVILLE EMPLOYEE, MEMBER OF HOUSEHOLD OR BUSINESS ASSOCIATE

Code of Ala. 1975§36-25-11 requires that contracts entered into with a public official, a public employee, a member of the household of the public official or public employee, or a business with which a public official or public employee associates be filed with the Alabama Ethic Commission. If you are awarded the contract, and if you are a City employee, or if a member of your household is a City employee or public official, or if your business associates with a City employee or public official, you must comply with the provisions of Code of Ala. 1975 §36-25-11

| | | | | |
|---|---|---|---|---|
| City Employee (X the correct answer)? | Yes | _____ | No | X |
| If Yes Department | | | | |
| Member of Household City Employee? | Yes | _____ | No | X |
| If Yes, Name & Department | | | | |
| Anyone associated with your Company a City Employee? | Yes | _____ | NO | X |
| If Yes, Name(s) & Departments | | | | |

## ACKNOWLEDGEMENTS

**I hereby certify that I have read and understand the City of Huntsville's General Terms and Conditions. I hereby certify that I agree to comply with all of the General Terms and Conditions of this IFB. I also understand that the General Terms & Conditions are standard and that any contradicting requirements of the IFB supercede.**

**I affirm that I have not been in any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition.**

**Upon award of this bid, I will not substitute any item on this bid under any circumstances.**

Signature of Bidder

William C Dunlap Jr
Print or Type Name of Bidder

2-28-2012
Date

Dunlap Contracting Inc
Legal Name of Firm

PO Box 189
Mailing Address

Lacey's Spring AL 35754
City State Zip Code

256-883-7134 256-8801542
Phone Fax

cameron@dunlapcontracting.com
Email Address

dunlapcontracting.com
Website Address

Terms 30 days

## E-VERIFY AFFIDAVIT

FORM FOR SECTIONS 9 (a) and (b) BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT; CODE OF ALABAMA, SECTIONS 31-13-9 (a) and (b)

**AFFIDAVIT FOR BUSINESS ENTITY/EMPLOYER /CONTRACTOR**
(To be completed as a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees)

State of Alabama

County of Madison

Before me, a notary public, personally appeared William C. Dunlap Jr. (print name) who, being duly sworn, says as follows:
As a condition for the award of any contract, grant, or incentive by the State of Alabama, any political subdivision thereof, or any state-funded entity to a business entity or employer that employs one or more employees, I hereby attest that in my capacity as President (state position) for Dunlap Contracting, Inc (state business entity/employer/contractor name) that said business entity/employer/contractor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.

I further attest that said business entity/employer/contractor is enrolled in the E-Verify program. **(ATTACH DOCUMENTATION ESTABLISHING THAT BUSINESS ENTITY/EMPLOYER/CONTRACTOR IS ENROLLED IN THE E-VERIFY PROGRAM)**

Signature of Affiant

Sworn to and subscribed before me this 6 day of March, 2012.
I certify that the affiant is known (or made known) to me to be the identical party he or she claims to be.

Signature and Seal of Notary Public

CAMERON B. GRACE
Notary Public
State of Alabama
MY COMMISSION EXPIRES: MAR 1, 2016

Company ID Number: 389312

# THE E-VERIFY PROGRAM FOR EMPLOYMENT VERIFICATION MEMORANDUM OF UNDERSTANDING

## ARTICLE I

## PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) sets forth the points of agreement between the Department of Homeland Security (DHS) and **Dunlap Contracting, Inc.** (Employer) regarding the Employer's participation in the Employment Eligibility Verification Program (E-Verify). This MOU explains certain features of the E-Verify program and enumerates specific responsibilities of DHS, the Social Security Administration (SSA), and the Employer. E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of the Employment Eligibility Verification Form (Form I-9). For covered government contractors, E-Verify is used to verify the employment eligibility of all newly hired employees and all existing employees assigned to Federal contracts or to verify the entire workforce if the contractor so chooses.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). Authority for use of the E-Verify program by Federal contractors and subcontractors covered by the terms of Subpart 22.18, "Employment Eligibility Verification", of the Federal Acquisition Regulation (FAR) (hereinafter referred to in this MOU as a "Federal contractor with the FAR E-Verify clause") to verify the employment eligibility of certain employees working on Federal contracts is also found in Subpart 22.18 and in Executive Order 12989, as amended.

## ARTICLE II

## FUNCTIONS TO BE PERFORMED

### A. RESPONSIBILITIES OF SSA

1. SSA agrees to provide the Employer with available information that allows the Employer to confirm the accuracy of Social Security Numbers provided by all employees verified under this MOU and the employment authorization of U.S. citizens.

2. SSA agrees to provide to the Employer appropriate assistance with operational problems that may arise during the Employer's participation in the E-Verify program. SSA agrees to provide the Employer with names, titles, addresses, and telephone numbers of SSA representatives to be contacted during the E-Verify process.

3. SSA agrees to safeguard the information provided by the Employer through the E-Verify program procedures, and to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security Numbers and for evaluation of the E-Verify program or such other persons or entities who may be authorized by SSA as governed

E-Verify

Company ID Number: 389312

**To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 888-464-4218.**

| | |
|---|---|
| Employer Dunlap Contracting, Inc. | |
| Holly Pamperin | |
| Name (Please Type or Print) | Title |
| *Electronically Signed* | 02/01/2011 |
| Signature | Date |

| | |
|---|---|
| Department of Homeland Security – Verification Division | |
| USCIS Verification Division | |
| Name (Please Type or Print) | Title |
| Electronically Signed | 02/01/2011 |
| Signature | Date |

Information Required for the E-Verify Program

**Information relating to your Company:**

| | |
|---|---|
| Company Name: | Dunlap Contracting, Inc. |
| Company Facility Address: | 1815 Hwy 231 |
| | Laceys Spring, AL 35754 |
| | |
| Company Alternate Address: | P.O. Box 189 |
| | Laceys Spring, AL 35754 |
| | |
| County or Parish: | MORGAN |
| Employer Identification Number: | 631232674 |