

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 PROJECT PLANNER throughout this agreement.

Owner

The Construction Site

May Street
Rochester, New York 14609

I. Project Description

A. For a price identified below, PROJECT PLANNER agrees to complete for Owner the Work identified in this agreement as the PROJECT PLANNING.

II. Contract Price

A. In addition to any other charges specified in this agreement, Owner agrees to pay PROJECT PLANNER the following for completing the Work described as the PROJECT PLANNING:

For the cost of overhead as defined in this agreement.

Plus a fee of 0.16 percent of the total cost.

III. Scheduled Start of Construction

A. Work under this agreement will begin on 5/29/2019.

IV. Scheduled Completion of Construction

A. Work under this agreement will be completed in a reasonable time, consistent with the schedule of PROJECT PLANNER and Owner.

B. Owner and PROJECT PLANNER 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 PROJECT PLANNER

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. **Proposal (Estimate or Bid)**

Proposal (Estimate or Bid) dated 6/4/2019.

For the amount of \$0.00.

4. **Detailed Drawings**
5. **General Conditions**
6. **Special Conditions**
7. **Project Manual**
8. **Shop Drawings**
9. **Samples**

VI. Ownership of Plans

A. Plans, Drawings, Specifications and copies prepared for use in construction under this agreement are the property of PROJECT PLANNER. PROJECT PLANNER retains all common Law and statutory rights to these Plans, Drawings and Specifications. Owner agrees that these documents will not be used on any other project and, with the exception of one record set to be retained by Owner, will be returned to PROJECT PLANNER on request.

VII. Documents Supplied to Contractor

- A. Owner will furnish to PROJECT PLANNER at no cost:
1. 2 full sets of Plans and Specifications for all trades, on paper.
 2. A full set of Plans and Specifications for all trades in electronic format.
 3. A project manual in electronic or paper format.
 4. PROJECT PLANNER will distribute Contract Documents as required by Subcontractors.

VIII. Scope of Work

A. The intent of this contract is to provide for the construction, complete in every detail, of the Work described in or reasonably inferred from the Contract Documents, at the Contract Price and within the time established in the schedule. PROJECT PLANNER has the duty to determine the means, methods, techniques, sequences and procedures required to complete the PROJECT PLANNING as described and inferred.

B. Except for materials expressly designated otherwise in the Contract Documents, PROJECT PLANNER warrants that all materials and equipment furnished under this contract shall be of good quality and new.

C. PROJECT PLANNER is responsible for coordination of the various trades and deliveries of equipment, materials and supplies to minimize interference which could delay the Work or pose a hazard to life or property. PROJECT PLANNER shall be responsible for allocation of tasks between trades and will be the final authority on location and routing of equipment and storage of materials

on the Job Site.

D. PROJECT PLANNER will ensure that Subcontractors, their agents, and employees adhere to these Contract Documents. PROJECT PLANNER accepts responsibility for all Work performed under this contract, including Work performed by employees of Subcontractors. PROJECT PLANNER will settle disputes among Subcontractors and between PROJECT PLANNER and Subcontractors so that disagreements do not delay completion of the Work or affect quality of the Work.

E. PROJECT PLANNER shall make a best effort to adopt and implement policies and practices designed to minimize Work stoppages, slowdowns, disputes or strikes. Except as may be specifically provided elsewhere in this or a separate agreement, PROJECT PLANNER is not liable to Owner for damages suffered by Owner as a result of Work stoppages, slowdowns, disputes or strikes. PROJECT PLANNER shall allocate labor tasks among the various trades in accordance with local custom, rules, jurisdictional awards, regulations, and decisions, regardless of any classification by the Contract Documents.

F. PROJECT PLANNER shall not be relieved of obligations to perform the Work in accord with the Contract Documents either by actions of or inaction by Owner or agents of Owner, or by tests, Inspections, or approvals required or performed by persons other than PROJECT PLANNER.

G. This agreement is the product of a confidential relationship between PROJECT PLANNER and Owner requiring that both Parties exchange confidential information, the disclosure of which would constitute a loss. Except as provided below, PROJECT PLANNER and Owner agree not disclose or use for any purpose other than completion of the PROJECT PLANNING all or any portion of the Contract Documents, cost estimates, diagrams, records, reports, computer data or any other information concerning the PROJECT PLANNING for 5 years from the date of this agreement without mutual consent of PROJECT PLANNER and Owner. The following are exceptions: (1) Information required by the recipient to complete the PROJECT PLANNING, (2) Information known to the recipient before disclosure, (3) Information lawfully obtained by the recipient from a third party under no obligation of confidentiality, (4) Information generally known or publicly available other than by unauthorized disclosure, (5) Information developed independently by the recipient prior to disclosure, and (6) Disclosure required by legally constituted authority, but only after notification of each Party to this agreement. In the event of a breach or threatened breach or intended breach of this confidential relationship by either Party, the other Party, in addition to any other rights and remedies available at Law or in equity, shall be entitled to preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach. PROJECT PLANNER and Owner shall, by contract or Subcontract, require others who receive confidential information on the PROJECT PLANNING to comply with the Requirements of this paragraph. Both PROJECT PLANNER and Owner shall use at least the same degree of care in protecting confidential information on the PROJECT PLANNING as in maintaining their own confidential information but in no case less that a reasonable degree of care.

IX. Record Documents

A. PROJECT PLANNER 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. Protection of People and Property

A. Safety Program

1. PROJECT PLANNER shall institute and maintain a safety program designed to avoid and prevent unsafe conditions and unsafe acts on the Job Site during the period of construction, whether by PROJECT PLANNER personnel, Subcontractors, Sub-subcontractors, or visitors to the site. The safety program adopted by PROJECT PLANNER will meet all Requirements of federal, state and local Laws and regulations.
2. PROJECT PLANNER shall present to Owner for approval a safety plan describing how PROJECT PLANNER proposes to meet all OSHA and related Requirements, details on how safety equipment is to be used, how the risk of fire and other potential hazards will be abated, how welding and flame-cutting will be done, and how PROJECT PLANNER will maintain safety-related equipment such as fire extinguishers, fire alarms and fire sprinklers during the period of construction.

B. Safety Standards

1. PROJECT PLANNER will ensure that construction areas, aisles, stairs, ramps, runways, corridors, offices, shops, and storage areas where Work is in progress are lighted with either natural or artificial illumination not less than the minimums set in Table D-3 of Code of Federal Regulation § 1926.56.
2. PROJECT PLANNER will not permit employees, employees of Subcontractors, vendors or the general public to use any walking surface which lacks the structural integrity to support foot traffic. Every working surface or leading edge 6 feet (1.8 m) or more above a lower level will be protected with a guardrail, safety net, or personal fall arrest system. Exception: If PROJECT PLANNER can demonstrate that it is infeasible or creates a greater hazard to use a guardrail, safety net or personal fall arrest system, PROJECT PLANNER may substitute a fall protection plan which meets the Requirements of paragraph (k) of Section 1926.502, 29 Code of Federal Regulations.
3. Where a walking or working surface is adjacent to a hole or opening 6 feet (1.8 m) or more above a lower level (such as a skylight), PROJECT PLANNER will either install a cover or guardrail around the perimeter of the hole or require construction personnel to use a personal fall arrest system.
4. When employees of PROJECT PLANNER, employees of Subcontractors, vendors, or the general public may be exposed to risk of harm from falling objects on the Job Site, PROJECT PLANNER will (1) Erect toe boards, screens, or guardrails to prevent objects from falling from higher levels, or (2) Erect a canopy to catch loose objects before they fall to the surface below, or (3) Barricade the area into which objects could fall and keep personnel out of the barricaded area.
5. PROJECT PLANNER shall ensure that all workers and visitors on the Job Site wear safety hard hats and obey all safety rules and regulations. PROJECT PLANNER shall post a sign in a conspicuous location indicating that safety hard hats are required on-site and shall loan such hats to visitors, as may be required.

C. Fire Protection

1. PROJECT PLANNER shall ensure that all construction personnel take precautions to eliminate fire hazards and prevent fire damage on the Job Site.
2. PROJECT PLANNER shall maintain during construction an appropriate number of fire extinguishers. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work. Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water-pressurized, and appropriate for the likely hazards. In areas with flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.
3. No open fires of any kind will be allowed on the Job Site during the course of construction without explicit permission of Owner. PROJECT PLANNER shall consult with Owner before bringing any roofing tar kettle on the Job Site and before conducting any Work that requires welding or flame-cutting.
4. PROJECT PLANNER shall ensure that no vehicles, materials, or equipment obstruct fire lanes or aisles unless alternate routing is provided which preserves good access for firefighting trucks and equipment.

XI. 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 PROJECT PLANNING. Owner is responsible for accuracy of the survey marks and other site information supplied to PROJECT PLANNER. PROJECT PLANNER shall promptly notify Owner of any discrepancies found in survey markers or other site information supplied by Owner.
- B. Owner will provide a topographic survey of the Job Site showing contour lines that depict elevation and slope of the ground surface.
- C. Owner will provide PROJECT PLANNER 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 PROJECT PLANNER under the terms of this paragraph.
- D. Owner will provide a legal description for the Job Site and the assessor's parcel number.

XII. Employee Relations

- A. PROJECT PLANNER 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. PROJECT PLANNER 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) PROJECT PLANNER 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

PROJECT PLANNER, 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 PROJECT PLANNER or Owner.

C. PROJECT PLANNER 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. PROJECT PLANNER 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. PROJECT PLANNER 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.

D. PROJECT PLANNER 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.

E. PROJECT PLANNER shall discharge from employment on the PROJECT PLANNING any worker who cannot or will not meet standards for acceptable performance or who fails to comply with reasonable expectations for personal conduct.

F. PROJECT PLANNER is responsible for good labor relations on the PROJECT PLANNING 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. PROJECT PLANNER shall be liable to Owner for all damages suffered by Owner as a result of Work stoppages, slowdowns, disputes and strikes.

XIII. Emergency Response

A. In any Emergency threatening the health, safety or life of persons or serious and immediate damage to property, PROJECT PLANNER shall use best efforts and full discretion without special instruction or authorization from Owner to prevent the threatened damage, injury or loss. When directed by any authority, PROJECT PLANNER shall provide Emergency assistance without special instruction or authorization from Owner. However, PROJECT PLANNER shall notify Owner promptly if PROJECT PLANNER believes any significant changes in the Work or variations from Contract Documents have been caused by the Emergency response.

B. Provided PROJECT PLANNER is not responsible for the Emergency condition and provided the additional cost to PROJECT PLANNER for the Emergency response is not covered by insurance or recoverable from others, PROJECT PLANNER shall be granted a Change Order to compensate for the Emergency response.

C. PROJECT PLANNER shall respond immediately to calls for assistance at the Job Site any time, day or night, when circumstances require the presence of PROJECT PLANNER to protect health or safety or the Work or adjacent property.

XIV. Owner's Responsibilities

A. Owner will respond in writing and with reasonable promptness to written requests from PROJECT PLANNER for information relevant to completion of the Work. Owner will identify a

Representative qualified to respond to questions from PROJECT PLANNER when Owner is not available. PROJECT PLANNER is authorized to rely on written responses from Owner and the identified Representative.

B. Owner affirms that Owner has the right to enter into this agreement and has the right to contract for construction of the PROJECT PLANNING on the Job Site. Owner shall pay all taxes and assessments due on the Job Site during the period of construction and shall take all reasonable actions required to protect marketable title to the Job Site.

C. Owner shall have sole responsibility to secure financing for the PROJECT PLANNING and shall pay all fees, charges, or other costs of such financing, including Inspection fees charged by any lender. The nonperformance of any lender shall not affect the obligation of Owner to PROJECT PLANNER. Owner hereby authorizes and directs any lender on the PROJECT PLANNING to furnish PROJECT PLANNER with full information on undisbursed loan proceeds when requested by PROJECT PLANNER.

D. On request of PROJECT PLANNER, 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 PROJECT PLANNER 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 PROJECT PLANNER of the obligation to begin or continue the Work.

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

F. 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 PROJECT PLANNER.

G. If Owner fails to comply with any request for information, PROJECT PLANNER shall be entitled to an extension of the Contract Time equal to the delay, if any, caused by failure of Owner to respond, provided PROJECT PLANNER shall have promptly notified Owner in writing of the right to extend the Time for Completion. Any such extension of the Contract Time shall be the sole remedy of PROJECT PLANNER for failure of Owner to reply to a request for information.

H. Owner grants to PROJECT PLANNER the rights to take pictures of the PROJECT PLANNING and use those pictures for advertising, promotion or publicity purposes in any electronic, online, or print format. Owner grants to PROJECT PLANNER permission to give prospective clients of PROJECT PLANNER the name of Owner and a contact number when soliciting future business. These rights expire 18 months after completion of the PROJECT PLANNING unless terminated sooner by Owner.

XV. Representations by Contractor

A. The Contract Price is based on PROJECT PLANNER'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 PROJECT PLANNER or duration of construction.

B. PROJECT PLANNER 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, PROJECT PLANNER affirms that the Contract Price and Contract Time are fair and reasonable for completion of the PROJECT PLANNING.

D. Owner has reported to PROJECT PLANNER all conditions known to Owner which may not be apparent to PROJECT PLANNER 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. PROJECT PLANNER 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. PROJECT PLANNER 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.

XVI. Payment Plan

A. Owner will pay to PROJECT PLANNER the Contract Price at completion of the Work.

XVII. Cost-Plus Reimbursements

A. General Requirements

1. Applications for payment shall be based on entries in a job cost accounting system maintained for the PROJECT PLANNING by PROJECT PLANNER. Reports generated by the accounting system shall make it easy to reconcile payments by Owner against applications for payment by PROJECT PLANNER. Every charge in each application for payment shall be supported by a paper or electronic copy of a paid invoice, receipt, cancelled check, voucher or ledger entry and archived in a file maintained by PROJECT PLANNER and available for Inspection during normal business hours by Owner.

2. Applications for payment shall be accompanied by copies of invoices, receipts, cancelled checks, vouchers and ledgers which validate each charge in the application for payment.

3. On requests of Owner, PROJECT PLANNER shall make all payment records on the PROJECT PLANNING available for audit by a representative of Owner. Records shall be available for audit during regular business hours for the duration of the Project and until 4 years after the date of final payment under this contract.

4. A cost is reasonable and necessary if, in its nature and amount, it does not exceed what would be incurred by a prudent person in the conduct of a competitive business. Specifically: (1) Is this type of cost generally recognized as ordinary and necessary in the conduct of the Contractor's

business or contract performance? (2) Is this a generally accepted sound business practice that would result from arm's-length bargaining? (3) Does this expense comply with the Contractor's responsibilities to the Owner, other customers, the owners of the construction business, employees, and the public at large? (4) Is this a significant deviation from the Contractor's established business practice?

5. If a cost benefits others in addition to Owner, at least a portion of the cost shall be allocated to Owner for reimbursement under any of the following conditions: (1) If the expense was incurred specifically for the Work, (2) If the expense can be distributed to both the Work and other jobs in reasonable proportion to the benefits received by each, or (3) If the expense is necessary to the overall operation of the business of PROJECT PLANNER although a direct relationship to the Work cannot be shown.

B. Reimbursements of Overhead Costs

1. Owner shall reimburse PROJECT PLANNER for all overhead expenses reasonably necessary to complete the PROJECT PLANNING. Overhead expenses shall be billed to Owner based on estimated amounts approved in advance by Owner and reconciled with actual expenses before the date of Final Completion. The difference between estimated and actual overhead cost shall be debited or credited in the final payment to PROJECT PLANNER.

XVIII. Audit of Records

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

C. PROJECT PLANNER shall require that all Subcontractors working for PROJECT PLANNER on the PROJECT PLANNING have the same obligation for Inspection, copying and retention of records as PROJECT PLANNER has. PROJECT PLANNER 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. PROJECT PLANNER 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, PROJECT PLANNER 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.
- B. No interest shall accrue on funds properly retained under the terms of this contract.

XX. Grounds for Withholding Payment

- A. Owner may withhold payment due PROJECT PLANNER for Defective Work which has not been corrected in compliance with terms of this agreement.
- B. Owner may withhold payment due PROJECT PLANNER for failure by PROJECT PLANNER to meet financial obligations to Subcontractors, tradesmen or Material Suppliers on the PROJECT PLANNING. Failure to meet financial obligations shall not constitute cause to withhold payment if PROJECT PLANNER has provided a Payment Bond from a licensed Surety, guaranteeing payment of Subcontractors, Material Suppliers, and tradesmen.
- C. Owner may withhold from payments due PROJECT PLANNER 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 PROJECT PLANNER or by anyone for whom PROJECT PLANNER may be liable. Damage to Owner shall not constitute grounds to withhold payment if PROJECT PLANNER has insurance coverage which would prevent loss to Owner from the damage claimed.
- D. Owner may withhold payment due PROJECT PLANNER when it is reasonable to believe that liquidated damages due Owner upon completion will exceed the balance due PROJECT PLANNER upon completion.
- E. Owner may withhold payment due PROJECT PLANNER for unauthorized deviations from the Contract Documents or persistent failure to observe Requirements of the Contract Documents.
- F. Owner may withhold payment due PROJECT PLANNER for neglect of PROJECT PLANNER to obtain a required permit or license or to comply with applicable Law, ordinance, code, or regulation, providing such neglect of PROJECT PLANNER has a material impact on satisfactory completion of the PROJECT PLANNING in compliance with the Contract Documents.
- G. Owner may withhold payment due PROJECT PLANNER 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 PROJECT PLANNER 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. Grounds entitling Owner to withhold certain amounts due PROJECT PLANNER under this agreement shall not relieve Owner of the obligation to pay PROJECT PLANNER 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.
- J. Payments made by Owner with knowledge of a Defect, Claim, damage, delinquency, neglect, or failure of PROJECT PLANNER 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 PROJECT PLANNER.

K. 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 PROJECT PLANNER been discovered before the earlier payment was made.

L. Should any mediation, arbitration or court proceeding determine that Owner was not justified in withholding payment to PROJECT PLANNER, 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. PROJECT PLANNER 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 PROJECT PLANNER 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 PROJECT PLANNER except those Claims previously made in writing and delivered to PROJECT PLANNER and those obligations otherwise provided by this agreement or by operation of Law.

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

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

F. Owner will notify PROJECT PLANNER of the date when notice of Final Completion is recorded.

G. If completion of the Work is delayed unreasonably at no fault of PROJECT PLANNER, PROJECT PLANNER shall be entitled to final payment for all Work completed without prejudice to the right of PROJECT PLANNER to complete the PROJECT PLANNING at a later date and without prejudice to the right of Owner to make Claims against PROJECT PLANNER 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 PROJECT PLANNER 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. PROJECT PLANNER 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 PROJECT PLANNER charges for Similar changes on other jobs.
- H. No Claim for Extra Work shall include a charge by PROJECT PLANNER for negotiating details of the Change Order with Owner.
- I. Time required to complete Extra Work may include time needed to estimate and document the Extra Work. But time required to negotiate details of a Change Order shall not be considered when evaluating an appropriate extension of the Contract Completion Date appropriate for the Change Order.
- J. Any increase in the cost to PROJECT PLANNER 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 PROJECT PLANNER. PROJECT PLANNER shall provide detailed records showing each cost change claimed.
- K. The cost to Owner for changes in the Work shall exclude any Claim of PROJECT PLANNER for penalties or damages. Extension of the Contract Time due to a Change Order shall not be the basis for any Claim by PROJECT PLANNER to extra compensation.
- L. The cost to Owner of any Extra Work shall include any loss by PROJECT PLANNER due to change in quantity discounts, forfeiture of deposits, restocking charges, cancellation charges, waste of time or materials or additional delivery charges.
- M. If any Change Order increases or decreases the time required for completion, Owner and PROJECT PLANNER shall make an appropriate adjustment in the Contract Completion Date.
- N. Any adjustment claimed by PROJECT PLANNER in the Contract Completion Date shall be supported by a schedule depicting activities or events which determine the Completion Date (critical path) prior to the Change Order. Any change in the Work which affects activities not on the critical path (Float or slack time), and which can be accomplished within the Float or slack time, shall not result in a change in the Contract Completion Date.
- O. PROJECT PLANNER shall include in Subcontract agreements for the PROJECT PLANNING the following language: "Any Claim by a Subcontractor for Extra Work shall be made with PROJECT PLANNER. Only PROJECT PLANNER 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.

P. PROJECT PLANNER 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.

Q. PROJECT PLANNER 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. PROJECT PLANNER will inform Owner of each minor change made in the Work.

R. 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.

S. No change in the Contract Price or Contract Time will be approved without consent of Sureties providing Performance or Completion Bonds for the PROJECT PLANNING.

T. Other clauses in this agreement notwithstanding, there will be no reduction in the value of the Work without a written Change Order.

U. When a change in the Work has been proposed by Owner, PROJECT PLANNER 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.

V. When signed by PROJECT PLANNER and Owner, each Change Order becomes a Contract Document.

W. Acceptance by PROJECT PLANNER of payment for a Change Order shall constitute a waiver by PROJECT PLANNER of all other Claims by PROJECT PLANNER based on Work described in the Change Order.

X. Notwithstanding any provision in this agreement to the contrary, PROJECT PLANNER 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 PROJECT PLANNER or delay the Contract Completion Date.

Y. Failure of PROJECT PLANNER 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.

Z. 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 PROJECT PLANNER.

AA. Should PROJECT PLANNER and Owner fail to agree promptly on the terms of a Change Order, PROJECT PLANNER 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.

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

CC. Failure of PROJECT PLANNER 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 PROJECT PLANNER to Claim that Work performed was beyond Requirements of the Contract Documents.

XXIII. Cooperation of the Parties

A. Owner and PROJECT PLANNER acknowledge that open communication and cooperation will be required to complete the PROJECT PLANNING on time, as estimated, and in compliance with the Contract Documents. PROJECT PLANNER 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 PROJECT PLANNER and Owner shall try to reach informal agreement on problems as they arise but are under no obligation to do so.

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

XXIV. Job Conferences

A. Prior to the start of construction, PROJECT PLANNER and Owner shall hold a pre-construction conference to identify: (1) The people who will be involved in construction of the PROJECT PLANNING, 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. PROJECT PLANNER shall send a representative to Job Site progress conferences when scheduled by Owner. This representative shall have authority to act on behalf of PROJECT PLANNER on issues that concern contract compliance or affect the completion schedule. These conferences shall include Subcontractors, Material Suppliers and others who can contribute to job progress. At these conferences, the representative of PROJECT PLANNER shall be prepared to assess progress of the Work, purchases, deliveries, Shop Drawings, product data, quality control Samples, possible conflicts, compatibility problems, time schedules, weather limitations, temporary facilities, space and access limitations, structural limitations, government regulations, safety, Inspection and testing Requirements, performance results, recording Requirements, protection, and

Similar considerations. Owner shall set the time, date and place of these conferences and act as conference chair. Phone or web conferencing may be used with the consent of all attending any conference.

C. PROJECT PLANNER shall require that appropriate Subcontractors be present at scheduled job conferences.

XXV. Value Engineering

A. PROJECT PLANNER shall notify Owner of opportunities to reduce costs, accelerate completion, or improve results without loss of intended design functions and without reduction of desirable characteristics such as service life, reliability, economy of operation, and ease of maintenance. Value engineering proposals by PROJECT PLANNER shall be in the form of a recommended Change Order and shall include the following information: (1) A description of the proposed change including comparative advantages and disadvantages in service life, reliability, economy of operation, ease of maintenance, design safety standards, appearance, and impact on the Contract Completion Date, if any, (2) A list of contract Requirements, which must be changed and recommendations on the best way to make those changes if the value engineering proposal is adopted, (3) An offer to complete the proposed change at a specified price, (4) A statement of the time by which a decision on the value engineering proposal must be made to obtain the forecast benefit, and (5) If required, PROJECT PLANNER shall ensure that proposed changes are prepared under supervision of a licensed professional architect or engineer. On receipt of consent by Owner, PROJECT PLANNER shall submit complete final Contract Documents showing the accepted change, the new design, design calculations and design criteria, if any, and a detailed breakdown of costs to implement the value engineering proposal, including cost to PROJECT PLANNER, Subcontractors, and Owner for architectural, engineering, or other consultant services, and the staff time required to examine and review the proposal. On approval by Owner of a value engineering Change Order, the Contract Price shall be reduced by 50 percent of the net decrease in construction cost to implement the proposal or increased by 50 percent of the net present value of the added benefit to Owner. In the absence of any such value engineering proposal, PROJECT PLANNER is deemed to have accepted construction details provided by the Contract Documents as adequate to produce satisfactory Work.

B. PROJECT PLANNER shall remain obligated to perform in accord with terms of the Contract Documents unless and until a Change Order adopting a value engineering proposal is approved by Owner.

C. Calculation of the saving or enhanced value to Owner that may result from a value engineering proposal shall be based on the PROJECT PLANNING only, without consideration of other projects, future acquisitions, royalties or collateral savings.

D. Value engineering proposals must not delay completion of the PROJECT PLANNING or adversely affect the quality of design or construction or the operation or maintenance of the PROJECT PLANNING.

E. Owner shall consider each value engineering proposal, but is not bound to accept any recommended Change Order. No Claim shall arise out of failure by Owner to approve any value engineering proposal made by PROJECT PLANNER.

XXVI. Contractor Claims

- A. If PROJECT PLANNER claims that any instruction, Drawing, act or omission of Owner or any representative of Owner, or any agency of government, increases costs to PROJECT PLANNER, requires extra time or changes the Scope of Work, PROJECT PLANNER shall have the right to assert a Claim for such costs or time.
- B. Unresolved Claims or disputes shall not cause PROJECT PLANNER to delay or suspend Work or for Owner to delay or suspend payments as provided by this agreement. Continued performance by PROJECT PLANNER shall not be deemed a waiver of any Claim for additional compensation or an extension of Time for Completion. PROJECT PLANNER 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. PROJECT PLANNER 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 PROJECT PLANNER and Owner shall be resolved under the provisions of this agreement covering dispute resolution.

XXVII. Notice of Claims

- A. No Claim by PROJECT PLANNER shall be considered unless PROJECT PLANNER 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 PROJECT PLANNER 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 PROJECT PLANNING.
- B. If the Claim involves Extra Work, PROJECT PLANNER 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, PROJECT PLANNER 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 PROJECT PLANNER 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 PROJECT PLANNER."
- E. All Claims of any nature are barred if asserted after final payment has been made under this contract.
- F. Neither mediation nor arbitration shall relieve the obligation of PROJECT PLANNER 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. PROJECT PLANNER 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.

XXVIII. Dispute Resolution

A. Except as provided elsewhere in this agreement, all Claims and disputes between PROJECT PLANNER 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 PROJECT PLANNING 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.

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, PROJECT PLANNER 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, PROJECT PLANNER 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 PROJECT PLANNER 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 PROJECT PLANNER. 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 PROJECT PLANNER. 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, PROJECT PLANNER 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 PROJECT PLANNER at the time it is signed by Owner, PROJECT PLANNER 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 PROJECT PLANNING has been approved and funds are available. In the event that Owner is unable to get financing for the PROJECT PLANNING within 60 days after the contract is signed, this contract shall be considered terminated unless Owner and PROJECT PLANNER 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)