

# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 1/14/2016

Action Requested By:  
General Services

Agenda Item Type  
Resolution

Subject Matter:

Big Spring Park East Phase II

Exact Wording for the Agenda:

Resolution Authorizing the Mayor to enter an agreement between the City of Huntsville and Dunlap Contracting for Construction Services for the Big Spring Park East Phase II

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

Item to be considered for: Action

Unanimous Consent Required: No

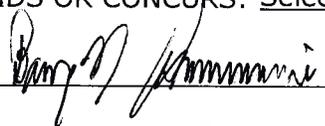
Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Provide construction services for the Big Spring Park Phase II

Associated Cost: \$158,285.00

Budgeted Item: Yes

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: 

Date: 1/6/2015

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: General Services

Council Meeting Date: 1/14/2016

Department Contact: Chris O'Neil

Phone # 256-427-5281

Contract or Agreement: Dunlap Contracting Inc.

Document Name: Big Spring Park East Renovations Phase II

City Obligation Amount: \$158,285.00 ✓

Total Project Budget:

Uncommitted Account Balance:

Account Number: 3020-14-00000-521002-00000000 ✓

### Procurement Agreements

<u>Title 39</u>	<u>Select...</u>
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### Grant-Funded Agreements

<b><u>Not Applicable</u></b>	Grant Name: <u></u>
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Department	Signature	Date
1) Originating	<i>[Signature]</i>	12/28/15 1/6/2016
2) Legal	<i>Mary C. Cates</i>	1/11/2016
3) Finance <i>CC</i>	<i>M. Dunge</i>	1-13-16
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**RESOLUTION NO. 16-\_\_\_\_\_**

**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. in the amount of One Hundred Fifty Eight Thousand Two Hundred Eighty Five Dollars and No/100s (\$158,285.00) for the Big Spring Park East Renovations Phase II located on 200 Church Street, Huntsville, Alabama 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 "Standard Fixed Price Agreement for Construction Services between the City of Huntsville and Dunlap Contracting, Inc." consisting of forty-three (43) 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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
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 \$158,285.00  
for the Big Spring Park East Renovations Phase II  
to be awarded January 14, 2016,

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: Margaret Sargent  
Margaret Sargent

Its: Finance Director

Date: Jan 13, 2016



## **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 Project Manual dated December 17, 2015, the Drawings dated December 17, 2015 and addenda(s)1-2, 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. A record copy of the Contract Documents will be maintained at the City of Huntsville's General Services Department offices. 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 PRIVACY 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 Engineer 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 Engineer 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 forth 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.

## 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 by April 1, 2016. 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 Engineer , 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 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 **One Hundred Fifty Eight Thousand Two Hundred Eighty Five Dollars and No/100s (\$158,285.00): Unit Price #1- Unsuitable Soils \$55.00 per cubic yard: Unit Price #2- Engineered Fill per cubic yard.** The prices set forth in this paragraph 4.1 shall constitute the Contract Prices which shall not be modified except by Change Order or other mutually agreed upon contract modification as provided in this Contract. The contract prices as set forth herein shall include the cost of all labor, materials, and supplies to be used or incorporated in the project. The contract prices 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 Engineer 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 Engineer 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 Engineer 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 Engineer and to the Owner. After being subsequently certified by the Engineer and sent to the Owner by the Engineer, 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 Engineer and to the Owner in such form and manner, and with such supporting data and content, as the Owner or the Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer'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 Engineer'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, materialmen, suppliers, or others having lien rights, wherein said subcontractors, materialmen, 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, materialmen, 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, materialman, 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, materialman, 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, materialmen, 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, materialman, 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 Engineer, 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 Engineer and the Owner and shall submit in writing a list of items to be completed or corrected. When the Engineer, on the basis of an inspection, determines that the Work is in fact substantially complete, then the Engineer 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 Engineer, 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 Engineer 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 Engineer.

5.6.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer 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 Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Engineer confirms that the Work is complete in full accordance with this Contract and this Contract has been

fully performed, the Engineer 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 Engineer 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 Engineer, 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 Engineer 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 Engineer'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 Engineer'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 the Project Manager William C. Bell The telephone number is 256-261-9428.

### **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 Engineer 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 Engineer 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 Engineer, 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 Engineer 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 Engineer 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 Engineer.

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

<b>Name</b>	<b>Function</b>
<b><u>William C. Dunlap Jr.</u></b>	<b><u>President</u></b>

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 Engineer 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 Engineer. 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 Engineer, 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 Engineer 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 Engineer 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 Engineer. Approval by the Engineer or Owner, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract. The Owner and Engineer shall have no duty to review partial submittals, unsolicited, or incomplete submittals.
- 7.9.3 The Contractor shall review, approve and submit to the Engineer 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 Engineer 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 Engineer. 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 Engineer 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 Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and the Engineer 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 Engineer'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 Engineer on previous submittals.

- 7.9.7 Informational submittals upon which the Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer.

#### **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 Engineer 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 Engineer 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 Engineer 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 13.1G.
- 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 Engineer.

- 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 Engineer 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 ENGINEER**

- 8.1.1 The Engineer for this project is City of Huntsville Engineering Department.

#### **8.2 ENGINEER'S ADMINISTRATION**

- 8.2.1 The Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the Owner's agent from the effective date of this Contract until final payment has been made. The Engineer 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 Engineer.
- 8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer 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 Engineer 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 Engineer shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Engineer deems it necessary or advisable, the Engineer shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.
- 8.2.6 The Engineer 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 Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.
- 8.2.8 The Engineer 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 Engineer. The Contractor is not a third-party beneficiary of any contract by and between the Owner and the Engineer. 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 Engineer 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 Engineer. Such written notice and claim must be received by the Owner and Engineer 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 Engineer 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 Engineer 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 Engineer, 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 Engineer 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 Engineer 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, materialmen 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 Engineer, for such reasonable time as the Engineer 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 Engineer 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 Engineer 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 Engineer, 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 Engineer 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 Engineer, 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 Engineer 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 Engineer, 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 Engineer a completed "Contract Modification Request" (Exhibit A) specifying the change(s) with justification. The Engineer 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 Engineer, 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 Engineer requires.

### **10.3 MINOR CHANGES**

10.3.1 The Engineer 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 Engineer's request or to any provisions of this Contract, it shall, if required by the Engineer or the Owner, be uncovered for the Engineer'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 Engineer or Owner, be uncovered for the Engineer'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 Engineer 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 Engineer'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 Engineer, 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 Engineer 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 Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. 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 to 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 Engineer'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 omissions 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. Worker's 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.

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 Owners, Contractors Protective Liability:

Insurance naming the City of Huntsville 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, sink hold, and flood may be approved the 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 and 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. Worker's 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 Insureds, 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 or 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, Engineer 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 Engineer timely notice of when and where tests and inspections are to be made so the Engineer 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 Engineer, 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 Engineer 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 Engineer and to the Owner of when and where tests and inspections are to be made so the Engineer 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 Engineers, 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 Engineer and to the Owner.
- 14.5.5 If the Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Engineer 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 Engineer 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.

## 14.13 CONTRACTOR'S E-VERIFY CLAUSE

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, Code of Alabama (1975) § 31-13-1 through 31-13-30 (also known as and hereinafter referred to as "the Alabama Immigration Act") as amended by Act No. 2012-491 on May 16, 2012 is applicable to all competitively bid contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, as amended, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are included in each subcontract in accordance with §31-13-9(c). Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2).

Code of Alabama (1975) § 31-13-9 (k) requires that the following clause be included in all City of Huntsville contracts that have been competitively bid and is hereby made a part of this contract:

"By signing this contract the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom."

**CONTRACTOR**

**OWNER**

SEAL

SEAL

WILLIAM DUNLAP  
By:

Tommy Battle  
By:

  
(SIGNATURE)

(SIGNATURE)

William C. Dunlap Jr.  
Dunlap Contracting Inc.  
P.O. Box 189  
Laceys Spring, AL 35754

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

\_\_\_\_\_  
(DATE OF EXECUTION)

\_\_\_\_\_  
(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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
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 **William C. Dunlap**, whose names as **President** of **Dunlap Contracting Inc.** 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 16th day of January, 2016.

[Signature]  
Notary Public  
My Commission Expires:  
1-10-2016

**"EXHIBIT A"**

UPDATED 10/07/2015

**CONTRACT MODIFICATION REQUEST**

DATE: \_\_\_\_\_ CMR NUMBER: \_\_\_\_\_

PROJECT: \_\_\_\_\_

OWNER: \_\_\_\_\_

ARCHITECT: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

DESCRIPTION OF CHANGE (BY GENERAL CONTRACTOR):

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

1. TOTAL COST (CONTRACTOR TO ATTACH DETAILED BREAKDOWN): \_\_\_\_\_

2. TIME EXTENSION IN CALENDAR DAYS (ATTACH JUSTIFICATION): \_\_\_\_\_

THIS CHANGE AFFECTS THE CRITICAL PATH OF THE PROJECT

3. SUBMITTED BY:

A. CONTRACTOR \_\_\_\_\_

B. ARCHITECT \_\_\_\_\_

**\*\*\*BOTTOM SECTION TO BE FILLED OUT BY CITY OF HUNTSVILLE REPRESENTATIVE\*\*\***

4. INITIATED BY: \_\_\_\_\_

5. OWNER'S CLASSIFICATION:

- CONTRACT MODIFICATION DUE TO:
- \_\_\_\_\_ VALUE ENGINEERING OR COST REDUCTION
- \_\_\_\_\_ CHANGES IN PROJECT SCOPE OF WORK
- \_\_\_\_\_ OWNER REQUESTED UPGRADE
- \_\_\_\_\_ UNFORESEEN CONDITIONS
- \_\_\_\_\_ TECHNICAL COORDINATION

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

- \_\_\_\_\_ MINOR CHANGE OF A MONETARY VALUE AND NOT REQUIRED FOR COMPETITIVE BIDDING.
- \_\_\_\_\_ CHANGES TO THE ORIGINAL CONTRACT NECESSITATED BY UNFORESEEABLE CIRCUMSTANCES ARISING DURING THE COURSE OF THE WORK.
- \_\_\_\_\_ EMERGENCIES ARISING DURING THE COURSE OF THE WORK.
- \_\_\_\_\_ CHANGE FOR ALTERNATES PROVIDED FOR IN THE ORIGINAL BIDDING WHERE THERE IS NO DIFFERENCE IN PRICE OF THE CHANGE FROM THE ORIGINAL BEST BID ON THE ALTERNATE.
- \_\_\_\_\_ CHANGE 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.
- \_\_\_\_\_ CHANGE NOT CONTEMPLATED WHEN THE PLANS AND SPECIFICATIONS WERE PREPARED AND THE PROJECT WAS BID AND WHICH IS IN THE PUBLIC INTEREST AND EXCEEDS 10% OF THE CONTRACT PRICE AND CONSTITUTES EXTRAORDINARY CIRCUMSTANCES.

7. I HAVE REVIEWED, UNDERSTAND AND RECOMMEND THIS CHANGE WITH NO EXCEPTIONS:

- A. CoH ESTIMATOR \_\_\_\_\_
- B. CoH PROJECT MANAGER \_\_\_\_\_
- C. DEPARTMENT HEAD (CUSTOMER) \_\_\_\_\_
- D. CoH FACILITIES PROJ MANAGER \_\_\_\_\_
- E. DEPARTMENT HEAD (GS) \_\_\_\_\_

**\*\*\*THIS EXECUTED FORM DOES NOT CONSTITUTE A CHANGE ORDER. THIS DOCUMENT IS AN ACKNOWLEDGEMENT BY THESE DESIGNATED REPRESENTATIVES THAT THEY RECOMMEND TO THE CITY OF HUNTSVILLE'S CITY COUNCIL TO APPROVE THE CHANGE IN CONTRACT SUM, SCOPE AND OR TIME STATED HEREIN. THE CITY OF HUNTSVILLE'S CITY COUNCIL MUST APPROVE ALL CHANGE ORDERS.\*\*\***



# "EXHIBIT B"

CITY OF HUNTSVILLE, ALABAMA

## CONTRACT CHANGE ORDER

CHANGE ORDER NO. \_\_\_\_\_

DATE: \_\_\_\_\_  
TO: \_\_\_\_\_

PROJECT: \_\_\_\_\_

(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

### CONTRACTING PARTIES

\_\_\_\_\_  
(Company)

\_\_\_\_\_  
(Contractor)

By \_\_\_\_\_  
(Authorized Representative)

By \_\_\_\_\_  
(Authorized Representative)

**RECOMMENDED**

**CITY OF HUNTSVILLE, ALABAMA**

By \_\_\_\_\_  
(Design Engineer or Architect)

By \_\_\_\_\_  
(Its Mayor)

By \_\_\_\_\_  
(COH Facilities Project Manager)

By \_\_\_\_\_  
(President of City Council)

By \_\_\_\_\_  
(Director of General Services)

Date \_\_\_\_\_

**"Exhibit C"**

**RESOLUTION NO. 2016-**

**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 \_\_\_\_\_, 2016.

\_\_\_\_\_  
President of the City Council of  
The City of Huntsville, Alabama

**ADOPTED** this the \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

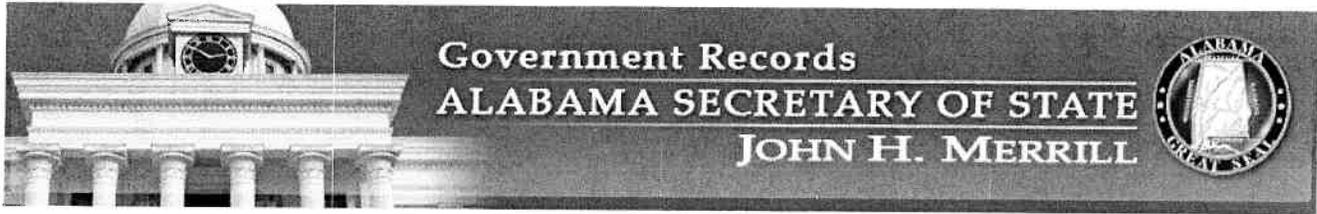
**EXHIBIT D**  
**PARTIAL RELEASE AND WAIVER OF LIENS**  
**FOR CONSTRUCTION OF**  
**FOR**  
**THE CITY OF HUNTSVILLE,**  
**HUNTSVILLE, ALABAMA**

On this the \_\_\_\_ day of \_\_\_\_\_, 2016, 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):





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**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 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	
Annual Report information is filed and maintained by the Alabama Department of Revenue. If you have questions about any of these filings, please contact Revenue's Business Privilege Tax Division at 334-242-1170 or <a href="http://www.ador.alabama.gov">www.ador.alabama.gov</a> . The Secretary of State's Office cannot answer questions about or make changes to these reports.	
Report Year	<a href="#">1999</a> <a href="#">2000</a> <a href="#">2001</a> <a href="#">2002</a> <a href="#">2003</a> <a href="#">2004</a> <a href="#">2005</a> <a href="#">2006</a> <a href="#">2007</a> <a href="#">2008</a> <a href="#">2009</a> <a href="#">2010</a> <a href="#">2011</a> <a href="#">2012</a> <a href="#">2013</a> <a href="#">2014</a> <a href="#">2015</a>
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Document Date / Type / Pages	8-12-1999   Articles of Formation   6 pgs.

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



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

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by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).

4. SSA agrees to provide a means of automated verification that is designed (in conjunction with DHS's automated system if necessary) to provide confirmation or tentative nonconfirmation of U.S. citizens' employment eligibility within 3 Federal Government work days of the initial inquiry.

5. SSA agrees to provide a means of secondary verification (including updating SSA records as may be necessary) for employees who contest SSA tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of U.S. citizens' employment eligibility and accuracy of SSA records for both citizens and non-citizens within 10 Federal Government work days of the date of referral to SSA, unless SSA determines that more than 10 days may be necessary. In such cases, SSA will provide additional verification instructions.

## **B. RESPONSIBILITIES OF DHS**

1. After SSA verifies the accuracy of SSA records for employees through E-Verify, DHS agrees to provide the Employer access to selected data from DHS's database to enable the Employer to conduct, to the extent authorized by this MOU:

- Automated verification checks on employees by electronic means, and
- Photo verification checks (when available) on employees.

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

3. DHS agrees to make available to the Employer at the E-Verify Web site and on the E-Verify Web browser, instructional materials on E-Verify policies, procedures and requirements for both SSA and DHS, including restrictions on the use of E-Verify. DHS agrees to provide training materials on E-Verify.

4. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in the E-Verify program. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

5. DHS agrees to issue the Employer a user identification number and password that permits the Employer to verify information provided by employees with DHS's database.

6. DHS agrees to safeguard the information provided to DHS by the Employer, and to limit access to such information to individuals responsible for the verification of employees' employment eligibility and for evaluation of the E-Verify program, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security Numbers and employment eligibility, to enforce the Immigration and

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Nationality Act (INA) and Federal criminal laws, and to administer Federal contracting requirements.

7. DHS agrees to provide a means of automated verification that is designed (in conjunction with SSA verification procedures) to provide confirmation or tentative nonconfirmation of employees' employment eligibility within 3 Federal Government work days of the initial inquiry.

8. DHS agrees to provide a means of secondary verification (including updating DHS records as may be necessary) for employees who contest DHS tentative nonconfirmations and photo non-match tentative nonconfirmations that is designed to provide final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

## **C. RESPONSIBILITIES OF THE EMPLOYER**

1. The Employer agrees to display the notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system.

2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted regarding E-Verify.

3. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.

4. The Employer agrees that any Employer Representative who will perform employment verification queries will complete the E-Verify Tutorial before that individual initiates any queries.

A. The Employer agrees that all Employer representatives will take the refresher tutorials initiated by the E-Verify program as a condition of continued use of E-Verify.

B. Failure to complete a refresher tutorial will prevent the Employer from continued use of the program.

5. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:

- If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.

- If an employee presents a DHS Form I-551 (Permanent Resident Card) or Form I-766 (Employment Authorization Document) to complete the Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The photocopy must be of sufficient quality to allow for verification of the photo

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and written information. The employer will use the photocopy to verify the photo and to assist DHS with its review of photo non-matches that are contested by employees. Note that employees retain the right to present any List A, or List B and List C, documentation to complete the Form I-9. DHS may in the future designate other documents that activate the photo screening tool.

6. The Employer understands that participation in E-Verify does not exempt the Employer from the responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures, except for the following modified requirements applicable by reason of the Employer's participation in E-Verify: (1) identity documents must have photos, as described in paragraph 5 above; (2) a rebuttable presumption is established that the Employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of any individual if it obtains confirmation of the identity and employment eligibility of the individual in good faith compliance with the terms and conditions of E-Verify; (3) the Employer must notify DHS if it continues to employ any employee after receiving a final nonconfirmation, and is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in violation of section 274A(a)(1)(A) if the Employer continues to employ an employee after receiving a final nonconfirmation; and (5) no person or entity participating in E-Verify is civilly or criminally liable under any law for any action taken in good faith based on information provided through the confirmation system. DHS reserves the right to conduct Form I-9 and E-Verify system compliance inspections during the course of E-Verify, as well as to conduct any other enforcement activity authorized by law.

7. The Employer agrees to initiate E-Verify verification procedures for new employees within 3 Employer business days after each employee has been hired (but after the Form I-9 has been completed), and to complete as many (but only as many) steps of the E-Verify process as are necessary according to the E-Verify User Manual, or in the case of Federal contractors with the FAR E-Verify clause, the E-Verify User Manual for Federal Contractors. The Employer is prohibited from initiating verification procedures before the employee has been hired and the Form I-9 completed. If the automated system to be queried is temporarily unavailable, the 3-day time period is extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability. Employers may initiate verification by notating the Form I-9 in circumstances where the employee has applied for a Social Security Number (SSN) from the SSA and is waiting to receive the SSN, provided that the Employer performs an E-Verify employment verification query using the employee's SSN as soon as the SSN becomes available.

8. The Employer agrees not to use E-Verify procedures for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use not authorized by this MOU. Employers must use E-Verify for all new employees, unless an Employer is a Federal contractor that qualifies for the exceptions described in Article II.D.1.c. Except as provided in Article II.D, the Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. The Employer understands that if the Employer

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uses the E-Verify system for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its access to SSA and DHS information pursuant to this MOU.

9. The Employer agrees to follow appropriate procedures (see Article III. below) regarding tentative nonconfirmations, including notifying employees in private of the finding and providing them written notice of the findings, providing written referral instructions to employees, allowing employees to contest the finding, and not taking adverse action against employees if they choose to contest the finding. Further, when employees contest a tentative nonconfirmation based upon a photo non-match, the Employer is required to take affirmative steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

10. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo non-match, does not establish, and should not be interpreted as evidence, that the employee is not work authorized. In any of the cases listed above, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, refusing to assign the employee to a Federal contract or other assignment, or otherwise subjecting an employee to any assumption that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo non-match or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 or OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

11. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA, as applicable, by not discriminating unlawfully against any individual in hiring, firing, or recruitment or referral practices because of his or her national origin or, in the case of a protected individual as defined in section 274B(a)(3) of the INA, because of his or her citizenship status. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the unfair immigration-related employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-



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Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

12. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.

13. The Employer agrees that it will use the information it receives from SSA or DHS pursuant to E-Verify and this MOU only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords) to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

14. The Employer acknowledges that the information which it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)), and that any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

15. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, including by permitting DHS and SSA, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a timely and accurate manner to DHS requests for information relating to their participation in E-Verify.

#### **D. RESPONSIBILITIES OF FEDERAL CONTRACTORS WITH THE FAR E-VERIFY CLAUSE**

1. The Employer understands that if it is a subject to the employment verification terms in Subpart 22.18 of the FAR, it must verify the employment eligibility of any existing employee assigned to the contract and all new hires, as discussed in the Supplemental Guide for Federal Contractors. Once an employee has been verified through E-Verify by the Employer, the Employer may not reverify the employee through E-Verify.

a. Federal contractors with the FAR E-Verify clause agree to become familiar with and comply with the most recent versions of the E-Verify User Manual for Federal Contractors and the E-Verify Supplemental Guide for Federal Contractors.

b. Federal contractors with the FAR E-Verify clause agree to complete a tutorial for Federal contractors with the FAR E-Verify clause.

c. Federal contractors with the FAR E-Verify clause not enrolled at the time of contract award: An Employer that is not enrolled in E-Verify at the time of a contract award must enroll as a Federal contractor with the FAR E-Verify clause in E-Verify within 30 calendar days of contract award and, within 90 days of enrollment, begin to use E-Verify to initiate verification of employment eligibility of new hires of the Employer who are working in the United States,

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whether or not assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within 3 business days after the date of hire. Once enrolled in E-Verify as a Federal contractor with the FAR E-Verify clause, the Employer must initiate verification of employees assigned to the contract within 90 calendar days from the time of enrollment in the system and after the date and selecting which employees will be verified in E-Verify or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Employers that are already enrolled in E-Verify at the time of a contract award but are not enrolled in the system as a Federal contractor with the FAR E-Verify clause: Employers enrolled in E-Verify for 90 days or more at the time of a contract award must use E-Verify to initiate verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire. Employers enrolled in E-Verify as other than a Federal contractor with the FAR E-Verify clause, must update E-Verify to indicate that they are a Federal contractor with the FAR E-Verify clause within 30 days after assignment to the contract. If the Employer is enrolled in E-Verify for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within 3 business days after the date of hire. An Employer enrolled as a Federal contractor with the FAR E-Verify clause in E-Verify must initiate verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

e. Institutions of higher education, State, local and tribal governments and sureties: Federal contractors with the FAR E-Verify clause that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), State or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors with the FAR E-Verify clause may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. The provisions of Article II.D, paragraphs 1.a and 1.b of this MOU providing timeframes for initiating employment verification of employees assigned to a contract apply to such institutions of higher education, State, local and tribal governments, and sureties.

f. Verification of all employees: Upon enrollment, Employers who are Federal contractors with the FAR E-Verify clause may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only new employees and those existing employees assigned to a covered Federal contract. After enrollment, Employers must elect to do so only in the manner designated by DHS and initiate E-Verify verification of all existing employees within 180 days after the election.

g. Form I-9 procedures for existing employees of Federal contractors with the FAR E-Verify clause: Federal contractors with the FAR E-Verify clause may choose to complete new Forms I-9 for all existing employees other than those that are completely exempt from this process. Federal contractors with the FAR E-Verify clause may also update previously completed Forms I-9 to initiate E-Verify verification of existing employees who are not completely exempt as long as that Form I-9 is complete (including the SSN), complies with

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Article II.C.5, the employee's work authorization has not expired, and the Employer has reviewed the information reflected in the Form I-9 either in person or in communications with the employee to ensure that the employee's stated basis in section 1 of the Form I-9 for work authorization has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen). If the Employer is unable to determine that the Form I-9 complies with Article II.C.5, if the employee's basis for work authorization as attested in section 1 has expired or changed, or if the Form I-9 contains no SSN or is otherwise incomplete, the Employer shall complete a new I-9 consistent with Article II.C.5, or update the previous I-9 to provide the necessary information. If section 1 of the Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired subsequent to completion of the Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.C.5, subject to any additional or superseding instructions that may be provided on this subject in the Supplemental Guide for Federal Contractors. Nothing in this section shall be construed to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU, or to authorize verification of any existing employee by any Employer that is not a Federal contractor with the FAR E-Verify clause.

2. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements.

### **ARTICLE III**

## **REFERRAL OF INDIVIDUALS TO SSA AND DHS**

### **A. REFERRAL TO SSA**

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.
2. The Employer will refer employees to SSA field offices only as directed by the automated system based on a tentative nonconfirmation, and only after the Employer records the case verification number, reviews the input to detect any transaction errors, and determines that the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security Number to SSA for verification again if this review indicates a need to do so. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.
3. If the employee contests an SSA tentative nonconfirmation, the Employer will provide the employee with a system-generated referral letter and instruct the employee to visit an SSA office within 8 Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it

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determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

4. The Employer agrees not to ask the employee to obtain a printout from the Social Security Number database (the Numident) or other written verification of the Social Security Number from the SSA.

## **B. REFERRAL TO DHS**

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must print the tentative nonconfirmation notice as directed by the E-Verify system and provide it to the employee so that the employee may determine whether he or she will contest the tentative nonconfirmation. The Employer must review the tentative nonconfirmation with the employee in private.

2. If the Employer finds a photo non-match for an employee who provides a document for which the automated system has transmitted a photo, the employer must print the photo non-match tentative nonconfirmation notice as directed by the automated system and provide it to the employee so that the employee may determine whether he or she will contest the finding. The Employer must review the tentative nonconfirmation with the employee in private.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation received from DHS automated verification process or when the Employer issues a tentative nonconfirmation based upon a photo non-match. The Employer will determine whether the employee contests the tentative nonconfirmation as soon as possible after the Employer receives it.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will provide the employee with a referral letter and instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within 8 Federal Government work days.

5. If the employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will provide the employee with a referral letter to DHS. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary. The Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo non-match, the Employer will send a copy of the employee's Form I-551 or Form I-766 to DHS for review by:

- Scanning and uploading the document, or
- Sending a photocopy of the document by an express mail account (paid for at employer expense).

7. If the Employer determines that there is a photo non-match when comparing the photocopied List B document described in Article II.C.5 with the image generated in E-Verify, the Employer must forward the employee's documentation to DHS using one of the means described in the preceding paragraph, and allow DHS to resolve the case.

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## ARTICLE IV

### SERVICE PROVISIONS

SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

## ARTICLE V

### PARTIES

A. This MOU is effective upon the signature of all parties, and shall continue in effect for as long as the SSA and DHS conduct the E-Verify program unless modified in writing by the mutual consent of all parties, or terminated by any party upon 30 days prior written notice to the others. Any and all system enhancements to the E-Verify program by DHS or SSA, including but not limited to the E-Verify checking against additional data sources and instituting new verification procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes. DHS agrees to train employers on all changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual, the E-Verify User Manual for Federal Contractors or the E-Verify Supplemental Guide for Federal Contractors. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials. An Employer that is a Federal contractor with the FAR E-Verify clause may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such a circumstance, the Federal contractor with the FAR E-Verify clause must provide written notice to DHS. If an Employer that is a Federal contractor with the FAR E-Verify clause fails to provide such notice, that Employer will remain a participant in the E-Verify program, will remain bound by the terms of this MOU that apply to participants that are not Federal contractors with the FAR E-Verify clause, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

B. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. The Employer understands that if it is a Federal contractor with the FAR E-Verify clause, termination of this MOU by any party for any reason may negatively affect its performance of its contractual responsibilities.

C. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

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D. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

E. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

F. The Employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

H. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.

# E-Verify



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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

Company ID Number: 389312

North American Industry Classification Systems Code:	236
Administrator:	
Number of Employees:	5 to 9
Number of Sites Verified for:	1
<b>Are you verifying for more than 1 site? If yes, please provide the number of sites verified for in each State:</b>	
<ul style="list-style-type: none"><li>ALABAMA 1 site(s)</li></ul>	

**Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:**

Name:	Holly M Pamperin	Fax Number:	(256) 880 - 1542
Telephone Number:	(256) 883 - 7134		
E-mail Address:	holly.pamperin@gmail.com		