

## **Construction Contract**

This agreement is made by Brian Washington (Contractor) and (Owner) on the date written beside our signatures.

### **Contractor**

Brian Washington

26A Quincy Street

Rochester, New York 14069

Work Phone Number: 585-298-0835

Email Address: eramos199@aol.com

Brian Washington is operating as a limited liability company in the state of New York.

Brian Washington will be referred to as CONTRACT WRITER throughout this agreement.

### **Owner**

New York

### **The Construction Site**

New York

#### **I. Project Description**

A. For a price identified below, CONTRACT WRITER agrees to complete for Owner the Work identified in this agreement as the CONTRACT WRITING.

#### **II. Contract Price**

A. In addition to any other charges specified in this agreement, Owner agrees to pay CONTRACT WRITER \$150.00 for completing the Work described as the CONTRACT WRITING.

#### **III. Payment per Unit of Work**

A. In addition to other charges specified in this agreement, Owner agrees to pay CONTRACT WRITER \$150.00 per 2 of 2.

1. The Contract Price includes 1 unit. The Contract Price will not be adjusted if there are additional or fewer Units of Work actually completed.

#### **IV. Scheduled Start of Construction**

A. Work under this agreement will begin on 6/5/2019.

#### **V. Scheduled Completion of Construction**

A. Work under this agreement will be completed in a reasonable time, consistent with the schedule of CONTRACT WRITER.

#### **VI. Documents Incorporated**

A. This agreement incorporates by reference certain disclosures and notices required by federal and state law. The following documents are incorporated as though included in full as part of this agreement.

Notice Required by New York Personal Property Law Article 10 Section 428 (in duplicate)

B. This agreement incorporates by reference certain documents which define and describe the Work to be done. The following documents are incorporated as though included in full as part of this agreement.

1. **Plans**
2. **Detailed Drawings**
3. **General Conditions**
4. **Special Conditions**
5. **Shop Drawings**
6. **Samples**

#### **VII. Documents Supplied to Contractor**

A. Owner will furnish to CONTRACT WRITER at no cost:

1. 2 full sets of Plans and Specifications for all trades, on paper.

If CONTRACT WRITER needs additional Plan sets, Owner will furnish those Plan sets to CONTRACT WRITER at no cost.

2. A full set of Plans and Specifications for all trades in electronic format.
3. A project manual in electronic or paper format.
4. CONTRACT WRITER will distribute Contract Documents as required by Subcontractors.

#### **VIII. Scope of Work**

A. CONTRACT WRITER shall supervise and direct the Work and accepts responsibility for construction means, methods, techniques, sequences and procedures required to complete the CONTRACT WRITING in compliance with the Contract Documents.

#### **IX. Compliance with Law**

A. CONTRACT WRITER and Owner mutually commit to use reasonable care to meet the Requirements of state, federal and local Law when discharging their responsibilities under this agreement.

#### **X. Employee Relations**

A. CONTRACT WRITER is responsible for performance of all construction crews, including employees of Subcontractors, and shall enforce strict discipline and good order on the Job Site.

B. CONTRACT WRITER will enforce the following rules on the Job Site: (1) Anyone found in possession of a firearm will be directed to leave immediately and will not be allowed to return, (2) Possession, sale, or distribution of alcohol or illicit drugs is prohibited. Anyone under the influence of alcohol or illicit drugs will be directed to leave immediately, (3) CONTRACT WRITER will certify that personnel on the Job Site have consented to submit to drug and alcohol screening and testing including pre-employment, for cause, periodic or random tests, and (4) Entry on the Job Site shall constitute consent to Inspection of an employee's person, vehicle, and personal effects by CONTRACT WRITER, Owner, or other authority. Any employee who is found in violation of these Job Site rules or who refuses to permit Inspection shall be barred from the Job Site at the discretion

of CONTRACT WRITER or Owner.

C. CONTRACT WRITER will ensure that personnel will be furnished and required to use safety equipment complying with OSHA standards, including hard hats, safety glasses with permanently attached side shields, body harnesses with shock cord lanyard, steel toe work boots, and appropriate protective equipment and clothing. Any employee who refuses to comply with OSHA standards shall be barred from the Job Site at the discretion of CONTRACT WRITER or Owner.

D. CONTRACT WRITER shall pay not less than the wage scale of the various classes of labor as shown in a prevailing wage schedule provided by Owner. Wage rates on this schedule are minimum rates only and do not include fringe benefits such as health, welfare and pension contributions, and travel allowances. CONTRACT WRITER and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and trade classification of all workers employed in connection with the Work and showing the actual per diem wage paid to each worker. Pay records shall be open at all reasonable hours for Inspection by Owner. CONTRACT WRITER and every Subcontractor and Sub-subcontractor shall keep posted on the construction Site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates.

E. Employment and training of apprentices shall be in accord with apprentice agreements under which each apprentice is training. Every apprentice shall be paid the wage appropriate for the craft or trade under which the apprentice is indentured. CONTRACT WRITER or any Subcontractor employing an apprentice shall hold a certificate approving CONTRACT WRITER or the Subcontractor for employment and training of apprentices. CONTRACT WRITER and the Subcontractor shall comply with any limitation on the number of apprentices or the ratio of apprentices to journeymen who may be employed in the craft or trade on the Work.

F. CONTRACT WRITER will allow only qualified, careful and skilled personnel to do the Work. Each worker shall have the appropriate license, certification or experience necessary to complete the tasks assigned.

G. CONTRACT WRITER shall discharge from employment on the CONTRACT WRITING any worker who cannot or will not meet standards for acceptable performance or who fails to comply with reasonable expectations for personal conduct.

H. Any worker employed on the CONTRACT WRITING by CONTRACT WRITER or by any Subcontractor who, in the opinion of Owner, is not careful and competent, does not perform Work in a proper and skillful manner, or is disrespectful, intemperate, disorderly, or neglects or refuses to comply with directions given, or who abuses drugs or alcohol, possesses contraband, harasses or is belligerent toward other employees shall, at the written request of Owner, be discharged from the CONTRACT WRITING by CONTRACT WRITER or Subcontractor and shall not be employed again in any portion of the Work without written consent of Owner. Should CONTRACT WRITER or a Subcontractor continue to or again employ anyone on the CONTRACT WRITING subject to a request under this paragraph, Owner may suspend Work until the request for discharge is honored. Any issue or circumstance relating to or resulting out of this paragraph shall not be construed or interpreted as interference with the responsibility of CONTRACT WRITER to determine the means, methods, techniques, sequences and procedures required to complete the CONTRACT WRITING as described in the Contract Documents.

I. CONTRACT WRITER agrees to Indemnify and hold harmless Owner from any and all causes of action, demands, Claims, damages, awards and attorney's fees, based on decisions made by Owner concerning discharge of construction personnel.

J. CONTRACT WRITER is responsible for good labor relations on the CONTRACT WRITING and shall use best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid Work stoppages, slowdowns, jurisdictional disputes between trades, and strikes. CONTRACT WRITER shall be liable to Owner for all damages suffered by Owner as a result of Work stoppages, slowdowns, disputes and strikes.

#### **XI. Owner's Responsibilities**

A. Owner will respond in writing and with reasonable promptness to written requests from CONTRACT WRITER for information relevant to completion of the Work. Owner will identify a Representative qualified to respond to questions from CONTRACT WRITER when Owner is not available. CONTRACT WRITER is authorized to rely on written responses from Owner and the identified Representative.

B. On request of CONTRACT WRITER, Owner shall provide clear and convincing evidence that Owner has access to funds committed to payment of the unpaid balance of the Contract Price. Owner shall inform CONTRACT WRITER of any significant change in the availability of funds committed to make payments required under the Contract Documents. Failure of Owner to comply with the terms of this paragraph shall relieve CONTRACT WRITER of the obligation to begin or continue the Work.

C. Owner will not interfere with or permit others to interfere with, stop, hinder, or delay completion of the Work by CONTRACT WRITER or Subcontractors except as provided under this agreement.

#### **XII. Construction by Others**

A. Owner reserves the right to use one or more Separate Contractors on the Job Site or on adjacent sites while Work is being done under this agreement. This right shall extend to portions of the Work which have been deleted from the Contract Documents by Change Order.

#### **XIII. Representations by Contractor**

A. The Contract Price is based on CONTRACT WRITER's careful evaluation of Plans, Specifications, Contract Documents, local conditions, including availability of labor, material, equipment, and transportation, the kind and character of soil and terrain, all available reports and tests on soil conditions, Work to be performed by Owner or Separate Contractors, environmental and historic preservation considerations, applicable Code Requirements, climatic conditions, and other local conditions that may affect cost to CONTRACT WRITER or duration of construction.

B. CONTRACT WRITER shall use skill and attention to complete the Work in a timely manner consistent with the Contract Documents.

C. Based on a thorough evaluation of the Contract Documents, the Job Site, and all conditions that may affect construction cost and duration, CONTRACT WRITER affirms that the Contract Price and Contract Time are fair and reasonable for completion of the CONTRACT WRITING.

D. Owner has reported to CONTRACT WRITER all conditions known to Owner which may not be apparent to CONTRACT WRITER and which might significantly increase cost of the Work or delay completion. These concealed conditions include, but are not limited to, hazards on the Job Site, unsuitable soil conditions, prior Defective Work of others, latent Defects in the Plans or Specifications, earlier attempts to do Similar or related Work, and obligations imposed by government.

E. CONTRACT WRITER affirms that the company is financially solvent, licensed, experienced, competent, and has resources necessary to complete the Work in compliance with the Contract Documents.

F. CONTRACT WRITER affirms that all Subcontractors will be financially solvent, licensed, experienced, competent, and will have resources necessary to complete the Work assigned in compliance with the Contract Documents.

#### **XIV. Disclaimer by Owner, Reliance by Contractor**

A. CONTRACT WRITER acknowledges that information offered by Owner on subsurface or concealed conditions or structures at the Job Site represent only the opinion of Owner based on limited knowledge and understanding and is not part of the contract. Owner disclaims the accuracy of information provided to CONTRACT WRITER.

#### **XV. Payment Plan**

A. Owner will pay to CONTRACT WRITER the Contract Price in installments consisting of progress payments and a final payment on completion of the Work.

#### **XVI. Progress Payments**

##### **A. Schedule of Progress Payments**

1. Progress payments are due as each phase of the Work is completed.

I. Amount due when vendor contract 1 is complete: \$150.00

Ventdor contract 1 is complete when contract has been written.

##### **B. Processing of Progress Payments**

1. No less than 5 calendar days before each progress payment is due under the terms of this contract, CONTRACT WRITER shall provide Owner with an application for payment (invoice) in a form which complies with generally accepted trade practice.

2. Except as provided otherwise in this agreement, Owner shall pay the amount due within 5 calendar days after approval of any application for progress or final payment.

3. Title to all Work done during the payment period shall pass to Owner upon payment in full of the invoice. At the request of Owner, CONTRACT WRITER shall prepare and execute all documents necessary to effect and perfect such transfer of title.

4. Each application for payment shall include a certification by CONTRACT WRITER that the charges are an accurate statement of the amount earned and payable under the terms of this contract for the current payment period, and include no items for which payment has been made previously.

5. Applications for payment shall include amounts due for changes only if approved as Change Orders or required as changes by Owner and shall exclude any amounts which are in dispute with Subcontractors or Material Suppliers.
6. With each application for payment, CONTRACT WRITER shall include the following signed statement: "Except as listed and attached to this certificate, CONTRACT WRITER unconditionally waives and releases Owner of any and all claims now existing on the CONTRACT WRITING for delay, acceleration, extensions of time, Indemnity, damages, or change in the Contract Price for Extra Work."
7. Unless otherwise provided in the Contract Documents, applications for payment may include, at the option of CONTRACT WRITER, itemized charges for materials and equipment not yet incorporated in the Work but delivered and suitably stored on the Job Site. Application for payment for stored materials and equipment shall include a bill of sale or other confirmation that stored materials and equipment are the property of Owner.
8. Payments to CONTRACT WRITER do not constitute a waiver of any Claim that Owner may have for Defective or inadequate workmanship or materials installed on the CONTRACT WRITING.
9. The check issued by Owner to CONTRACT WRITER may include one or more Subcontractors or Material Suppliers as joint payees.

#### **XVII. Payment for Materials Stored Off-Site**

A. No application for payment shall include materials stored off-site unless: (1) CONTRACT WRITER has received written approval from Owner to store the materials or equipment off-site in advance of delivery, (2) A certificate of insurance is furnished by CONTRACT WRITER evidencing the property in question is covered by all-risk property insurance naming the materials or equipment stored and naming Owner as an insured party, (3) Owner is provided with a detailed inventory of the stored materials or equipment, (4) The materials or equipment are clearly marked and identified and made available for Inspection and verification during normal business hours, (5) The materials or equipment are properly and safely stored, protected from weather, damage, vandalism and theft in a Bonded warehouse or a facility otherwise approved in advance by Owner, (6) CONTRACT WRITER provides documentation of the purchase price and that CONTRACT WRITER can pass clear title to the materials or equipment upon payment by Owner, and (7) CONTRACT WRITER warrants that the materials and equipment shall not be moved from the approved storage location except to the Job Site.

#### **XVIII. Audit of Records**

A. Accounting books and records of CONTRACT WRITER shall be available for Inspection and copying by Owner or a person authorized by Owner during normal working hours at a place of business designated by CONTRACT WRITER. Records made available shall include both electronic and paper versions of accounting records, receipts, vouchers, purchase orders, Subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, written policies and procedures, Change Order files (including documentation on negotiated settlements), payroll ledgers, record of allocation of overhead expense, and other documents which relate to the Work.

B. Accounting books and records of CONTRACT WRITER shall be retained for Inspection and copying by Owner for a period of 3 years after Final Completion.

C. CONTRACT WRITER shall require that all Subcontractors working for CONTRACT WRITER on the CONTRACT WRITING have the same obligation for Inspection, copying and retention of records as CONTRACT WRITER has. CONTRACT WRITER shall bear all costs (including attorney's fees) of enforcement of the right of Owner to Inspect and copy records in the event a Subcontractor refuses to fully cooperate.

D. CONTRACT WRITER shall keep payroll records showing the name, address, Social Security number, job classification, straight time and overtime hours worked each calendar day, and the actual wages paid to each person employed in the Work.

E. On request, CONTRACT WRITER shall release a certified copy of an employee's payroll record for Inspection and copying by the employee, Owner, or agency of government. Any copy of a payroll record made available for Inspection or copying by a public agency or Owner shall be marked or obliterated to prevent disclosure of the employee's name, address, and Social Security number.

#### **XIX. Interest**

A. Payments due and not paid under the Contract Documents shall bear interest from the date payment is due at a monthly rate of 0.10 percent.

#### **XX. Grounds for Withholding Payment**

A. Owner may withhold payment due CONTRACT WRITER for Defective Work which has not been corrected in compliance with terms of this agreement.

B. Owner may withhold payment due CONTRACT WRITER on the filing of a legal Claim against CONTRACT WRITER by any third party if the Claim relates to the subject matter of this contract and (1) May result in a lien on the CONTRACT WRITING, or (2) May result in a judgment for damages against Owner. Filing of a legal Claim shall not constitute grounds to withhold payment if CONTRACT WRITER has insurance coverage which would prevent loss to Owner from the legal Claim made.

C. Owner may withhold payment due CONTRACT WRITER for failure by CONTRACT WRITER to meet financial obligations to Subcontractors, tradesmen or Material Suppliers on the CONTRACT WRITING. Failure to meet financial obligations shall not constitute cause to withhold payment if CONTRACT WRITER has provided a Payment Bond from a licensed Surety, guaranteeing payment of Subcontractors, Material Suppliers, and tradesmen.

D. Owner may withhold payment due CONTRACT WRITER for unauthorized deviations from the Contract Documents or persistent failure to observe Requirements of the Contract Documents.

E. Owner may withhold payment due CONTRACT WRITER for neglect of CONTRACT WRITER to obtain a required permit or license or to comply with applicable Law, ordinance, code, or regulation, providing such neglect of CONTRACT WRITER has a material impact on satisfactory completion of the CONTRACT WRITING in compliance with the Contract Documents.

F. Owner may withhold payment due CONTRACT WRITER for failure to keep Work progressing in an orderly manner consistent with a reasonable time schedule.

G. If Owner withholds any payment under terms of this agreement, Owner will notify CONTRACT WRITER in writing of the amount being withheld, the reason why payment is withheld, and what must be done to release the payment otherwise due.

H. Grounds entitling Owner to withhold certain amounts due CONTRACT WRITER under this agreement shall not relieve Owner of the obligation to pay CONTRACT WRITER other amounts then due and shall not relieve Owner of the obligation to pay in full when the reason for withholding payment no longer exists.

I. Payments made by Owner with knowledge of a Defect, Claim, damage, delinquency, neglect, or failure of CONTRACT WRITER does not constitute waiver of the right of Owner to withhold payment at a later date for an earlier Defect, Claim, damage, delinquency, neglect, or failure by CONTRACT WRITER.

J. Owner may withhold from the current payment an amount which could have been withheld from an earlier payment had a latent Defect or failure by CONTRACT WRITER been discovered before the earlier payment was made.

K. Should any mediation, arbitration or court proceeding determine that Owner was not justified in withholding payment to CONTRACT WRITER, the amount wrongfully withheld shall be treated as an unpaid balance and accrue interest as provided by Law or this contract from the calendar day payment was wrongfully withheld.

## **XXI. Final Payment**

A. CONTRACT WRITER will submit an application for final payment to Owner when the Work has been completed in compliance with the Contract Documents. If Owner agrees that Work has been completed, payment is due CONTRACT WRITER for the entire unpaid balance of the contract amount.

B. Making of final payment constitutes waiver of all Claims by Owner against CONTRACT WRITER except those Claims previously made in writing and delivered to CONTRACT WRITER and those obligations otherwise provided by this agreement or by operation of Law.

C. The acceptance of final payment by CONTRACT WRITER constitutes a complete and unconditional waiver and release of any and all Claims by CONTRACT WRITER of whatever nature, and regardless of whether they are then known or unknown, and a complete and unconditional release of Owner, and every person for whom Owner is responsible, for any and all matters related to the contract or otherwise, except those Claims which have been made in writing and identified by CONTRACT WRITER as not having been settled at that time.

D. Application for final payment constitutes affirmation by CONTRACT WRITER that all payrolls, bills for materials, equipment charges, and other obligations of CONTRACT WRITER in connection with the Work have been paid or otherwise satisfied.

E. Owner will notify CONTRACT WRITER of the date when notice of Final Completion is recorded.

F. If completion of the Work is delayed unreasonably at no fault of CONTRACT WRITER, CONTRACT WRITER shall be entitled to final payment for all Work completed without prejudice to the right of CONTRACT WRITER to complete the CONTRACT WRITING at a later date and



without prejudice to the right of Owner to make Claims against CONTRACT WRITER for Defects in Work completed.

## **XXII. Changes in the Work**

- A. Except as provided elsewhere in this agreement, no change to this contract (including modification, clarification, interpretation or correction of the Plans or Specifications) shall be made without mutual agreement and a written Change Order signed by CONTRACT WRITER and Owner identifying the change, the cost of the change, and the effect on Project schedule, if any.
- B. Any change in Plans, Specifications or Contract Documents necessary to conform to existing or future Laws, codes, ordinances or regulations shall be considered Extra Work.
- C. Changes in the Work required due to defects or inconsistencies in Plans, Specifications or other Contract Documents shall be considered Extra Work.
- D. Any act, error, or omission by Owner or anyone acting on behalf of Owner which increases the cost of completing the Work or delays the Contract Completion Date shall be considered Extra Work.
- E. Owner may order Extra Work or make changes in the Work before a Change Order is signed when injury to person or property or a significant increase in cost or a significant delay would likely result from processing a routine Change Order.
- F. CONTRACT WRITER may take on Extra Work or make changes in the Work before a Change Order is signed when injury to person or property or a significant increase in cost or a significant delay would likely result from processing a routine Change Order.
- G. If the cost per Unit of Work is specified in this agreement, the change in Contract Price for more or less Units of Work shall be at the specified cost per unit.
- H. CONTRACT WRITER may delay acting on any written or oral direction, instruction, interpretation, or determination of Owner which would constitute Extra Work and may assert the right to an amendment to this contract by written Change Order before proceeding.
- I. On receipt of any instruction or information which CONTRACT WRITER interprets as requiring Extra Work, CONTRACT WRITER shall prepare and submit to Owner a proposal describing the change in the Work using (where appropriate) Drawings, Specifications, narrative, the cost to Owner for making the change, and the proposed revision in the Contract Completion Date, if any.
- J. CONTRACT WRITER is authorized to make minor changes in the Work which are in the interest of Owner, do not materially alter the quality or performance of the Work, and do not affect the cost or time of performance, and comply with applicable Laws, codes, ordinances and regulations. CONTRACT WRITER will inform Owner of each minor change made in the Work.
- K. Owner is authorized to make minor changes in the Work which are in the interest of Owner, do not materially alter the quality or performance of the Work, do not affect the cost or time of performance, and comply with applicable Laws, codes, ordinances and regulations.
- L. Other clauses in this agreement notwithstanding, there will be no reduction in the value of the Work without a written Change Order.

M. When a change in the Work has been proposed by Owner, CONTRACT WRITER shall halt Work in the area of the proposed change and take steps to minimize any loss or waste which might result from implementing the proposed change.

N. When signed by CONTRACT WRITER and Owner, each Change Order becomes a Contract Document.

O. Acceptance by CONTRACT WRITER of payment for a Change Order shall constitute a waiver by CONTRACT WRITER of all other Claims by CONTRACT WRITER based on Work described in the Change Order.

P. Notwithstanding any provision in this agreement to the contrary, CONTRACT WRITER shall be entitled to payment for Extra Work and an extension of the Contract Completion Date if acts or omissions of Owner, anyone acting on behalf of Owner or government authority, whether written or oral, explicit or implied, modify the Contract Documents or methods of the Work and thereby increase cost to CONTRACT WRITER or delay the Contract Completion Date.

Q. Should CONTRACT WRITER and Owner fail to agree promptly on the terms of a Change Order, CONTRACT WRITER shall be paid, pending resolution of the dispute, the portion of the cost of the change not in dispute, including the costs of time and materials required to execute the change. Payments required under this paragraph shall be made as the Work progresses, concurrently with progress payments.

R. Should CONTRACT WRITER and Owner fail to agree promptly on the cost of a Change Order, CONTRACT WRITER shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of Work allocable to the change. CONTRACT WRITER shall maintain such accounts until CONTRACT WRITER and Owner agree on the cost of change or until the issue is resolved under provisions of this contract relating to disputes.

S. Failure of CONTRACT WRITER and Owner to agree on the cost of a change in the Work or failure to agree that Extra Work is required does not prejudice the right of CONTRACT WRITER to Claim that Work performed was beyond Requirements of the Contract Documents.

### **XXIII. Cooperation of the Parties**

A. Both CONTRACT WRITER and Owner pledge that their relations will be conducted with courtesy and consideration in an environment characterized by mutual respect. Owner pledges to respond promptly to requests by CONTRACT WRITER for guidance, assistance and payments when due and agrees to extend to CONTRACT WRITER the deference and latitude a dedicated professional deserves. CONTRACT WRITER pledges to commit the skill and resources required to complete the CONTRACT WRITING in a manner that complies with both the letter and spirit of the Contract Documents and enhances the reputation of CONTRACT WRITER for dependability and professionalism.

### **XXIV. Contractor Claims**

A. If CONTRACT WRITER claims that any instruction, Drawing, act or omission of Owner or any representative of Owner, or any agency of government, increases costs to CONTRACT WRITER, requires extra time or changes the Scope of Work, CONTRACT WRITER shall have the right to assert a Claim for such costs or time.

B. Unresolved Claims or disputes shall not cause CONTRACT WRITER to delay or suspend Work or for Owner to delay or suspend payments as provided by this agreement. Continued performance by CONTRACT WRITER shall not be deemed a waiver of any Claim for additional compensation or an extension of Time for Completion. CONTRACT WRITER shall cooperate with Owner and representatives of Owner to mitigate potential damages, delay and other adverse consequences arising out of the condition which is the subject of the Claim.

C. CONTRACT WRITER and Owner agree to make a good faith effort to resolve all Claims that arise under this agreement and shall seek the opinion of expert disinterested parties on the validity of Claims, when appropriate. Claims not resolved to the mutual satisfaction of CONTRACT WRITER and Owner shall be resolved under the provisions of this agreement covering dispute resolution.

#### **XXV. Notice of Claims**

A. No Claim by CONTRACT WRITER shall be considered unless CONTRACT WRITER provides Owner with a notice that there will be a Claim for additional compensation or an extension of time. This notice of Claim shall be made no less than 5 calendar days after CONTRACT WRITER recognizes or should have recognized that circumstances exist which support such a Claim. The notice of Claim shall include: (1) The date of the notice, (2) The date the basis for the Claim was discovered, (3) The circumstances that support the Claim, and (4) The estimated additional cost to Owner or additional time required to complete the CONTRACT WRITING.

B. If the Claim involves Extra Work, CONTRACT WRITER shall maintain detailed records which show each expense incurred, including payroll records and receipts for Subcontracted Work, materials and equipment. These detailed records shall be made available to Owner for verification while Work subject to the Claim is being performed.

C. Within 10 calendar days after completion of Work which is the subject of a notice of Claim, CONTRACT WRITER shall provide to Owner a written final statement of Claim. The final statement of Claim shall include: (1) The date of the statement, (2) The date when Work done under the Claim was completed, (3) The full and final amount of the Claim and the additional time Claimed, and (4) An offer to provide detailed written records substantiating each element of the Claim.

D. The final statement of Claim shall be accompanied by a certificate executed by CONTRACT WRITER and stating as follows: "I certify that this claim is made in good faith; that the supporting information is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which Owner is liable; and, that I am duly authorized to certify the claim on behalf of CONTRACT WRITER."

E. The amount Claimed by CONTRACT WRITER shall be calculated in accord with provisions in this contract on charges for Extra Work.

F. Neither mediation nor arbitration shall relieve the obligation of CONTRACT WRITER to give timely notice of Claims. No conduct or settlement negotiation during mediation shall be considered a waiver of the right of Owner to assert that Claim procedures were not followed.

G. CONTRACT WRITER agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon Owner unless and until such approval is ratified by execution of a written Change Order.

## **XXVI. Dispute Resolution**

A. Except as provided elsewhere in this agreement, all Claims and disputes between CONTRACT WRITER and Owner arising out of or relating to the Contract Documents or contract warranty or the breach thereof, except for Claims which have been waived by the making or acceptance of final payment, shall be decided by courts of competent jurisdiction in the county where the CONTRACT WRITING is located.

B. Should either Party bring suit in court to enforce the terms of this agreement, any judgment or award shall include court costs and reasonable attorney's fees to the successful Party plus interest at the legal rate.

## **XXVII. Insurance**

### **A. General Requirements**

1. CONTRACT WRITER shall carry workers' compensation insurance and public liability insurance as required by Law and regulation for the protection of CONTRACT WRITER and Owner during progress of the Work.

#### **Notice to Owner Required by New York Law**

**MECHANICS' LIENS:** Any contractor, subcontractor, or materialman who provides home improvement goods or services pursuant to this home improvement contract and who is not paid may have a valid legal claim against your property known as a mechanic's lien. Any mechanic's lien filed against your property may be discharged. Payment of the agreed-upon price under the home improvement contract prior to filing of a mechanic's lien may invalidate such lien. You may contact an attorney to determine your right to discharge a mechanic's lien.

**TRUST FUNDS:** Except as provided below for hourly pay, CONTRACT WRITER is legally required to deposit all payments received prior to completion in accordance with subdivision four of section seventy-one-a of the lien law and that, in lieu of such deposit, CONTRACT WRITER may post a bond, contract of indemnity or irrevocable letter of credit with Owner guaranteeing the return or proper application of such payments to the purposes of the contract.

**PROGRESS PAYMENTS:** If this contract provides for one or more progress payments to be paid to CONTRACT WRITER by Owner before substantial completion of the work, the contract shall include a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment.

**EXCEPTION FOR HOURLY PAY:** If the contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, such payments for such work or materials shall not be deemed to be progress payments for the purposes of this agreement and shall not be required to be deposited in accordance with provisions of this agreement on progress payments.

**RIGHT TO CANCEL:** In addition to any right otherwise to revoke an offer, Owner may cancel the home improvement contract until midnight of the third business day after the day on which Owner has signed this agreement. Cancellation occurs when written notice of cancellation is given to CONTRACT WRITER. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of Owner not to be bound. Notwithstanding the foregoing, this paragraph shall not apply to a transaction in which Owner has initiated the contact and the home improvement is needed to meet a bona fide emergency of Owner, and the owner furnishes the home improvement contractor with a separate dated and signed personal statement in the handwriting of Owner describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the home improvement contract within three business days. For the purposes of this paragraph Owner shall mean any representative of Owner.

**RIGHT TO RECEIVE THIS CONTRACT:** This contract is legible, in plain English, and describes clearly other documents incorporated into the contract. Before any work is done, Owner shall be furnished a copy of the Contract Documents signed by CONTRACT WRITER. This contract may include other matters agreed to by the parties to this contract.

## Signatures

The signatures that follow constitute confirmation by those signing that they have examined and understand the Contract Documents and agree to be bound by the terms of these documents.

CONTRACT WRITER may not begin Work before receiving from Owner a written notice to proceed. Any Work performed by CONTRACT WRITER before receipt of the notice to proceed shall be done at the risk of CONTRACT WRITER and without obligation of Owner.

This contract is for immediate acceptance. Any delay in acceptance beyond 6/5/2019 will require renegotiation of the terms of this agreement.

If this contract is not signed by CONTRACT WRITER at the time it is signed by Owner, CONTRACT WRITER shall, within 15 days thereafter, either give Owner written notice of rejection of the contract or sign the contract and supply owner with copy of the signed contract. The notice of rejection or signed contract will be delivered to Owner either personally or by certified or registered mail. In case of rejection, any payment made by Owner will be returned with the notice of rejection.

### Notice Required by New York Personal Property Law Article 10 Section 428

**The refund policy of CONTRACT WRITER is: Demend for Refund must be submitted in 10 days**

**YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.**

This agreement is entered into as of the date written below.

Owner

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name)

Brian Washington, Contractor

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name and Title)

### Change Order Agreement

Today's Date \_\_\_\_\_ Original contract date \_\_\_\_\_

Job Address \_\_\_\_\_ Original contract price \$ \_\_\_\_\_

Job Address \_\_\_\_\_ Sum of previous changes \$ \_\_\_\_\_

City, ST, ZIP \_\_\_\_\_ Cost of this change \$ \_\_\_\_\_

Contractor \_\_\_\_\_ Revised contract price \$ \_\_\_\_\_

Description of this change \_\_\_\_\_

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

A. Material and supplies cost: \$ \_\_\_\_\_

B. Taxes and fees \$ \_\_\_\_\_

C. Direct labor: \$ \_\_\_\_\_

D. Indirect labor costs: \$ \_\_\_\_\_

E. Equipment and tools: \$ \_\_\_\_\_

F. Subtotal: ..... \$ \_\_\_\_\_

G. Overhead at \_\_\_\_\_ % of line F: \$ \_\_\_\_\_

H. Subcontracts: \$ \_\_\_\_\_

I. Overhead at \_\_\_\_\_ % of line H: \$ \_\_\_\_\_

J. Subtotal: ..... \$ \_\_\_\_\_

K. Profit at \_\_\_\_\_ % of lines F and J: \$ \_\_\_\_\_

L. Subtotal: ..... \$ \_\_\_\_\_

M. Total cost, lines F, J and L:  Add  Deduct \$ \_\_\_\_\_

N. Items specifically excluded from this change: \_\_\_\_\_

\_\_\_\_\_

Q. This proposal is valid for \_\_\_\_\_ days.

R. We require \_\_\_\_\_ days extension of the contract time.

We are proceeding with this work per your authorization.

Please return a signed copy of this agreement as your acknowledgment of this change.

This Change Order incorporates by reference the terms, conditions, notices, disclosures and waivers in the original contract and all change orders approved since execution of the original contract.

This Change Order is accepted by \_\_\_\_\_ Date \_\_\_\_\_

**Notice Required by New York Personal Property Law Article 10 Section 428**

**(Date the contract is signed) \_\_\_\_\_**

**YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE. IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK. IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO**

**Brian Washington  
26A Quincy Street  
Rochester , New York 14069**

**NOT LATER THAN MIDNIGHT OF**

**(Last day to cancel) \_\_\_\_\_**

**I HEREBY CANCEL THIS TRANSACTION.**

\_\_\_\_\_  
**(Owner's Signature)**

\_\_\_\_\_  
**(Date)**



**Notice Required by New York Personal Property Law Article 10 Section 428**

**(Date the contract is signed) \_\_\_\_\_**

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\_\_\_\_\_  
**(Owner's Signature)**

\_\_\_\_\_  
**(Date)**