

## **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 Plot Designer throughout this agreement.

### **Owner**

#### **The Construction Site**

10 May Street  
Rochester, New York 15609

### **I. Project Description**

A. For a price identified below, Plot Designer agrees to complete for Owner the Work identified in this agreement as the PLOT LAYOUT.

### **II. Contract Price**

A. In addition to any other charges specified in this agreement, Owner agrees to pay Plot Designer \$750.00 for completing the Work described as the PLOT LAYOUT.

### **III. Scheduled Start of Construction**

A. Work under this agreement will begin on 0/00/2019.

### **IV. Scheduled Completion of Construction**

A. Plot Designer agrees to complete the Work within a reasonable time, subject to such delays as are permissible under this contract.

B. Owner and Plot Designer have determined that a definite completion date is not the essence of this agreement.

C. The following contingencies may materially change the estimated completion date:

- Inclement weather or other Force Majeure
- Other factors beyond control of Plot Designer

### **V. Documents Incorporated**

A. 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. **Specifications**
3. **Detailed Drawings**
4. **Samples**

#### **VI. Ownership of Plans**

- A. Plot layout were prepared by PLOT DESIGNER and are property of PLOT BESIGNER.

#### **VII. Plans on Site**

- A. Plot Designer will maintain at the construction site a copy of all Plans, Addenda, Change Orders, supplemental Drawings, written directives, approved Submittals, Inspection reports and an updated schedule. At all reasonable times, these documents will be made available for review by authorized personnel.

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

- A. Plot Designer shall supervise and direct the Work and accepts responsibility for designing means, methods, techniques, sequences and procedures required to complete the PLOT LAYOUT in compliance with the Contract Documents.
- B. Except for materials expressly designated otherwise in the Contract Documents, Plot Designer warrants that all materials and equipment furnished under this contract shall be of good quality and new.

#### **IX. Record Documents**

- A. Plot Designer will note on a record set of Project Drawings any Work done that is not shown on the original Plans and not described in other Contract Documents. The record set of Project documents will be delivered to Owner at the same time as final payment is requested.

#### **X. Survey**

- A. Owner will employ an engineer or licensed land surveyor to establish lines, points and levels adequate to lay out alignment and elevations for the PLOT LAYOUT but assumes no responsibility for accuracy of the survey provided. Without extra cost to Owner and before beginning construction, Plot Designer shall engage a licensed surveyor, if necessary, to verify accuracy of the survey provided by Owner.
- B. Owner will provide Plot Designer with all relevant site information available to Owner, such as information about soil conditions, easements, utility lines (whether on or adjacent to the site), floodplain maps, fault maps, and existing improvements. These are not Contract Documents and Owner makes no warrant on the accuracy of information provided to Plot Designer under the terms of this paragraph.
- C. Owner will provide a legal description for the Job Site and the assessor's parcel number.
- D. Before Work begins, Plot Designer shall locate all existing improvements and all utility lines on the Job Site, including phone, electric, cable, gas, water, sewage, and drainage. Plot Designer is responsible for any damage done to existing lines, cables, pipes, conduit, and improvements.

E. Upon Substantial Completion, Plot Designer will provide to Owner a copy of a survey by a licensed surveyor or engineer showing the Job Site in plan view as actually completed with distances to adjoining property lines, easements, and utility lines indicated.

#### **XI. Employee Relations**

A. Plot Designer 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.

B. Plot Designer shall discharge from employment on the PLOT LAYOUT any worker who cannot or will not meet standards for acceptable performance or who fails to comply with reasonable expectations for personal conduct.

C. Plot Designer 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.

#### **XII. Owner's Responsibilities**

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

B. On request of Plot Designer, 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 Plot Designer 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 Plot Designer 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 Plot Designer or Subcontractors except as provided under this agreement.

D. Owner will coordinate the Work of Separate Contractors on the Job Site to ensure that Work under this contract can proceed without interference. Owner affirms that contracts with Separate Contractors require their cooperation with Plot Designer.

#### **XIII. Construction by Others**

A. Owner shall neither hire nor retain Separate Contractors, Subcontractors, employees or agents of Owner to perform Work on the Job Site while Work is being done under this agreement by Plot Designer.

#### **XIV. Representations by Contractor**

A. The Contract Price is based on Plot Designer'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 Plot Designer or duration of construction.

B. Owner has reported to Plot Designer all conditions known to Owner which may not be apparent to Plot Designer 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.

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

D. Plot Designer 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.

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

A. Plot Designer 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 Plot Designer.

#### **XVI. Payment Plan**

A. Owner will pay to Plot Designer the Contract Price at completion of the Work.

#### **XVII. Audit of Records**

A. Accounting books and records of Plot Designer 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 Plot Designer. 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 Plot Designer shall be retained for Inspection and copying by Owner for a period of 3 years after Final Completion.

C. Plot Designer shall require that all Subcontractors working for Plot Designer on the PLOT LAYOUT have the same obligation for Inspection, copying and retention of records as Plot Designer has. Plot Designer 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.

#### **XVIII. 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.

B. No interest shall accrue on funds properly retained under the terms of this contract.

#### **XIX. Grounds for Withholding Payment**

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

- B. Owner may withhold payment due Plot Designer for failure by Plot Designer to meet financial obligations to Subcontractors, tradesmen or Material Suppliers on the PLOT LAYOUT. Failure to meet financial obligations shall not constitute cause to withhold payment if Plot Designer has provided a Payment Bond from a licensed Surety, guaranteeing payment of Subcontractors, Material Suppliers, and tradesmen.
- C. Owner may withhold from payments due Plot Designer a sum adequate to reimburse Owner for any damage suffered by Owner or for which Owner may be liable and which was caused by an act or neglect of Plot Designer or by anyone for whom Plot Designer may be liable. Damage to Owner shall not constitute grounds to withhold payment if Plot Designer has insurance coverage which would prevent loss to Owner from the damage claimed.
- D. Owner may withhold payment due Plot Designer when it is reasonable to believe that liquidated damages due Owner upon completion will exceed the balance due Plot Designer upon completion.
- E. Owner may withhold payment due Plot Designer for unauthorized deviations from the Contract Documents or persistent failure to observe Requirements of the Contract Documents.
- F. Owner may withhold payment due Plot Designer for neglect of Plot Designer to obtain a required permit or license or to comply with applicable Law, ordinance, code, or regulation, providing such neglect of Plot Designer has a material impact on satisfactory completion of the PLOT LAYOUT in compliance with the Contract Documents.
- G. Owner may withhold payment due Plot Designer for failure to keep Work progressing in an orderly manner consistent with a reasonable time schedule.
- H. If Owner withholds any payment under terms of this agreement, Owner will notify Plot Designer in writing of the amount being withheld, the reason why payment is withheld, and what must be done to release the payment otherwise due.
- I. Payments made by Owner with knowledge of a Defect, Claim, damage, delinquency, neglect, or failure of Plot Designer 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 Plot Designer.
- J. Should any mediation, arbitration or court proceeding determine that Owner was not justified in withholding payment to Plot Designer, 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.

## **XX. Final Payment**

- A. Plot Designer 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 Plot Designer for the entire unpaid balance of the contract amount.
- B. Except as provided otherwise in this agreement, Owner shall pay the amount due within 5 calendar days after approval of any application for payment.
- C. Making of final payment constitutes waiver of all Claims by Owner against Plot Designer except those Claims previously made in writing and delivered to Plot Designer and those obligations otherwise provided by this agreement or by operation of Law.

D. The acceptance of final payment by Plot Designer constitutes a complete and unconditional waiver and release of any and all Claims by Plot Designer 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 Plot Designer as not having been settled at that time.

E. Owner has no obligation to make final payment until all as-built Drawings, certificates, warranties and job records required by the Contract Documents have been submitted to Owner.

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

G. Owner will notify Plot Designer of the date when notice of Final Completion is recorded.

H. If completion of the Work is delayed unreasonably at no fault of Plot Designer, Plot Designer shall be entitled to final payment for all Work completed without prejudice to the right of Plot Designer to complete the PLOT LAYOUT at a later date and without prejudice to the right of Owner to make Claims against Plot Designer for Defects in Work completed.

#### **XXI. 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 Plot Designer 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. Plot Designer 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. The charge for Extra Work shall be the normal selling price Plot Designer charges for Similar changes on other jobs.

H. Any increase in the cost to Plot Designer of labor, materials, equipment or Subcontract Work between the time the contract is executed and the time the Work is done shall be considered Extra Work so long as the increase is beyond control of Plot Designer. Plot Designer shall provide detailed

records showing each cost change claimed.

I. The cost to Owner of any Extra Work shall include any loss by Plot Designer due to change in quantity discounts, forfeiture of deposits, restocking charges, cancellation charges, waste of time or materials or additional delivery charges.

J. If any Change Order increases or decreases the time required for completion, Owner and Plot Designer shall make an appropriate adjustment in the Contract Completion Date.

K. Plot Designer shall include in Subcontract agreements for the PLOT LAYOUT the following language: "Any Claim by a Subcontractor for Extra Work shall be made with Plot Designer. Only Plot Designer has the right to make a Claim with Owner for changes in the Work. No Subcontractor at any Tier shall have the right to file a Claim for Extra Work with Owner.

L. Plot Designer 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.

M. Plot Designer 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. Plot Designer will inform Owner of each minor change made in the Work.

N. 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.

O. No change in the Contract Price or Contract Time will be approved without consent of Sureties providing Performance or Completion Bonds for the PLOT LAYOUT.

P. When a change in the Work has been proposed by Owner, Plot Designer 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.

Q. When signed by Plot Designer and Owner, each Change Order becomes a Contract Document.

R. Acceptance by Plot Designer of payment for a Change Order shall constitute a waiver by Plot Designer of all other Claims by Plot Designer based on Work described in the Change Order.

S. Notwithstanding any provision in this agreement to the contrary, Plot Designer 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 Plot Designer or delay the Contract Completion Date.

T. Failure of Plot Designer and Owner to agree on the terms of a Change Order shall be resolved under the provisions of this agreement which cover Claims and disputes.

U. Cost to Owner for making a change in the Work shall not exceed the amount quoted in any written proposal for that change provided by Plot Designer.

V. Should Plot Designer and Owner fail to agree promptly on the terms of a Change Order, Plot Designer 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.

W. Should Plot Designer and Owner fail to agree promptly on the cost of a Change Order, Plot Designer 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. Plot Designer shall maintain such accounts until Plot Designer and Owner agree on the cost of change or until the issue is resolved under provisions of this contract relating to disputes.

X. Failure of Plot Designer 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 Plot Designer to Claim that Work performed was beyond Requirements of the Contract Documents.

## **XXII. Cooperation of the Parties**

A. Owner and Plot Designer acknowledge that open communication and cooperation will be required to complete the PLOT LAYOUT on time, as estimated, and in compliance with the Contract Documents. Plot Designer and Owner each agree to identify a representative who will be available to resolve minor problems, answer questions and reach mutually acceptable solutions. The individuals identified by Plot Designer and Owner shall try to reach informal agreement on problems as they arise but are under no obligation to do so.

B. Both Plot Designer 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 Plot Designer for guidance, assistance and payments when due and agrees to extend to Plot Designer the deference and latitude a dedicated professional deserves. Plot Designer pledges to commit the skill and resources required to complete the PLOT LAYOUT in a manner that complies with both the letter and spirit of the Contract Documents and enhances the reputation of Plot Designer for dependability and professionalism.

## **XXIII. Job Conferences**

A. Prior to the start of construction, Plot Designer and Owner shall hold a pre-construction conference to identify: (1) The people who will be involved in construction of the PLOT LAYOUT, their chain of authority, addresses, telephone numbers, fax numbers and email addresses to be used when requesting information or giving notices, (2) The proposed construction schedule, (3) Procedures for approving Shop Drawings, product data and Submittals, (4) Procedures for handling Change Orders, (5) Construction Site Requirements such as dust and erosion control, storm water management, Project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic, (6) Safety Requirements and procedures, (7) Quality control, testing, Inspections and notice Requirements, (8) Inspection procedures, and (9) The handling of payment requests.

B. Plot Designer shall require that appropriate Subcontractors be present at scheduled job conferences.

## **XXIV. Contractor Claims**

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



B. Unresolved Claims or disputes shall not cause Plot Designer to delay or suspend Work or for Owner to delay or suspend payments as provided by this agreement. Continued performance by Plot Designer shall not be deemed a waiver of any Claim for additional compensation or an extension of Time for Completion. Plot Designer 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. Plot Designer 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 Plot Designer and Owner shall be resolved under the provisions of this agreement covering dispute resolution.

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

A. No Claim by Plot Designer shall be considered unless Plot Designer 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 Plot Designer 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 PLOT LAYOUT.

B. If the Claim involves Extra Work, Plot Designer 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, Plot Designer 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. All Claims of any nature are barred if asserted after final payment has been made under this contract.

E. Neither mediation nor arbitration shall relieve the obligation of Plot Designer 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.

F. Plot Designer 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. Statutes of Limitations**

A. No action shall be brought to recover damages for any Defect in the PLOT LAYOUT more than 2 years after Substantial Completion if the Claim is based on a Defect reasonably apparent at Substantial Completion. Nothing in this agreement shall be construed as extending the period prescribed by Law for the bringing of an action.

## **XXVII. Insurance**

### **A. General Requirements**

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

## **XXVIII. Interpretation of the Contract**

A. The omission of words or phrases in the Contract Documents or obvious typographical errors in the Contract Documents shall not defeat interpretation of the Contract Documents so long as the meaning is reasonably inferable from the Contract Documents taken as a whole.

B. Wherever the words "will" or "shall" appear in the Contract Documents, it is understood that the act specified is required for compliance with the Contract Documents. The words "approved", "acceptable", and "satisfactory" mean "approved by", "acceptable to" or "satisfactory to" Owner unless otherwise expressly stated.

C. The terms "agreement" and "contract" have the same meaning and are interchangeable.

D. The words "including" or "includes" shall be construed as identifying examples rather than limitations whether or not followed or preceded by nonlimiting language (such as "without limitation, but not limited to").

E. Words of any gender used in this contract shall be construed to include both genders. Words in the singular number shall be construed to include the plural, unless the context requires otherwise.

## **XXIX. Rights of Third Parties**

A. Except as provided elsewhere in this agreement, neither Plot Designer nor Owner intend that any provision of the Contract Documents create any obligation or confer any right or benefit on anyone other than Owner and Plot Designer.

## **XXX. Assignment of the Contract**

A. Except as otherwise provided in this agreement, Plot Designer shall not assign this contract or sublet it as a whole without the written consent of Owner.

B. Except as otherwise provided in this contract, Owner shall not assign this contract without the written consent of Plot Designer.

C. Owner and Plot Designer mutually bind themselves, their partners, successors, assigns, and legal representatives to all covenants, agreements and obligations contained in the Contract Documents.

D. Except as may be required under terms of the Performance Bond or Payment Bond, Plot Designer shall not assign money due or to become due under this agreement without prior written consent of Owner. Any assignment of money due or to become due under this agreement without prior written consent of Owner shall be void and shall not obligate Owner in any way.

E. Owner shall not assign the rights or benefits due or to become due under this agreement without prior written consent of Plot Designer. Any assignment of the rights or benefits due or to become due under this agreement without prior written consent of Plot Designer shall be void and

shall not obligate Plot Designer in any way.

F. No assignment by Plot Designer or Owner shall relieve either Owner or Plot Designer of obligations assumed under this contract.

#### **XXXI. Entire Agreement**

A. The Contract Documents are the entire agreement and constitute a complete integration of all understandings between Plot Designer and Owner on the subject of the PLOT LAYOUT. The Contract Documents supersede all prior negotiations, representations and agreements, whether written or oral. No subsequent notation, renewal, addition, deletion, change or amendment to this contract shall have any force or effect unless in the form of a written Change Order or amendment to this contract.

#### **XXXII. Independent Contractor**

A. Plot Designer shall perform all obligations required by this agreement as an independent contractor and not as an employee of Owner. No agent, employee or Subcontractor of Plot Designer shall accrue leave, pension, insurance, or any other benefit provided to employees of Owner.

B. Neither Plot Designer nor any employee of Plot Designer shall act as an agent, representative or employee of Owner. Plot Designer shall have no authorization, express or implied, to bind Owner to any agreement, liability, or understanding, except as expressly provided in this contract.

C. Nothing in this agreement shall be construed to create any partnership, joint venture, or other association between Owner and Plot Designer.

D. It is expressly agreed and understood that this is a nonpersonal services contract under which professional services rendered by Plot Designer are rendered as an independent contractor.

#### **XXXIII. Severability**

A. If any provision of this contract is interpreted or rendered invalid and unenforceable, then the remainder of this contract shall remain in full force and effect.

#### **XXXIV. Survival of Obligations**

A. Provisions of this contract which by their nature survive Final Completion or termination of the contract, including any and all warranties, Indemnities, payment obligations, the obligations to settle disputes by arbitration and the right of Owner to audit the books of Plot Designer, shall remain in full force and effect after Final Completion or termination of the contract.

#### **XXXV. Cumulative Remedies**

A. All rights and remedies provided to Plot Designer and Owner by the Contract Documents are cumulative and in addition to and not in limitation of rights and remedies available to Plot Designer and Owner at Law or in equity.

#### **XXXVI. Extension of the Time for Completion**

A. Owner shall execute a Change Order for Excusable Delay by extending the Contract Time for the period of the delay. Any of the following shall constitute excusable delay for which the Contract Time shall be extended: (1) Strike, boycott, embargo, terrorism, armed rebellion, quarantine or other obstructive action by employees, labor organizations, discovery of archaeological or paleontological

artifacts, act or neglect of a public utility, or order of government authority, and (2) Fire, flood, earthquake, tornado, tidal wave, lightning, casualty loss, epidemic, or unusually adverse weather.

B. Any Claim for delay due to unusually adverse weather shall be supported by documentation that weather at the Job Site: (1) Could not have been anticipated, and (2) Had an adverse effect on the construction schedule. Substantiation must include: (1) Supporting evidence from the *US National Climatic Data Center* or Similar authority for at least the previous 10 years, and (2) The Project schedule showing specific Work events which were delayed.

C. For delay in delivery of materials or equipment or for a shortage of labor that results from unforeseeable circumstances beyond the control and without fault or negligence of Plot Designer, or any Subcontractor or Material Supplier of Plot Designer, Owner will grant an extension of the Contract Time if: (1) Plot Designer notifies Owner promptly on discovery of the anticipated shortage, (2) Plot Designer substantiates the delay as unavoidable with a detailed chronology of events and all relevant correspondence, and (3) Plot Designer provides a firm date when the material, equipment or labor will be available.

D. Extensions of the Contract Time due to delay shall be granted on the basis of 1.3 calendar days for every day Plot Designer would have worked but was unable to Work due to Excusable Delay. Extensions shall be rounded up to the nearest whole calendar day.

E. Any Change Order granted for Excusable Delay shall have no effect on a Claim by Plot Designer for damage from the same delay for interruption, hindrance, or disruption.

F. Any wrongful refusal by Owner to grant an extension of the Contract Time shall entitle Plot Designer to recover the additional costs due to acceleration so long as Plot Designer: (1) Actually did accelerate the Work, and (2) Gave notice to Owner of intent to Claim costs for acceleration. Valid acceleration costs may include: (1) Overtime and premium time Work, (2) Expedited delivery of materials and services, (3) Reduced productivity resulting from longer shifts and the stacking of trades, (4) Disruption and inefficiency due to the change in schedule, and (5) Any necessary additional Supervision and management resources.

G. Anything in this contract notwithstanding, Owner shall have no obligation to extend the Contract Time if Plot Designer has failed to comply with contract Requirements for maintaining, submitting, and updating the construction schedule.

H. Anything in this contract notwithstanding, Owner shall have no obligation to extend the Contract Time for any delay not on the critical path. An activity is on the critical path only if each Day of delay in the activity postpones completion of the PLOT LAYOUT for a calendar day beyond the Contract Time. When two or more delays occur at the same time and each concurrent delay by itself would be critical, then all concurrent delays shall be treated as a single delay beginning at the first delay and terminating at the end of the last delay. Plot Designer shall support any Claim for delay on the critical path with a reference to the specific portion of the construction schedule.

I. No Claim for Excusable Delay shall be considered unless made within 10 calendar days of the date Plot Designer discovers or should have discovered an act, error, omission or unforeseen condition giving rise to a Claim for extension of the Contract Time. The notice of Claim for delay shall be submitted to Owner and shall: (1) Fully explain reasons for the delay, (2) Provide full documentation supporting the Claim, (3) Cite the Day the delay began and the last day of the delay, if known, and (4) Specify the time extension requested. 10 calendar days after submission of the

notice of Claim, the requested extension shall be deemed granted unless Owner responds with a written objection.

J. An extension of the Contract Time shall be the exclusive relief granted for Excusable Delay or any shortage of labor, material, or equipment. No additional compensation shall be paid to Plot Designer on account of such delay.

#### **XXXVII. Contractor Claims for Delay**

A. No Claim by Plot Designer for compensation for suspension, delay or interruption in the Work shall be considered unless Plot Designer informs Owner immediately that Work has been suspended, delayed or interrupted. Within 10 calendar days after suspension, delay or interruption, Plot Designer shall submit to Owner a notice of Claim which: (1) Explains fully all grounds for the claim; (2) Provides complete documentation supporting the claim; (3) Cites the day the delay began and the last day of the delay, if known; (4) Specifies the compensation requested; and, (5) Documents each element of the requested compensation. Plot Designer shall report the end of the suspension, delay or interruption within 10 calendar days after resumption of Work. Failure to give notice of either the inception or the termination of delay or failure to present a Claim within the times prescribed shall constitute a waiver of any Claim for extension or additional compensation based on that cause.

#### **XXXVIII. Liquidated Damages**

A. Achieving Substantial Completion sooner than the Contract Time, plus approved extensions of that time, shall earn additional compensation to Plot Designer of \$25.00 for each calendar day that Substantial Completion is achieved prior to the Contract Time, plus approved extensions of that time.

B. Plot Designer shall not be charged liquidated damages for any failure, neglect or refusal to complete the Work on schedule to the extent that the proximate cause of the delay was: (1) Strike, boycott, embargo, terrorism, armed rebellion, quarantine, or other obstructive action by employees or labor organizations, discovery of archaeological or paleontological artifacts, act or neglect of a public utility, or by order of government authority, (2) Fire, flood, earthquake, tornado, tidal wave, lightning, casualty loss, epidemic, or unusually adverse weather, (3) Any delay of Subcontractors or vendors resulting from items listed in sections 1 or 2 above, or (4) Any act or omission of Owner or anyone acting on behalf of Owner.

C. If part of the Work is completed within the agreed time and put into use by Owner and part of the Work is not completed, the stated charge for liquidated damages shall be equitably prorated to that portion of the Work that Plot Designer fails to complete on schedule.

D. Owner shall notify Plot Designer in writing of the manner in which the amount retained, deducted, or Claimed as liquidated damages has been computed.

E. If the amount due Plot Designer or to become due Plot Designer is less than liquidated damages due to Owner, then Plot Designer or the Surety of Plot Designer shall pay Owner the full amount of liquidated damages due.

F. If for any reason the provision in this contract for liquidated damages cannot be assessed or enforced, Plot Designer shall be liable to Owner for any and all actual damages sustained as a result of failure to comply with the construction schedule.

G. Any extension of time or remission of charges or liquidated damages shall, in no other manner, affect the rights or obligations of the parties under this contract, nor be construed to prevent termination of this contract by Owner.

H. Assessment of charges for liquidated damages shall not relieve Plot Designer of any obligation or liability under this contract. Payment of liquidated damages to Owner shall not limit the right of Owner to seek damages or other remedies available under Law or equity, to the extent such damages or remedies are not based upon failure to comply with the construction schedule.

#### **XXXIX. Termination of Contract by Contractor**

A. If Work is suspended for a period totaling 60 calendar days or more in aggregate for any reason (1) not related to weather, and (2) beyond control of Plot Designer or those responsible to Plot Designer, then Plot Designer may, upon 5 calendar days written notice, terminate all obligations under this agreement and collect compensation as provided for in this contract for termination by Plot Designer.

B. Should Owner or any affiliate of Owner: (1) Become insolvent, file a petition in bankruptcy, or perform an assignment for the benefit of creditors, (2) Fail to make any payment not in dispute to Plot Designer within 30 calendar days of the date due, or (3) Be in substantial breach of any financial commitment undertaken in this contract, then Plot Designer may request from Owner documentation confirming the ability of Owner to pay in full for completion of the PLOT LAYOUT. If, within 15 calendar days of this request for documentation, Owner has not provided clear and convincing evidence of the ability to meet financial obligations of this contract, Plot Designer may terminate this agreement and collect compensation as may be provided in this contract or, if not so provided, as allowed by Law.

C. Plot Designer shall have the right to terminate this contract for: (1) Repeated failure by Owner to make payments, when due, of sums not in dispute, (2) Failure of Owner to cure a material breach of a covenant or obligation of this contract within 10 calendar days after delivery of a written demand from Plot Designer, or (3) Persistent failure of Owner to meet contract obligations essential for progress of the Work.

D. On termination of this contract by Plot Designer, Owner shall pay Plot Designer the Contract Price, less the cost of finishing the PLOT LAYOUT in compliance with the Contract Documents.

E. Except as specifically provided for in this contract, Plot Designer expressly waives all rights to compensation and damage after termination of this agreement by Plot Designer.

F. After termination of this agreement by Plot Designer, all payments due Plot Designer shall be made within 30 calendar days after Plot Designer removes from the Job Site all equipment and material owned by Plot Designer.

#### **XL. Termination by Owner for Cause**

A. Owner shall have the right to terminate this contract for cause if Plot Designer: (1) Fails to make steady progress toward timely completion for any cause other than as permitted by these Contract Documents, (2) Fails to pay amounts due to Subcontractors, Material Suppliers, or employees promptly after receiving payment from Owner, or (3) Requires continual corrections to enforce compliance with the Contract Documents and the building code.

B. Owner shall have the right to terminate this contract for cause should Plot Designer on more than one occasion: (1) Refuse to correct Defective Work after being advised by Owner to make corrections, (2) Be found to have deliberately concealed from Owner a Defect or error in the Work, or (3) Be found to have deliberately deceived Owner on any issue relevant to Plot Designer's compliance with the Contract Documents.

C. In the absence of a material breach, this contract shall not be terminated for cause unless Plot Designer and any Surety of Plot Designer has first received a written notice from Owner: (1) Alleging that cause exists to terminate the contract, (2) Stating that Owner intends to terminate the contract if corrective measures are not taken within 5 calendar days, and (3) Listing every alleged fault giving Owner the right to terminate the contract for cause.

D. Owner may terminate this contract by written notice of default 5 calendar days after receipt of the intent to terminate, if Plot Designer has either: (1) Failed to initiate and diligently prosecute corrective measures for the causes listed in the intent to terminate, or (2) Failed to provide adequate written assurance that Work will be completed on a reasonable schedule, for the Contract Price, and in compliance with the Contract Documents.

E. After termination of this contract for cause, and in the absence of any notice by a Surety to begin performance of the contract, Owner may: (1) Take control of the Job Site and everything on the Job Site, including materials and equipment owned by Plot Designer, and (2) Complete the Work by contract or otherwise.

F. On request by Owner after contract termination for cause, and in the absence of any notice by a Surety to begin performance of the contract, Plot Designer shall promptly remove from the Job Site all materials, supplies, equipment, and tools owned by Plot Designer. Owner may remove and store any property of Plot Designer remaining on the Job Site 7 calendar days after requesting removal. Any property of Plot Designer remaining in storage after 90 calendar days can be sold by Owner, for the benefit of Plot Designer after any Claim by Owner has been satisfied.

G. The amount due Plot Designer after termination of the contract for cause by Owner shall be the unpaid balance due on the contract: (1) Less the cost of completing the Work, (2) Less the additional expenses incurred by Owner as a result of their termination, (3) Less any liquidated damages provided under the Contract Documents, and (4) Plus the fair value of all materials, supplies and equipment owned by Plot Designer and used to complete the Work. Owner shall provide Plot Designer with a detailed accounting of the amount due Plot Designer as a result of termination for cause.

H. After termination of this contract for cause by Owner, Plot Designer shall be liable for any amount by which the cost of completion of the Work exceeds the amount due Plot Designer under the contract. The cost of completion of the Work shall include: (1) The construction cost, (2) Plus additional expenses incurred by Owner as a result of their termination, (3) Plus liquidated damages due under this agreement, and (4) Less the fair value of all materials, supplies, and equipment owned by Plot Designer and used to complete the Work.

I. After termination of this contract for cause by Owner, Plot Designer shall not be liable for any cost of completion beyond the Contract Price if termination of the contract for cause was beyond the control and without the fault or negligence of Plot Designer.

J. Rights granted to Owner after termination of this contract for cause shall be in addition to other remedies Owner may have under Law, including the right to proceed against Plot Designer to recover for losses suffered by Owner.

K. If any termination for cause, made in good faith by Owner, is determined to have been wrongly given, the termination shall be effective as though made at the convenience of Owner, and compensation will be paid as though termination had been at the convenience of Owner.

L. Plot Designer shall notify Owner promptly of any proceeding in bankruptcy that affects Plot Designer.

M. If the contract is terminated for cause by Owner, Plot Designer shall be liable for the same liquidated damages for delay as would have been payable if the Plot Designer had completed the Work.

### **XLI. Termination at Owner's Convenience**

A. Owner may, for any reason or for no reason at all, terminate all or any separate part of the Work under this contract by delivering to Plot Designer a written notice of termination. The notice of termination at convenience of Owner shall specify the extent of the termination and the effective date.

B. Plot Designer shall submit a Claim for payment no later than 90 calendar days after the effective date of termination at the convenience of Owner. If no termination Claim is received by Owner within 90 calendar days, Owner may estimate the amount due Plot Designer on termination and pay Plot Designer that amount.

C. Acceptance by Plot Designer of payment for termination shall constitute waiver of any and all Claims Plot Designer may have for termination of the contract.

D. Termination at the convenience of Owner constitutes a waiver of any cause of action Owner may have against Plot Designer for breach of contract. Claims Plot Designer may have for breach of contract are not affected by termination at the convenience of Owner.

E. After termination for convenience of Owner, Owner may direct Plot Designer to sell specific property in possession of Plot Designer which would have been transferred or delivered to Owner on completion of the PLOT LAYOUT. When so directed by Owner, Plot Designer shall sell designated property on the open market or to the highest bidder. Sale shall be contingent on approval by Owner of the selling price. The net receipts from such sale, after delivery and selling expense, shall be applied against the termination Claim of Plot Designer. Pending final disposition of such property, Plot Designer shall protect and preserve the property being held for sale.

F. Plot Designer shall continue to prosecute any Work not terminated at the convenience of Owner.

G. Termination of this contract at the convenience of Owner, with the intent to retain others to finish the Work or for the purpose of finishing the Work without others, shall constitute a breach of contract.

H. Changes in Plans and Specifications shall be made with a Change Order rather than a partial termination at the convenience of Owner. Any change which requires deletion of one portion of the PLOT LAYOUT and substitution of other Work shall be made by Change Order. Only a separately



identifiable major portion of the PLOT LAYOUT may be removed from the Work with a partial termination at the convenience of Owner.

I. After termination for convenience of Owner, Plot Designer shall submit a termination Claim for the full Contract Price: (1) Less savings realized due to the termination, (2) Plus fees and costs that result from premature conclusion of Work, (3) Plus the cost of preparing the termination Claim, and (4) Less amounts previously paid or to be paid Plot Designer for the Work.

## **XLII. Delivery of Notices**

A. Any written notice required by this contract can be: (1) Delivered by hand to the last known address of the addressee, or (2) Delivered by hand to the addressee or representative of the addressee, wherever found. Notice is effective upon delivery.

B. Any written notice required by this contract can be: (1) Delivered by enclosing in a stamped envelope addressed to the last known address of the intended recipient and either deposited in a United States Postal Service mailbox or given to a USPS employee, or (2) Consigned to a commercial courier service and addressed to the last known address of the intended recipient. Notice is effective upon delivery if proof of delivery is provided. Where no proof of delivery is available, notice is effective 5 calendar days after mailing or consignment to a courier service.

C. Any written notice required by this contract can be delivered by facsimile (fax) to the fax number listed in this contract. Notice sent by fax shall be effective on the date at which a machine-generated confirmation states the fax was received.

D. Any written notice required by this contract can be delivered by e-mail to the address listed in this contract with a read receipt requested. Notice sent by e-mail shall be effective on delivery of the read receipt.

E. The address to which notices shall be sent may be changed by sending a written notice using any means of delivery provided by this contract.

## **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, Plot Designer 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, Plot Designer 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 Plot Designer 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 Plot Designer. 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 Plot Designer. 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.

By signing this agreement, Plot Designer confirms Inspection of the Job Site and signifies familiarity with all local conditions, Laws, and regulations under which the Work is to be performed.

This contract is for immediate acceptance. Any delay in acceptance beyond 5/30/2019 will require renegotiation of the terms of this agreement.

If this contract is not signed by Plot Designer at the time it is signed by Owner, Plot Designer 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.

This contract shall not be effective until financing for the PLOT LAYOUT has been approved and funds are available. In the event that Owner is unable to get financing for the PLOT LAYOUT within 60 days after the contract is signed, this contract shall be considered terminated unless Owner and Plot Designer mutually agree to an extension.

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 \_\_\_\_\_