

TERMS AND CONDITIONS

ARTICLE 1 – THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of this Agreement signed by the Owner and Contractor.

ARTICLE 2 – CONTRACT SUM

2.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 8, the Contract Sum is based on the unit prices shown on the “Quotation” for the Work.

ARTICLE 3 – PAYMENTS

3.1 All payments due to Contractor by Owner under this Contract shall be due and payable thirty (30) days from the date of the Contractor’s invoice. Owner shall be responsible, and Owner shall indemnify Contractor, for all sales, use, excise or other taxes presently or hereafter payable in connection with the provisions of this Contract hereunder, unless Owner provides to Contractor an exemption certificate. Contractor shall not be responsible, and Owner shall indemnify Contractor for any income, franchise, or similar taxes of Owner or its customers, or any taxes incurred by or imposed on Owner or its customers in connection with the purchase or use of Products or any tax, such as sales, use, value added or purchase tax, customarily passed on to the ultimate consumer.

3.2 If Owner is overdue with any payment hereunder, then without prejudice to Contractor’s other rights or remedies, Contractor shall have the right to receive interest on the overdue amount at the rate of 1 1/2%, which interest shall accrue on a daily basis from the date payment becomes overdue until Contractor has received full payment of the overdue amount together with all interest that has accrued, and shall be payable within thirty (30) days of receipt of Contractor’s invoice in respect of the same.

3.3 If Contractor has any doubt as to Owner’s responsibility, or if Owner faults to fulfill the terms and conditions of payment set forth in this Contract Document, Contractor may (1) decline to perform any additional Work hereunder, except upon receipt of satisfactory security, including, but not limited to, full or partial payment; or (2) terminate this Contract Document. If, pursuant to this provision, Contractor defers any portion of the Work or terminates this Contract Document, Owner shall be liable for, and reimburse Contractor, for any losses, expenses, and termination charges incurred by Contractor as a result of such deferral or termination.

ARTICLE 4 – INSURANCE

4.1 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

ARTICLE 5 – GENERAL PROVISIONS

5.1 The Contract

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 8.

5.2 The Work

The term “Work” means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor’s obligations.

5.3 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

5.4 Ownership and Use of Drawings, Specifications and Other Documents

Documents prepared by the Owner are instruments of the Owner’s service for use solely with respect to this Project. The Owner shall retain all common law, statutory, and other reserved rights, including the copyright. The

Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

5.5 Electronic Notice

Written notice under this Agreement may be given by one party to the other by email as set forth below:

Bottomlinecompany@bottomlinecompany.com

ARTICLE 6 – OWNER

6.1 Information and Services Required of the Owner

6.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

6.1.2 Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

6.2 Owner’s Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

6.3 Owner’s Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Owner may withhold Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cost of correction, provided the actions of the Owner and amounts charged to the Contractor were approved by the Owner.

6.4 Owner’s Right to Perform Construction and to Award Separate Contracts

6.4.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project.

6.4.2 The Contractor shall coordinate and cooperate with the Owner’s own forces and separate contractors employed by the Owner.

ARTICLE 7 – CONTRACTOR

7.1 Review of Contract Documents and Field Conditions by Contractor

7.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

7.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Architect.

7.2 Contractor’s Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner’s information a Contractor’s construction schedule for the Work.

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7.3 Supervision and Construction Procedures

7.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

7.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner have made a timely and reasonable objection.

7.4 Labor and Materials

7.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

7.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

7.5 Warranty

The Contractor warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new or relay and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence upon substantial completion.

7.6 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

7.7 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching as required to complete the Work or to make its parts fit together properly.

7.8 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

7.9 Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, and agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

ARTICLE 8 – CHANGES IN THE WORK

8.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree

to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

8.2 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

ARTICLE 9 – TIME

9.1 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

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

ARTICLE 10 – COMPLETION

10.1 Substantial Completion

10.1.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

10.1.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Owner and the Owner will make an inspection to determine whether the Work is substantially complete. When the Owner determines that the Work is substantially complete, the Owner shall establish the responsibilities of the Owner and Contractor, and fix the time within which the Contractor shall finish all items on the list. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

ARTICLE 11 – PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

ARTICLE 12 – CORRECTION OF WORK

12.1 The Contractor shall promptly correct Work rejected by the Owner as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

12.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

12.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 6.3.

ARTICLE 13 – MISCELLANEOUS PROVISIONS

13.1 Assignment of Contract

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

13.2 Tests and Inspections

13.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the

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Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

13.2.2 If the Owner requires additional testing, the Contractor shall perform those tests.

13.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

13.3 Governing Law

The Contract shall be governed by the laws of the State of Texas.

ARTICLE 14 – TERMINATION OF THE CONTRACT

14.1 Termination by the Contractor

If the Work is stopped for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

14.2 Termination by the Owner for Cause

14.2.1 The Owner may terminate the Contract if the Contractor

- .1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2** fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4** is otherwise guilty of substantial breach of a provision of the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1** take possession of the site and of all materials thereon owned by the Contractor, and
- .2** finish the Work by whatever reasonable method the Owner may deem expedient.

14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

14.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.