



## DEMOLITION CONTRACT

This **DEMOLITION CONTRACT** (this "Contract" is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between **Ownership and/or its affiliates**, a New York Corporation ("Owner"), and **WEBB DEVELOPMENT SERVICES CORPORATION**, a New York Licensed ("Contractor").

### RECITALS

A. Owner is the owner of the real property located at **19 SOUTH TERRACE AVENUE** in the **City Of Mount Vernon, State of New York**, as more particularly described in Exhibit "A" attached hereto (the "Property" or the "Site").

B. Owner has issued a certain Invitation for Bid (the "IFB"), a copy of which is attached hereto as Exhibit "B" to this Contract, pursuant to which Owner has sought bids for the demolition and removal of all Improvements, as defined herein, located on the Property.

C. Contractor has submitted a proposal in response to the **IFB** which is attached hereto as Exhib-it "C" to this Contract and which has been accepted by Owner.

### AGREEMENT

In consideration of the foregoing recitals, the covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Contractor agree as follows:

**Section 1. Definitions.** As used in this Contract, the following terms have the following meanings.

1.1. "Applicable Environmental Laws" means any federal, state or local statute, law, rule, regulation, ordinance, code, policy or rule of common law of any Governmental Entity now in effect and in each case as amended from time to time, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to the environment, human health or hazardous materials, including, without limitation, CERCLA; The Hazardous Materials Transportation Act of 1994, as amended, 49 U.S.C. § 5101, et seq.; the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1201, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Safe Drinking Water Act, 42 U.S.C. §300(f), et seq., the Federal Insecticide, Fungicide and Rodenti-

side Act, as amended, 7 U.S.C. §136, et seq., the Occupational Safety and Health Act of 1970, 29 U.S.C. §651, et seq., orders, rules and regulations issued by the New York State Department of Natural Resources Division on Environmental Quality, and the ordinances, rules, and permits of the City of New York, and any other similar federal, state or local laws, or any federal, state, or local laws relating to the environment or to hazardous or waste materials.

1.2. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

1.3. "Change Directive" has the meaning set forth in Section 9.4.B.

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- 1.4. "Change Order" has the meaning set forth in Section 9.4.A.

- 1.5. "Commencement Date" means \_\_\_\_\_, 2023.

- 1.6. "Completion Date" means 80 calendar days following the Commencement

Date. The Completion Date may be changed only by written Change Order or written Change Directive in accordance with this Contract.

1.7. "Contract Documents" mean this Contract and all Exhibits hereto, the IFB, the Proposal, and any other document listed in this Contract.

- 1.8. "Contractor-Related Person" has the meaning set forth in Section 14.1.A.

- 1.9. "Contract Sum" has the meaning set forth in Section 9.1.

1.10. "Contract Time" means the period of time beginning on the Commencement Date and ending on the Completion Date. The Contract Time shall initially be for a period of **2 days to demolish and back fill excluding engineering plans approvals by City of Mount Vernon DOB**, unless increased or decreased by written Change Order or written Change Directive in accordance with this Contract.

1.11. "EPA" means the United States Environmental Protection Agency, or any successor agency.

1.12. "Event of Default" has the meaning set forth in Section 17.3.

1.13. "Final Completion", with respect to the Work, means that all Work, including, without limitation, all grading, disposal and compaction work, has been completed in accordance with the Contract Documents and has been accepted by Owner.

1.14. "Governmental Authorities" means governmental agencies, units or officials having jurisdiction over the Work.

1.15. "Governmental Entity" means any court or any federal, state, or local legislative or administrative body or governmental municipality, department, commission, board, bureau, agency or authority.

1.16. "Hazardous Materials" means:

A. any substance, material, or waste that is included within the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances", "toxic materials", "toxic waste", or words of similar import in any Environmental Law;

B. the substances listed as hazardous substances by the United States Department of Transportation (or any successor agency) (49 C.F.R. 172.101 and amendments thereto) or by the EPA (40 C.F.R. 302 and amendments thereto); and

C. any substance, material, or waste that is petroleum, petroleum related, or a petroleum by-product, asbestos or asbestos containing material, lead or lead containing materials, polychlorinated biphenyls, flammable, explosive, or radioactive materials, Freon gas, radon, or a pesticide, herbicide, or any other

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agricultural chemical.

1.17. "Improvements" mean all buildings, structures, and other improvements, and all equipment and other physical components of any of the foregoing located on the Property.

1.18. "Legal Requirements" means laws, ordinances, rules, codes, regulations, permits, licenses and legal requirements of any kind issued by any Governmental Authority, to the extent they apply to the Work under the laws of the state of Missouri and as to the obligations of the Parties generally under this Contract.

1.19. "OSHA" means the United States Occupational Safety and Health Administration, or its successor.

1.20. "Outstanding Work" has the meaning ascribed to it in Section 17.8.

1.21. "Owner Indemnified Person" or "Owner Indemnified Persons" has the meaning set forth in Section 14.1.

1.22. "Owner's Certificate of Acceptance" has the meaning ascribed to it in Section 11.1.

- 1.23. "Property" or "Site" has the meaning set forth in the Recitals.
- 1.24. "Proposal" has the meaning set forth in the Recitals.
- 1.25. "Project" has the meaning set forth in Section 2.1.
- 1.26. "Subcontractor" means any person or entity under a direct contract with

Contractor to perform any part of the Work, supply any materials to be incorporated into the Work, or to supply any tools, equipment or other articles or services to be used in the Work.

- 1.27. "IFB" has the meaning set forth in the Recitals.
- 1.28. "Work" has the meaning set forth in Section 4.1.

## **Section 2. Project Description and Contract Documents.**

2.1. Contract Documents. The Contract Documents are incorporated in to this Contract by this reference for all purposes and constitute the entire and integrated agreement between Owner and Contractor. If anything contained in any of the Contract Documents other than this Contract is inconsistent with this Contract, this Contract shall govern.

2.2. Site and Project. The Work under this Contract and the Contract Documents is generally described as the demolition of the Improvements and the disposal of all debris relating thereto (the "Project"). **19 South Terrace Avenue Mount Vernon New York Block #1064 Lot 36**

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2.3. Ownership of Improvements Being Demolished. On execution of this Contract, solely for the purpose of performance under this Contract, all right, title and interest in and to the Improvements shall be deemed to be vested in Contractor, subject to the provisions of the Contract Documents. No right, title, property or interest in and to the land on which the improvements stand is created, assigned, conveyed, granted, or transferred to Contractor, or any other persons, except only the license to enter onto the Property to demolish and remove the improvements in strict accordance with the Contract Documents. If Owner terminates this Contract in accordance with the Contract Documents, title to the Improvements remaining on the Site as of t h e d a t e o

f termination revert to and vest in Owner without release or prejudice to claims between the parties.

**Section 3. Commencement and Completion of the Work.**

3.1. Commencement and Completion Dates. Contractor shall commence the Work on or before the Commencement Date and shall complete the work on or before the Completion Date.

3.2. Timely Completion Required. Time is of the essence under this Contract. The time for completion of the Work shall not be extended except as agreed by Owner and Contractor by a written Change Order signed by both Owner and Contractor or by Change Directive.

3.3. Delay. If the Project is not completed on or before the Completion Date, then, in addition to all other rights and remedies Owner may have under this Contract, Contractor shall pay to Owner the sum of \$100 per day for each calendar day beyond the Completion Date until the Project is completed. If Contractor is delayed at any time in the progress of the Work, for any reason other than an act of neglect by Contractor or any of Contractor's agents, employees, consultants or Subcontractors (including, without limitation, any act or neglect of Owner or any of Owner's agents, employees or consultants), then, in such event, Contractor's sole remedy shall be an extension of the Contract Time. Contractor must notify Owner in writing within 7 days after the commencement of any event for which Contractor shall be entitled to a Contract Time extension under this Section 3.3 (it being expressly understood that requests made subsequent to such 7 day period shall not be eligible for extension), and any such adjustment in the Contract Time shall be memorialized in a written Change Order.

**Section 4. Work.**

4.1. Work. Contractor shall provide all necessary labor, professional services, supervision, materials, tools, accessories, equipment, permits, fees, testing, inspections, and certifications which may be necessary to properly complete the Project to the satisfaction of Owner and all applicable Governmental Authorities in accordance with the Contract Documents and all Legal Requirements (the "Work"). The term "Work", as used herein, includes all demolition, services, labor, materials, tools, machinery, equipment, transportation, disposal, permitting, utilities, and other facilities and services necessary for the proper execution and completion of the Work.

4.2. Scope of Work. The specific Work to be performed under this Contract is generally described as follows: File engineering demolition plans with **City of Mount Vernon DOB** and obtain approval.

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The dismantling, leveling and demolition of all Improvements, including, without limitation, buildings, below-grade foundations, parking areas, driveways, utility installations owned by Owner located on or under the Site; removal and proper disposal of all debris resulting from such Work; and proper compaction and grading of the Site following the removal of all improvements and debris therefrom. The Work expressly includes identification and remediation, removal and proper disposal of asbestos and polychlorinated bi-phenyls comprising a portion of the improvements (as opposed to any such substances improperly released into the environment).

4.3. Environmental Services. Any environmental consulting or engineering services forming a part of the Work shall be performed by a licensed engineer employed by Contractor. Such Work may include inspection and testing of possible asbestos, polychlorinated bi-phenyls, or other Hazardous Materials, permitting for removal and disposal work, establishing Hazardous Materials safety and handling programs and other related Work in accordance with all Applicable Environmental Laws.

4.4. Workmanlike Manner and Compliance with Laws. Contractor shall complete the Work in a first class, good and workmanlike manner in accordance with the terms of this Contract, and generally accepted engineering practices adopted by firms performing services of a similar nature to the Work. Contractor shall comply with all federal, state and municipal laws, codes, ordinances, rules and regulations and other Legal Requirements effective where the Work is to be performed.

4.5. General Requirements. Subject to additional requirements as set forth in the Contract Documents, Contractor shall perform the following duties in connection with the Work:

A. Utilities. Contractor shall contact all relevant utilities to (1) ensure that service has been disconnected; (2) to determine the location of any underground utilities located at the Site; and (3) to properly cap off all utilities as appropriate in accordance with all applicable Legal Requirements.

B. Fill and Compaction. Any depressions resulting from the removal of underground utilities, building foundations or other items shall be filled to grade with clean fill and compacted to 95%.

C. Grading. Following the removal of all on-grade improvements, underground improvements and debris, Contractor shall grade all disturbed surface areas.

D. Disposal of Hazardous Materials. Asbestos, polychlorinated bi-phenyls and other Hazardous Materials, if any, shall be disposed of in a properly licensed facility in accordance with all Applicable Environmental Laws or other Legal Requirements. Contractor shall provide Owner with a list of all disposal facilities for approval prior to disposing of any Hazardous Materials. Contractor shall promptly provide all original waste manifests and other evidence of proper disposal following removal of any Hazardous Materials from the Site.

4.6. Salvage. Contractor shall have salvage rights to all components of the Improvements to the Site, except only any asbestos containing materials, equipment containing polychlorinated biphenyls or any other Hazardous Materials, which must be disposed of as provided for herein.

4.7. Safety. Contractor further agrees that it will, during the performance of the Work, take proper precautions to prevent injury or damages to persons or property, including without limitation providing, erecting, and maintaining all reasonable, necessary, or required safety devices for its employees and flagmen, erecting proper barricades and other safeguards around its Work, and posting danger signs and other warning devices where warranted by the nature of the existing condition of the Work. In any event, Contractor shall promptly and properly replace any safety devices provided by others or Contractor and which are disturbed by Contractor's operations or forces hereunder. Contractor shall take all necessary steps to protect and secure its Work, materials, tools, scaffolding, equipment, buildings, trailers, and work shacks from vandalism, theft, and fire damage and Owner shall not be responsible for losses or damages to such items. Contractor shall be responsible for initiating, maintaining, and supervising safety precautions and programs in connection with the performance of its Work hereunder. Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury or loss to: (i) all Contractor's employees on the Project and all other persons on or near the Project Site who may be affected by Contractor's operations; (ii) all the Work and all materials and equipment used in connection with the performance of the Work, whether on or off-site, under the care, custody, or control of Contractor or any of Contractor's Subcontractors; (iii) other property at the Site or adjacent thereto; and (iv) the work of Owner or other separate contractors. When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel and in accordance with all applicable Legal Requirements. Contractor shall properly remedy all damage or loss to any property referred to herein caused in whole or in part by Contractor, any of its Subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and for which Contractor is responsible hereunder. The foregoing obligation is in addition to Contractor's indemnification obligations set forth elsewhere herein. Owner will not in any manner be answerable or accountable for any loss or damage that shall or may happen to the Work or any part or parts thereof respectively or for any of the equipment, materials or other things used and employed in finishing and completing the Work, or for injury to any person or persons, either workers or the public, or for damage to property.

**Section 5.** Representations and Warranties of Contractor. Contract hereby represents and warrants to Owner and Owner's successors and assigns as follows:

5.1. Qualifications. Contractor is a licensed corporate entity duly organized, existing, authorized to do business, and in good standing under the laws of all jurisdictions under which the Work is to be performed. Contractor is duly authorized to enter into this Contract by signature set forth herein. Contractor is skilled and experienced in the Work to be provided pursuant to this Contract, and is familiar with and knowledgeable about Applicable Environmental Laws and Legal Requirements.

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5.2. Site Inspected. Contractor has inspected the Site and is satisfied with the improvements, the surface and subsurface of the Site, available labor supplies, available materials and supplies, and all other matters that could, in reasonable probability, affect the nature of and cost to perform the Work. No adjustments shall be made to the Contract Sum for concealed or unknown conditions except to the extent that the same could not have reasonably been discovered or anticipated by a competent contractor using its best efforts to determine the scope of the Work based upon typical conditions in the vicinity of the site of the Work.

5.3. Good and Workmanlike Work. Contractor will provide and complete the Work in a good and workmanlike, first class, manner, to the best of Contractor's art and skill, and in accordance with the Contract Document, all Legal Requirements and all Applicable Environmental Laws.

5.4. Licenses and Permits. Wherever necessary, Contractor shall obtain all licenses and permits required to perform the Work.

5.5. Work Will be Done in Compliance with Laws. Contractor shall comply with all Applicable Environmental Laws, and all federal, state and municipal laws, codes, ordinances, rules, regulations and other Legal Requirements effective where the Work is to be performed, with regard to safety, health, environment, or otherwise. Contractor, for itself and on behalf of its employees, agents, assigns and Subcontractors, agrees to comply with all safety directives of Owner's personnel and representatives. Failure to follow Owner's safety directives and regulations is grounds for immediate termination of this Contract without recourse and notwithstanding any other provision of this Contract.

**Section 6. Permits.** Prior to conducting any physical demolition work at the Site, Contractor shall obtain all demolition, asbestos removal and other permits required to perform the Work, and shall provide all required notices to utilities and government agencies, if any, required to perform the Work, the costs of which are included in the Contract Sum.

**Section 7. Conducting and Supervising Work.**

7.1. Contractor Solely Responsible for Means, Methods, Techniques, Sequences and Procedures. Contractor shall use its best skill in attention in supervising and directing the Work and shall have full control over and sole responsibility for the means, methods, techniques, sequences and

procedures of the Work and shall coordinate the Work with any other work being done by Owner or Owner's separate contractors. Contractor shall be responsible for worksite safety, but shall at all times comply with any safety rules or programs maintained by Owner at the Site. Contractor shall be responsible for all acts and omissions of Contractor's employees, agents, Subcontractors, licensees and invitees at the jobsite or elsewhere while acting in connection with the Project. Neither Owner nor Owner's officers, directors, employees or agents shall be responsible for Contractor's (a) means, methods, or techniques; (b) safety precautions or programs; (c) acts or omissions; or (d) failure to carry out the Work in accordance with the Contract Documents, Applicable Environmental Laws or applicable Legal Requirements.

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7.2. Jobsite Order. Contractor shall maintain good order at the jobsite at all times and shall not permit unqualified personnel to work on the Project. Contractor shall not permit the use of drugs or alcohol by its employees or those of its Subcontractors on the site and shall immediately remove from the Site any such person under the influence of drugs or alcohol.

**Section 8. Subcontractors.** Contractor shall supply to Owner a list of any Subcontractors to whom Contractor expects to perform work valued in excess of \$2,500.00. Each such subcontract shall: (a) require that such Work be performed in accordance with the requirements of this Contract; (b) waive all rights the Subcontractor may have against Owner for damages caused by fire or other casualty; (c) require the Subcontractor to carry and maintain liability insurance in an amount not less than those set out in Exhibit "D" and to furnish a certificate of such insurance naming Owner and Owner's officers and directors as additional insureds as set out in Exhibit "D" prior to entry on the Site.

**Section 9. Contract Sum.**

9.1. Amount. For all Work required under this Contract, Owner agrees to pay to Contractor the fixed fee of the following amount except as modified by Change Order or Change Directive (Contract Sum): **\$91,500.00. Ninety One Thousand Five Hundred Dollars Including Asbestos Abatement. Contractor will retain the Services Of Asbestos Mitigation Sub-Contractor.**

9.2. Amount Changed Only by Change Order. Notwithstanding anything to the contrary contained in this Contract, it is the specific intent of Owner and of Contractor that the Contract Sum may not, under any circumstances, be increased, other than by a written Change Order signed by authorized representatives of both Owner and Contractor or by Change Directive.

9.3. Amounts Outside of Contract Sum. Contractor agrees that it will not perform any work outside the scope of this Contract prior to receipt of a signed Change Order or Change Directive from Owner. Any such additional work performed without a Change Order or Change Directive shall not be subject to reimbursement by Owner. Contractor will be solely responsible for all its costs and expenses incurred in connection with this Contract that are not specifically provided for herein or in a written Change Order or Change Directive. This provision is of the highest importance to Owner and Owner would not have entered into this Contract absent this provision.

9.4. Changes in the Work.

A. A "Change Order" is a written agreement signed by Owner and Contractor stating their agreement upon a change in the Work, the amount of the adjustment of the Contract Sum, if any, and the extent of the adjustment in the Contract Time and Completion Date, if any.

B. A "Change Directive" is a written order prepared by Owner directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. Owner may by Change Directive, without invalidating this Contract, order changes in the Work within the general scope of the Contract Documents consisting of additions, deletions or other revisions, with the Contract Sum and/or Contract Time being adjusted accordingly. A Change

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Directive shall be used in the absence of total agreement on the terms of a Change Order.

C. Changes in the Work may be accomplished after execution of this Contract, and without invalidating this Contract, by Change Order or Change Directive, subject to the limitations stated in this Section 9.4 and elsewhere in the Contract Documents. A Change Order shall be based upon agreement among Owner and Contractor. A Change Directive issued by Owner may or may not be agreed to by Contractor, however Contractor shall perform the changes in the Work under applicable provisions of the Contract Documents, and Contractor shall proceed promptly to perform all such changes in the Work (including, without limitation, under a Change Directive whether or not agreed to by Contractor) even if Contractor does not sign the Change Directive.

D. A Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in the Contract Sum and/or Contract Time or the method for determining same. Such agreement shall be effective immediately and shall be recorded as a Change Order.

E. No more than 10% profit and overhead will be allowed on any change order.

**Section 10. Taxes.**

10.1. Sales Tax Exempt. As a tax exempt organization, Owner is not subject to the payment of sales, consumer, use and similar taxes. Contractor shall take all steps and execute such instruments as may be necessary to enable Owner to claim its exemption from the State of Missouri Sales Tax for goods, materials, fuel or other materials incorporated, used or consumed in the Work. All savings resulting from such tax exemptions shall be for the sole benefit of Owner.

10.2. Contractor Incurred Taxes. Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted as of the date of this Contract and incurred by Contractor in the Work. Notwithstanding anything in the Contract Documents to the contrary, the Contract Sum includes all sales, use, consumer, and similar taxes in effect, or announced to become effective on or before the date of this Contract and Contractor shall pay all such amounts directly to the appropriate authorities.

10.3. Taxes on Contractor's Business. Contractor shall bear and pay any and all liabilities or claims for any income taxes, profits taxes, property taxes on Contractor's equipment and other personal property, stamp taxes, document taxes, excise taxes, import taxes or duties, surtaxes, surcharges or any other taxes or governmental charges which any governmental authority claiming jurisdiction over the Contract may impose, assess or levy against Contractor on account of or resulting from Contractor's execution of or performance under the Contract.

10.4. Employee Benefits. Contractor further agrees to withhold from wages, salaries, fees or other remuneration of its agents, servants, employees, or sub- contractors, all taxes and contributions imposed or required by any law for any employment insurance, pensions, old age retirement funds or similar purposes or any other sums required to be withheld by the laws of the State of Missouri and to pay the

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same when due to the proper authorities.

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## **Section 11. Payment of Contract Sum.**

11.1. Final Completion and Invoice. After Contractor has completed all of the Work in accordance with the Contract Documents, Contractor shall notify Owner in writing. When Owner is satisfied Contractor has completed the Work in accordance with the Contract Documents, Owner shall notify Contractor of final acceptance of the Work by issuance of an "Owner's Certificate of Acceptance" in such form determined by Owner. Upon receipt of the Owner's Certificate of Acceptance, Contractor shall deliver to Owner an invoice for the entire Contract Sum along with the following documents:

A. an affidavit or final waiver of lien, in such form as Owner may request, certifying payment of its Subcontractors, laborers, suppliers and materialmen;

B. releases and/or final waivers of the Subcontractors or materialmen of Contractor of liens arising out of or in connection with performance of the Work as Owner may request; and

C. a release by Contractor of all claims against Owner arising out of the Contract Documents and/or performance of the Work.

11.2. Payment of Final Invoice. Owner shall pay the Contract Sum to Contractor within 30 days after Owner's receipt of the final invoice and all of the items listed in Section 11.1, all to the reasonable satisfaction of Owner. Neither final payment nor issuance of the Owner's Certificate of Acceptance shall affect or impair Owner's rights with respect to any defect in or nonconforming Work or any other breach or right or remedy under the Contract Documents.

11.3. Inspections. Prior to making the final payment required, Owner (individually or through its architect or other consultants) shall have the right, but not the obligation, to conduct inspections of the Work to determine the level of completion of the Work, the quality thereof and the compliance of the Work with the Contract Documents and all applicable codes, ordinances, regulations or other Legal Requirements. Should Owner elect to retain a consultant for such inspections, such consultant shall have the authority, in the consultant's sole discretion, to reject all nonconforming Work and to make recommendations to Owner regarding issuance or non-issuance of the Owner's Certificate of Acceptance.

11.4. Withholding Payments. Payments may be withheld by Owner for any of the following reasons:

- Contractor fails to correct defective or non-conforming Work;
- Claims or liens have been filed or threatened;
- Contractor has failed to make timely and adequate payments

to Subcontractors or others;

D. Contractor has failed to carry out the Work in accordance with this Contract;

E. Owner force places insurance on behalf of Contractor in accordance with Section 15.2;

F. Any cost or expense incurred by Owner to cancel or discharge one or more liens as provided in Section 12;

G. All damages Owner has suffered under this Contract as provided for in Section 17.6; and

H. The amount, if any, by which the costs incurred by Owner to complete the Work exceed the balance of the Contract Sum at the time of termination, and any other losses incurred as a result of Contractor's default, as provided for in Section 17.9.

11.5. No Representation. Any payment made by Owner to Contractor shall not thereby be deemed to represent that Owner has made an exhaustive or continuous on-Site inspection to check the quality or quantity of the Work, or that Owner has reviewed the means, methods, techniques, sequences, or procedures used to perform the Work, or that Owner has made an examination to ascertain the purposes for which Contractor has used the monies previously paid to Contractor, if any, pursuant to the Contract. No payment by Owner shall constitute an acceptance of any Work that is defective or otherwise not in accordance with this Contract.

**Section 12. No Liens.** Contractor agrees that any monies it shall receive in payment for Work performed under this Contract, other than the portion of such payments being a part of Contractor's fee for services rendered under this Contract and remaining after payment in full of all expenses associated with the Work, shall be received in trust and used to discharge its financial obligations with respect to such Work. Contractor further agrees that it will not file or cause to be filed any mechanic's lien for labor performed or to be performed unless Owner. Contractor further agrees that if any Subcontractor holding a subcontract from it or any materialman supplying materials to it or anyone claiming by or through it or any such Subcontractor or materialman shall file or cause to be filed any lien, Contractor will, upon notice from Owner, cause such lien to be canceled and discharged within 15 calendar days from such notice; and in the event of Contractor's failure to do so, Owner shall have the right to cause such lien to be canceled and discharged, and in that event any expense so incurred by Owner, including the premiums upon any bond furnished for such cancellation and discharge and reasonable attorneys' fees and disbursements, shall be paid by Contractor, or at the option of Owner, shall be deducted from any payment then due or thereafter becoming due from Owner to Contractor.

### **Section 13. Environmental Matters.**

13.1. Notification of Presence of Hazardous Materials. Owner has notified Contractor that it anticipates that the improvements to be demolished contains various asbestos containing materials, lead paint and other Hazardous Materials, including but not limited to, transformers and/or other electrical equipment containing polychlorinated bi-phenyls which are located at the Site. Contractor has represented to Owner that it has experience in handling Hazardous Materials, has inspected the Site for the presence of Hazardous Materials and has included the cost of remediation and disposal of such

Hazardous Materials in the Contract Sum. 13.2. Release Reporting.

A. Immediate Reporting Requirements. Contractor shall immediately report a release to all appropriate agencies and to Owner in the event a release occurs during the performance of the Work that requires immediate reporting to one or more federal, state or local agencies pursuant to applicable law including but not limited to the Emergency Planning and Community Right-To-Know Act of 1986, CERCLA, the Clean Water Act and the Oil Pollution Act of 1990. The term, "immediate reporting" shall mean those instances where reporting is required within 15 minutes of the incident such that it is not practical to contact Owner prior to making such report.

B. Other Reporting Requirements. Except for releases subject to Subsection 13.2.A above, Contractor shall promptly advise Owner in writing of any condition which it reasonably believes requires reporting, the appropriate agencies that should receive reports and the time period in which reports should be provided. Owner shall be responsible for making all such reports unless otherwise agreed in writing. Contractor shall assist Owner in preparing such reports at the request of Owner.

C. Contractor Reporting Requirements. In the event Contractor is specifically required by applicable federal, state or local laws, regulations or ordinances to independently report any release to any appropriate agency, Contractor shall advise Owner in writing of such requirement and shall provide copies of all such intended reports to Owner prior to making such reports. Contractor shall use its best efforts to coordinate any reports it is independently required to make with Owner.

13.3. Process and Compliance. In addition to other provisions of this Contract, Contractor shall provide all engineering methods and follow all work practices required to meet the exposure limits as required by OSHA Standards at 29 C.F.R. §§ 1910.1001 and to prevent emissions of particulate asbestos material to the outside air as required by EPA Regulation 40 C.F.R. Part 61, Subpart M (the "Asbestos Regulations"). Prior to the start of work, Contractor shall provide Owner with a copy of Contractor's asbestos removal procedure. Contractor shall provide employees with training on Contractor's asbestos removal procedures and Contractor shall so indicate in writing to Owner, immediately, any deviation from these procedures. Contractor, when required by EPA Regulations, shall provide the EPA regional administrator with written notice of intention to remove asbestos and this notice shall include all EPA required information. This written notice shall be sent by certified mail, return receipt requested. Owner shall be given a copy of this written notice and a copy of the EPA returned receipt prior to the start of asbestos removal. Contractor shall also provide all notices, plans, and other documents as required under the Asbestos Regulations and shall provide Owner with a copy of all such notices. Contractor shall provide Owner with copies of all truck asbestos hauling permits, dumping receipts, monitoring test results, and any and all documentation as may be required by the Asbestos Regula-

tions. Prior to the start of work, Contractor shall provide Owner with the names and social security numbers of all asbestos removal employees and a certification that employees are physically able to use respirators without any danger to their health and further certifying that they have received all of the required training and medical examinations. Contractor shall maintain a current daily

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log of personnel entering the sealed asbestos removal work area and copy Owner daily. Contractor shall provide all personal protective equipment, as required by OSHA Standards 29 C.F.R. §§ 1910.1001, for its employees. Contractor's Asbestos Removal Procedure shall include an established respirator program which shall provide training in the use of, and testing for proper face fit of, any respirator for all asbestos removal employees as required by OSHA Standard 29 C.F.R. §§ 1910.1001 and the American National Standards Institute "Practices For Respirator Protection," ANSI Z88.2-2015 and the "American National Standard for Respiratory Protection – Respirator Use – Physical Qualifications for Personnel," ANSI Z88.6- 2006. Contractor shall provide all personal protective equipment to Owner's personnel or any state or other Governmental Authority who may be required to inspect the work. Contractor shall provide or make available at its cost, medical examinations relative to exposure to asbestos as required by OSHA Standards 29 C.F.R. §§ 1910.1001. Contractor shall provide for all personal and environmental monitoring by a qualified person or an Industrial hygienist using the OSHA Standards 29 C.F.R. §§ 1910.1001 methods with the samples tested by a Laboratory accredited by qualified agencies. Contractor shall retain all Project records as required by OSHA Standards 29 C.F.R. §§ 1910.1001 for a period of 20 years or longer as may be required by State or local regulations.

#### **Section 14. Indemnification.**

14.1. Indemnification. To the fullest extent permitted by applicable law, Contractor shall defend, indemnify and hold harmless Owner and its officers, directors, employees or agents (collectively, the "Owner Indemnified Persons", and each, individually, an "Owner Indemnified Person" from and against:

A. all claims, damages, losses and expenses, including attorneys' and consultants' fees, arising out of the failure, in whole or in part, directly or indirectly, of Contractor, any Subcontractor, any material or equipment supplier, or anyone directly or indirectly employed by them and all other persons for whom contractor may be legally liable (collectively, the "Contractor-Related Persons", each, individually, a "Contractor-Related Person") to comply with Applicable Environmental Laws; Contractor's advising or instructing Owner in contravention of Applicable Environmental Laws; or the release or disturbance of Hazardous Materials by any Contractor-Related Person. Contractor hereby agrees to indemnify, defend and hold all Owner Indemnified Persons harmless from and against any and all costs, penalties, fines, remediation expenses, accountants',

experts' and attorneys' fees and costs of litigation in the event of any allegation of improper disposal of Hazardous Materials by any Contractor-Related Person in connection with this Contract. This Section 14.1.A is intended to indemnify Owner Indemnified Persons from liability even in the event of any Owner Indemnified Person's contributory or concurrent negligence or strict liability;

B. all claims, damages, losses, expenses, liabilities and judgments which may be made, asserted or entered against Owner or any other Owner Indemnified Person (including attorneys', consultants' and experts' fees), which arise from, are incident to, grow out of or are connected with bodily injuries to any person, (including Contractor-Related Persons), or damage to any property, caused in whole or in part by Contractor or any other Contractor-Related Person (except to the extent caused by the sole negligence of any Owner Indemnified Person). Contractor hereby waives any immunity provided for by the applicable workers compensation laws so that this indemnity may be enforced against

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Contractor for any action brought against any Owner Indemnified Person by any employee or alleged employee of Contractor;

C. any claims, damages, losses, expenses, liabilities and judgments which may be made, asserted or entered into against any Owner Indemnified Person based upon or arising from any actual or claimed infringement of patents, trademarks, service marks, trade secrets, mask work rights, or copyrights with respect to any process, product, equipment or apparatus, goods or materials supplied by Contractor or any other Contractor-Related Person in connection with any of their performance hereunder or the Work (except to the extent such infringement arises solely and directly out of Contractor's compliance with Owner's written specifications for such item of equipment or material); and

D. any and all liability imposed by reason of Contractor's or any other Contractor-Related Person's actual or asserted violation of laws, regulations, ordinances, or other rules of government or any quasi-governmental body or agency, including but not limited to, actual or alleged failure to pay taxes or other governmental fees or charges.

14.2. Deduction from Payments to Contractor. Any loss or damage incurred by Owner in connection with the foregoing may be deducted from compensation then due or to become due to Contractor hereunder, which deduction shall be in addition to any other remedies that Owner may have hereunder.

14.3. Survival. The Indemnities in this Section Section 14 shall survive the completion of the Work or the earlier termination of this Contract.

14.4. Notification. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at its own expense, shall assume on behalf of the Owner-Related Persons, and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to the Owner-Related Persons; provided, however, that the Owner-Related Persons shall have the right, at their option, to be represented therein by advisory counsel of their own selection and at their own expense. In the event of failure by Contractor to fully perform in accordance with this Section 14.4, the Owner-Related Persons, each at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by the Owner-Related Persons in that event shall be reimbursed by Contractor, together with interest on the same from the date any such expense was paid by the Owner-Related Persons until reimbursed by Contractor, at the highest lawful rate of interest allowed under applicable usury law (or if no maximum rate is applicable, at the rate of 18% per annum). This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, workers compensation acts, disability benefit acts or other employees' benefit acts.

14.5. Modified to Comply with Law. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation under this Section, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

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## **Section 15. Insurance.**

15.1. General and Specifications Exhibit. Attached hereto as Exhibit " D " are specifications for insurance and bonds to be obtained and maintained by Contractor and insurance to be obtained and maintained by Subcontractors. The specifications are in addition to the requirements set out in this Section 15. In the event of any conflict between the specification in Exhibit "D" and the requirements set out in the below sections of this Section 15, the specifications in the Exhibit "D" control and amend and supersede the conflicting requirement set out in the below sections of Section 15. Contractor will maintain certificates and evidence of insurance from all Subcontractors, enumerating, among other information, the waivers of subrogation in favor of and additional insured status of the Owner Indemnified Persons, as required by the Contract Documents. Contractor will make such certificates and evidence of insurance available to Owner Indemnified Persons prior to commencement of the Work and thereafter upon request. The coverages and limits set forth in Exhibit "D" are minimum requirements and not a determination as to all of the coverages and maximum limits that Contractor should carry. The failure of Owner to demand full compliance by Contractor or any Subcontractor with respect to the minimum coverages outlined in Exhibit "D" will not constitute a waiver with respect to Contractors' or the Subcontractors'

obligation to maintain such coverages. Contractor hereby indemnifies Owner and all Owner Indemnified Persons against any claims arising from Contractor's or any Subcontractor of any tier's failure to purchase and/or maintain the insurance coverages required by this Contract.

15.2. Forced Placed Insurance. In the event of any failure by Contractor to comply with the provisions of this Section, Owner may, without in any way compromising or waiving any right or remedy at law or in equity, on notice to Contractor, purchase such insurance, at Contractor's expense, provided that Owner shall have no obligation to do so and if Owner shall do so, Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

15.3. Contractor's Liability Insurance. Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the State of Missouri such insurance as expressly required by the insurance requirements in the Contract Documents and as will protect Contractor from claims set forth below which may arise out of or result from Contractor's operations and completed operations under the Contract and for which Contractor may be legally liable, whether such operations be by Contractor or by a Subcontractor of any tier or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- A. Claims under workers compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- B. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- C. Claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- D. Claims for damages insured by usual personal injury liability coverage;
- E. Claims for damages because of injury to or destruction of tangible

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property, including loss of use resulting therefrom;

F. Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

G. Claims for bodily injury or property damage arising out of completed operations;

H. Claims involving contractual liability insurance applicable to Contractor's obligations under Section 14; and

I. Pollution liability.

15.4. Limits, Occurrence and Claims-Made Basis. The insurance required by this Section 15 and Exhibit "D" shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to Contractor's completed operations coverage, until the expiration of five years from final completion. Notwithstanding the foregoing, such coverage required hereunder shall not be written on a claims-made basis without the advance express written consent of Owner, which consent may be withheld or denied in Owner's sole discretion, and if consent is not obtained then the insurance is to be written on an occurrence basis. No deductible or self-insured retention in excess of \$10,000.00 is permitted without the prior written approval of Owner. No policy may include an endorsement restricting, limiting or excluding coverage in any manner without the prior written approval of Owner.

15.5. Policies and Certificates of Insurance. Certificates of insurance acceptable to Owner shall be filed with Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. The insurance policies required by this Section 15 and Exhibit "D" shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with Contractor's final invoice and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 15.4. Information concerning reduction of coverage on account of revised limits or claims paid under the general aggregate, or both, shall be furnished by Contractor with reasonable promptness. Prior to commencement of Work and thereafter as requested by Owner, Contractor shall provide Owner with a certified true and correct copy of the insurance of Contractor's and such of the Subcontractors of any tier requested by Owner. When any required insurance, due to the attainment of a normal expiration date or renewal date shall expire, Contractor shall supply Owner with certificates of insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtain or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, Contractor shall also furnish Owner with a certified copy of the renewal or replacement policy unless Owner provides Contractor with prior written consent to submit only a Certificate of insurance

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for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to Owner and written by carrier acceptable to Owner.

15.6. Endorsements. Contractor shall cause the commercial liability, auto and umbrella liability coverage required by the Contract Documents to include (1) Owner and Owner's officers and directors as additional insureds for claims caused in whole or in part by Contractor's acts or omissions during Contractor's operations; and (2) Owner and Owner's officers and directors as additional insured for claims caused in whole or in part by Contractor's acts or omissions during Contractor's completed operations. All such liability policies carried and maintained by Contractor must be endorsed to be primary to any liability insurance policies carried by the additional insureds with respect to Contractor's operations hereunder. Waivers of subrogation shall be provided in favor of the additional insureds on general, auto, workers compensation/employers, umbrella, pollution and all other liability policies carried and maintained by Contractor.

15.7. Bonds. Owner shall have the right to require Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The payment bond shall be in the statutorily required amount and form and issued by an issuer acceptable to Owner. The payment bond shall not be on an AIA bond form. Any person, firm or corporation executing a performance or payment bond upon Contractor's Work under the Contract Documents, shall be deemed to have consented in advance to any changes in the Work made by order of Owner; any such changes shall in no way alter or impair the obligations of such person, firm or corporation executing such a bond. The amount of the bonds shall be written to increase with Change Orders. Contractor shall obtain and file with Owner bonds for any increases in the Contract Sum as may be necessary to effectuate coverage for increases in the Contract Sum. Issuer must be at least a Best's Key Rating Guide A/VII company and listed on the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers, Treasury Department Circular 570. The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to and waiver of (1) notice of changes in the Work; (2) request for reduction of release of retention; (3) request for final payment; and (4) any other material required by the surety. Owner may, in Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work. For contracts over \$150,000 a 5% bid bond and 100% performance bond and payment bond are required.

15.8. Property Insurance. The risk of loss to the improvements is to be borne by Contractor and Contractor waives and releases any claims on Owner's property insurance.

## **Section 16. Compliance with Law.**

16.1. Covenant. Contractor agrees that it shall comply with, and shall cause all Subcontractors, consultants, and engineers retained by Contractor to comply with all requirements of applicable law, including, without limitation, (1) any code or ordinances of the municipality where the Project site is located; (2) the requirements of the local board of insurance underwriters; (3) the provisions of any permits for the Work; (4) OSHA rules and regulations; and (5) all Applicable Environmental Laws and Legal Requirements.

16.2. Changes in Laws. If after the date of this Contract there is a change in the laws applicable to the Work (including a change in any official interpretation thereof issued by a court or regulatory agency) that necessitates some modification to the performance of any Work under this Contract, and Contractor neither had knowledge nor could reasonably have been expected to have knowledge of such change prior to the date of this Contract, Contractor shall prepare a proposed Change Order including the modifications required by such change in law and, upon acceptance by Owner, the Contract Sum shall be amended accordingly. No adjustment in the Contract Sum shall be made in the event of any change in law that Contractor knew of or could reasonably be expected to have knowledge of as of the date of this Contract.

## **Section 17. Termination or Suspension.**

17.1. Termination for Convenience. Owner may terminate this Contract or any portion of the Work at any time, with or without cause, by 5 days prior written notice to Contractor provided, however, that Owner shall compensate Contractor for the verifiable direct cost of all Work properly performed and profit earned prior to Contractor's receipt of notice and all of Contractor's reasonable, verifiable direct costs and expenses incurred in demobilizing following any such termination. Under no circumstances is Contractor entitled to reimbursement for any lost profits, lost opportunity costs, productivity losses, lost efficiencies or any other direct, indirect or consequential damage or cost occasioned by Owner's termination for convenience.

17.2. Suspension for Convenience. Owner may suspend performance of all or any portion of the Work at any time, with or without cause, by 10 days prior written notice to Contractor provided, however, that as Contractor's sole and exclusive remedy with respect thereto, Contractor shall be entitled to a Change Order in accordance with 9.4. During any such suspension, Contractor shall protect and secure the Work in such manner as Owner may require at Owner's expense, if such suspension is for convenience. Unless Owner otherwise directs, Contractor shall, at Owner's expense, if such suspension is for convenience, maintain its readiness on or near the Site to proceed with the Work upon Owner's further instructions. Contractor shall use its best efforts to use its material, labor and equipment in a manner that will mitigate costs associated with such a suspension. Following a suspension, Owner may at any time give Contractor notice to continue with the suspended Work.

17.3. Events of Default. Each of the following circumstances or events shall constitute an "Event of Default" by the party specified at the beginning of each sub-clause below:

A. by either party, if: a proceeding is instituted against the party seeking to adjudicate it as bankrupt or insolvent and such proceeding is not

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dismissed within 60 days of filing; the party makes a general assignment for the benefit of its creditors; a receiver is appointed on account of the insolvency of the party; the party files a petition seeking to take advantage of any other applicable laws relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts; or the party is unable to pay its debts when due or as they mature;

B. by Owner, if Owner fails to pay any undisputed amount and such failure continues unremedied for more than 30 days after first written notice thereof by Contractor;

C. by Contractor, if Contractor fails to perform any material obligation under this Contract and such failure continues and/or has not been remedied, and/or the effects of such failure have not been remedied, in each case for more than 15 days after first written notice thereof by Owner;

D. by Contractor, if Contractor fails to fully complete the Project within 10 days or more beyond the Completion Date;

E. by Contractor, if Contractor abandons performance of the Work and such abandonment is not cured within 7 days after first written notice thereof by Owner;

F. by Contractor, if any Contractor-Related Person is in breach of any Applicable Environmental Laws and such breach is not cured within 7 days after first written notice thereof by Owner; and

G. By Contractor, if Contractor fails to obtain or maintain, in full force and effect, any insurance or permit required to be obtained by Contractor or its Subcontractors pursuant to this Contract and such failure is not cured within 7 days after notice thereof.

17.4. Notice of Default. Any notice of default pursuant to Section 17.3 shall be given in accordance with Section 18.1.

17.5. Termination for Default. Upon an Event of Default by a party, the other party may by written notice to the defaulting party, effective immediately or on such other date as the terminating party may specify, terminate this Contract, and (except as expressly limited in this Contract) exercise all other remedies under the Agreement, at law or in equity with respect to such termination and the relevant Event of Default.

17.6. Owner's Right of Set Off. Owner may, at its sole discretion, set off damages Owner has suffered under this Contract against any amounts that may be due to Contractor by Owner under this Contract.

17.7. General Obligations. If Owner elects to terminate this Contract pursuant to this Section 17, Contractor shall, at Owner's request and at Contractor's expense, do the following:

A. cease all Work, except such Work as Owner may specify in the termination notice for the sole purpose of protecting that part of the Work already executed;

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B. terminate all subcontracts; except those to be assigned to Owner pursuant to Section 17.7.C;

C. immediately assign to Owner title to all Work not already owned by Company, all subcontracts and other contracts, all permits, licenses, authorizations, approvals, patents and other Contractor required authorizations; and

D. remove from the Site all machinery, tools, Hazardous Materials, trash and debris as Owner may request.

17.8. Payment Obligations. If Owner terminates this Contract as a result of an Event of Default with respect to Contractor pursuant to 17.5, Owner is not obligated to make any further payments to Contractor until either (i) the Work that remained outstanding on the date of termination (the "Outstanding Work") has been completed by or on behalf of Owner, or (ii) Owner has decided to abandon the Project. Upon completion of the Outstanding Work or abandonment of the Project (as the case may be), Owner shall pay Contractor the portion of the Contract Sum applicable to all Work properly performed in accordance with this Contract, subject to Company's right of set-off under Section 17.9.

17.9. Owner Set Off Rights; Reimbursement by Contractor. Owner shall have the right to deduct from the payment due to Contractor pursuant to Section 17.8 the amount, if any, by which the costs incurred by Owner to complete the Work exceed the balance of the Contract Sum at the time of termination, and any other losses incurred as a result of Contractor's default. Under no circumstances is Contractor entitled to reimbursement for any lost profits, lost opportunity costs, productivity losses, lost efficiencies or any other direct, indirect or consequential damage or cost occasioned by Company's termination in accordance with Section 17.5 as a result of Contractor's Event of Default.

## **Section 18. Notices.**

18.1. Method. Any notice to be given by either party to this Contract shall be given in writing and may be effected by personal delivery e-mail or sent by United States Mail, postage prepaid, addressed as follows:

If to Owner:

Florian Philip  
Project Director

On behalf of Webb Development Services Corporation

34 East 1<sup>ST</sup> Street 2<sup>ND</sup> Fl

Mount Vernon New York 10550

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If to Contractor: Attn:

Telephone: E-mail:

18.2. Effective Date. Any notice sent in compliance with the requirements of this Section 18 shall be deemed received on the earlier to occur of (i) the date such notice is received by the party or parties to whom such notice is addressed; (ii) three days following the date such notice is deposited in a United States Post Office or other official depository of the United States mail; or (iii) if such notice is sent via e-mail, upon receipt if received during recipient's normal business hours or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours.

### **Section 19. Miscellaneous.**

19.1. Entire Contract. This Contract, including the Exhibits, contains the entire Contract between Owner and Contractor pertaining to the transaction contemplated by this Contract and fully supersedes all prior Contracts and understandings between Owner and Contractor pertaining to such transaction.

19.2. Conflicts. In the event there is any conflict among this Contract and the Drawings, the provisions of this Contract shall be controlling, and in the event any Drawings, specifications, working drawings or similar project documents are not specific, the better quality or better quantity of work or materials shall be taken to be that specified under this Contract. Without in any way limiting the foregoing, Contractor covenants and agrees that the quality of workmanship and the quality of materials to be furnished under this Contract shall be at least as good as the quality of workmanship and materials commonly used in projects for Owner or other major industrial companies in the vicinity of the site of the Work.

19.3. Attorneys' Fees. In the event of any controversy, claim or dispute between Owner and Contractor affecting or relating to the subject matter or performance of this Contract, the prevailing

party shall be entitled to recover from the non-prevailing party all of the prevailing party's reasonable expenses, including, without limitation, attorneys' fees, accountants' fees and court costs.

19.4. Binding Effect. This Contract shall not be binding upon either Owner or Contractor unless and until both Owner and Contractor have executed this Contract or any counterpart hereof.

19.5. No Third Party Beneficiary. The provisions of this Contract and of any other documents to be executed and delivered in connection with the Project are and will be for the benefit of Owner and Contractor only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this

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Contract or of any other documents to be executed and delivered in connection with the Project.

19.6. No Assignment by Contractor. Contractor shall not sublet, assign, or transfer this Contract or any part thereof or any interest therein or contract any part of the Work called for by this Contract or permit the further subcontracting of any part thereof without prior written notice to Owner and without first obtaining the written consent of Owner thereto. The Contractor shall not subcontract any portion of the Work to any proposed Subcontractor to whom Owner has objection. Every such subcontract shall require the Subcontractor to be bound by and to comply with all the Contract Documents and Contractor shall cause its Subcontractors to comply with all the Contract Documents.

19.7. Rule of Construction. This Contract shall be construed without regard to any presumption or other rule requiring construction against the party causing this Contract or any of the provisions thereof to be drafted or prepared. If any words or phrases shall have been stricken out or otherwise eliminated, whether or not other words or phrases have been added, this Contract shall be construed as if the words or phrases so stricken out or otherwise eliminated were never included in this Contract and no implication or inference shall be drawn from the fact that said words or phrases were so stricken out or otherwise eliminated.

19.8. Governing Law. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Missouri. Each of the parties hereby irrevocably submits to and accepts the jurisdiction of any state or federal court sitting in the City or County of St. Louis, Missouri, and each of the parties hereby irrevocably agrees that any action may be heard and determined in such state or federal court.

19.9. Attorneys' Fees and Costs. In the event any legal action is taken under this Contract, the prevailing party shall be entitled to have and recover from the losing party reasonable attorneys' fees, cost of suit, and all other costs reasonably related to enforcement of its rights under this Contract as determined by a court of competent jurisdiction.

19.10. Counterpart and Electronic Signatures. This Contract may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute one and the same agreement. Signatures transmitted by facsimile or electronic mail (via pdf or other similar digital imaging method) shall constitute original signatures for purposes hereof.

[Signature Page Immediately Follows]

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**SIGNATURE PAGE TO DEMOLITION CONTRACT**

IN WITNESS WHEREOF, the parties hereto have, through their duly authorized representatives, executed this Demolition Contract as of the date first above written.

**OWNER:**

**City of Mount Vernon**

By: Name: Title:

**CONTRACTOR:**

By: Name: Title: Alonzo Webb, President

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**EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY**

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EXHIBIT B INVITATION FOR BID [See Attached]

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EXHIBIT C PROPOSAL [See Attached]

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EXHIBIT D  
CONTRACTOR'S INSURANCE SPECIFICATIONS

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Insurance Minimum Limits

<p>Contractor's Legal Liability Insurance</p>	<p>\$5,000,000 for each occurrence and \$5,000,000 aggregate</p>	<p>1. Scope. Such insurance shall cover any environmental claims, liabilities, loss or damage to the Job Site, adjoining properties, third parties, including property damage, bodily injury, disease or disease and transporter liability and properties contaminated during transportation ("Claims") caused by pollution conditions that arise from the operations of Contractor and its Subcontractors of every tier. Coverage shall include Claims arising out discharge, dispersal, seepage, migration, release or escape of Hazardous Materials, and cover clean-up costs. Coverage shall apply to sudden and non-sudden pollution conditions.</p> <p>2. Defense Costs. Defense, including costs and expenses incurred in the investigation, defense, or settlement of claims, shall be provided outside of the limit of liability.</p> <p>3. Notice. Contain a provision for 30 days' prior written notice by insurance carrier to Owner required for cancellation, non-renewal, or substantial modification.</p> <p>4. Waiver of Subrogation. Include a waiver of subrogation by insurer as to Owner, and Owner's officers and directors.</p> <p>5. If Claims Made. If coverage is written on a claims- made basis, Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effect date of the Contract, and that continuous coverage will be maintained on an extended discovery period will exercised for a period of 5 years beginning from the time that Work under this Contract is completed.</p> <p>6. Insureds. The policy shall be endorsed to include as an insured Owner, and Owner's officers and directors.</p> <p>_____</p> <p>_____</p>
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Disposal Site Operator		Contract is to furnish Owner evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting waste under this Contract. Coverage certified to Owner this paragraph must be maintained in minimum amounts of \$25,000,000 per loss.
Worker's Compensation	Statutory Limits (if state has no statutory limit, \$1,000,000)	<p>1. Form. No "alternative" forms of coverage will be permitted.</p> <p>2. Waiver of Subrogation. Waiver of subrogation by carrier as to claims against Owner and Owner's officers and directors.</p> <p>3. Rating. Issuer must be at least a <i>Best's Key Rating Guide</i> A/VII company.</p>

Other Requirements

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Employer's Liability	<p>\$1,000,000 each accident for bodily injury by accident</p> <p>\$1,000,000 each employee for bodily injury by disease</p>	<p>1. Waiver of Subrogation. Waiver of subrogation by carrier as to claims against Owner and Owner's officers and directors.</p> <p>2. Rating. Issuer must be at least a <i>Best's Key Rating Guide</i> A/VII company.</p> <hr/>
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<p>Commercial General Liability (Occurrence Basis)</p>	<p>\$1,000,000 per occurrence \$2,000,000 general aggregate</p> <p>\$1,000,000 product-completed operations aggregate limit</p> <p>\$1,000,000 personal and advertising injury limit</p> <p>\$100,000 damage to premises rented to you limit</p> <p>\$10,000 medical expense limit</p>	<p>1. Form. ISO form CG 00 01 or equivalent.</p> <p>2. Insured Contracts. Coverage shall apply to but not be limited to liability assumed by Contractor under the Construction Documents (including the tort liability of another assumed in a business contract).</p> <p>3. Primary. This insurance shall be endorsed to provide primary and non-contributing liability coverage. It is the specific intent of the parties to this Agreement that all insurance held by Owner shall be excess, secondary and non-contributory.</p> <p>4. Separation of Insureds. Separation of insured language will not be modified.</p> <p>5. Dedicated Limits. Aggregate limit of insurance (per project) endorsement ISO CG 25 03, or equivalent.</p> <p>6. Contractual Liability “ –Personal Injury”. The contractual liability exclusion with respect to “personal injury” (as defined in ISO policies) will be deleted.</p> <p>7. Defense. Defense will be provided as an additional benefit and not included within the limit of liability.</p> <p>8. Duration. This insurance will be maintained in identical form, and amount, including required endorsements, for at least 4 years following the Date of Final Completion.</p> <p>9. Additional Insureds. Owner and Owner's officers and directors will be listed as additional insureds on an ISO CG 20 26 or equivalent form of endorsement.</p> <p>10. Waiver of Subrogation. Endorsed to provide for carrier's waiver of subrogation for claims against Owner, its Regents and employees, and Owner's Architect.</p> <p>11. Rating. Issuer must be at least a <i>Best's Key Rating Guide</i> A/VII company.</p> <p>12. Prohibited Endorsements. The following exclusions/limitations (or their equivalents) are not permitted:</p>
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		<ul style="list-style-type: none"> <li>• (d) Any endorsement modifying or deleting the exception to the Employer’s Liability exclusion.</li> <li>• (e) Any “Insured vs. Insured” exclusion.</li> <li>• (f) Any type of punitive, exemplary or multiplied damages exclusion.</li> </ul>
<p>Business Automobile Liability (Occurrence Basis)</p>	<p>\$100,000 combined single limit</p>	<ol style="list-style-type: none"> <li>1. Form. ISO form CA 00 01 or equivalent.</li> <li>2. Scope. Includes liability arising out of operation of owned, hired and non-owned vehicles.</li> <li>3. Rating. Issuer must be at least a <i>Best’s Key Rating Guide A/VII</i> company.</li> </ol>
<p>Umbrella Liability Insurance (Occurrence Basis)</p>	<p>Limits for liability policies may be allocated between underlying policies and an umbrella liability policy, subject to the Other Requirements of these Specifications.</p>	<ol style="list-style-type: none"> <li>1. Scope. Written on an umbrella basis in excess over and no less broad than the liability coverages referenced above.</li> <li>2. Coverage Dates. Inception and expiration dates will be the same as commercial general liability insurance.</li> <li>3. Drop Down Coverage. Coverage must “drop down” for exhausted aggregate limits under the liability coverages referenced above.</li> <li>4. Dedicated Limits. Aggregate limit of insurance per location endorsement dedicating limits to the Project.</li> <li>5. Rating. Issuer must be at least a <i>Best’s Key Rating Guide A/VII</i> company.</li> </ol> <hr/> <hr/>

<p>Subcontractors' Insurance</p>	<p>Unless waived by Owner in writing in advance of a Subcontractor's commencing Work, each Subcontractor of every tier shall have liability insurance coverage meeting the same specifications as set out for</p>	
	<p>Contractor, including designating on the commercial general liability and automobile liability policies that Owner and Owner's officers and directors are additional insureds by additional insured endorsements acceptable to Owner, and the insurers of the liability policies shall waive rights of subrogation against Owner and Owner's officers and directors.</p>	