



**SECTION 00514
AGREEMENT**

THIS AGREEMENT, made this the _____ day of _____, by and between _____ (hereinafter called the “CONTRACTOR”) and Knoxville Utilities Board, a municipal utility created by charter of the City of Knoxville, Tennessee, a municipal corporation, (hereinafter called “the OWNER”), which municipal agency is authorized to contract in its own name.

WITNESSETH

The CONTRACTOR and OWNER, for and in consideration of their respective agreements contained herein hereby agree as follows:

1. The CONTRACTOR, at his own expense, shall do all work and furnish all materials not furnished by the OWNER, equipment, tools, and labor to complete in a good and workmanlike manner the following:

_____ **Control Number:** _____

(hereinafter called the “Work”). The Work shall be done in accordance with this Agreement and in accordance with the following documents (all of which, including this Agreement, are hereinafter sometimes referred to as the “Contract Documents”):

Project Manual Containing the Bid Specifications and Contract Documents
And
All other documents and drawings as attached to or referenced therein
For the

_____ **Control Number:** _____

In the event of a conflict between the documents, which together comprise the Contract Documents, the one requiring the highest level or quality of work shall control. The Contract Documents represent the entire Contract between the parties and supersede all prior representations, negotiations and agreements, whether written or oral. The Work performed by the CONTRACTOR shall be subject to inspection by the OWNER, and in the discretion of the OWNER, a reasonable amount of monies requested by the CONTRACTOR will be withheld for the percentage of the Work not complying with the Contract Documents until defects are corrected.



2. Unless otherwise expressly provided in the Contract Documents, the CONTRACTOR shall begin the Work on specified commence date stated in the Notice to Proceed and will continue the same with due diligence until the Work is completed. The CONTRACTOR will Substantially Complete the Work within ____ calendar days following the commence date stated in the Notice to Proceed and will finally complete the Work and submit the final Application for Payment in accordance with Section 01770 of the Specifications within calendar days following the commence date stated in the Notice to proceed.

3. CONTRACTOR and OWNER agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER \$_____ for each calendar day that expires after time specified in paragraph 2 of this Agreement until the Work is Substantially Complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse, or fail to complete the remaining Work in its entirety, CONTRACTOR shall pay OWNER \$_____ for each calendar day that expires after the time specified in paragraph 2 of this Agreement for completion and readiness for final Application for Payment in accordance with Section 01770 of the Specifications. The CONTRACTOR and OWNER recognize the delays, expense, and difficulties involved in proving in a legal proceeding the actual loss suffered by the OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree to the provisions herein.

4. Within thirty (30) days following the completion and acceptance of the Work (unless some other time of payment is expressly provided in the Contract Documents), and as payment for the Work, the OWNER shall pay or cause to be paid to the CONTRACTOR the Contract Price of: _____ dollars
(\$_____) (words)
(figures)
subject to any discount or discounts expressly allowed by the terms of the Contract Documents and subject to the provisions of Article 11 of the General Conditions in the case of Unit Price Work.

5. If the duration of the Work exceeds 30 days, the OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Application for Payment submitted on or about the 25th day of each month during performance of the Work. **The date on the Application For Payment (invoice) must be the 1st day of the next month. For example invoice submitted 25 May with date on invoice of 1 June.** The CONTRACTOR's Applications for Payment shall comply with the Contract Documents and shall conform to the Schedule of Values submitted to and approved by the OWNER. The OWNER shall withhold five percent (5%) retainage from the total amount of each approved Application for Payment, which retainage, in accordance with state law, will be released for payment to the CONTRACTOR within 90 days of Completion of the Work or receipt by OWNER of a certificate of Substantial Completion, whichever occurs first; unless OWNER has other claims or offsets against CONTRACTOR under the Agreement, in which event the retainage shall continue to be kept in escrow until such KUB claims or

offsets have been resolved. If the Contract Price exceeds \$500,000, the CONTRACTOR shall enter into a Retainage Escrow Agreement per Section 00600 of the Contract Documents. **Payment terms for this Agreement will be NET 30 DAYS from the date of approval by the OWNER of the CONTRACTOR's Applications for Payment.** Failure by CONTRACTOR to include a statement listing subcontractors, suppliers, and other second-tier expenditures with an application for payment in accordance with the Contract Documents may be cause for rejection of the application. Section 00487 has an acceptable statement that CONTRACTOR may include to fulfill this requirement.

6. The CONTRACTOR shall comply with all state, federal and local laws and regulations (including but not limited to the Occupational Safety and Health Act, environmental and immigration laws and regulations, the KUB – United States EPA Consent Decree, if attached) and all applicable codes and standards which govern the Work. The CONTRACTOR shall have and maintain in force at all times and upon request shall furnish to the OWNER proof that it has all licenses that are required to do the Work. It shall be the CONTRACTOR's responsibility to obtain permits and schedule for blasting, road closures, traffic control plans and other items necessary to complete the work. The OWNER shall obtain city, county and state approvals required for the facilities to be installed under this Agreement. The CONTRACTOR agrees to maintain a drug and alcohol-testing program for all employees performing the Work under this Agreement and shall replace any such employee who refuses testing or fails a test immediately at the CONTRACTOR's expense without impeding the progress of the Work. The CONTRACTOR agrees to comply, and require all of its subcontractors and employees to comply, with the terms and conditions of the KUB Firearms and Weapons Policy, as that policy may be amended from time to time and available on request, and agrees, immediately upon KUB's request, to remove from KUB's premises and the Work, any person who violates this policy and any firearms, ammunition or other weapons in their possession or under their control. CONTRACTOR also agrees that all employees and subcontractors will comply with KUB Customer Service Policy, available on request.

7. The CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors performing or furnishing any of the Work just as the CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. CONTRACTOR shall be solely responsible for coordinating the Work with any Subcontractors performing any of the Work under direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors performing or furnishing any Work to communicate with OWNER, DESIGN ENGINEER or Resident Project Representative through CONTRACTOR. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of the OWNER and DESIGN ENGINEER. CONTRACTOR shall have its own representative on site to communicate with the OWNER while work is being performed by Subcontractors.

8. Neither CONTRACTOR nor any Subcontractor shall commence work under this Agreement until the insurance described in the Contract Documents is in force and a certificate showing proof of such insurance has been delivered to the OWNER.
9. Should the CONTRACTOR:
 - (a) fail or refuse to begin or, once begun, to diligently proceed with the Work after receipt of the Notice to Proceed; or
 - (b) assign or sublet this Agreement or any part thereof without prior written consent of the OWNER; or
 - (c) violate any provisions of this Agreement; or
 - (d) allow any officer, director, shareholder or partner of CONTRACTOR to have any relationship with OWNER which would be violative of the conflict of interest provisions of T.C.A. § 6-54-107 and/or §12-4-101.

then in any of such events, the OWNER may immediately take one or more of the following actions: (i) cancel this Agreement; (ii) require the CONTRACTOR to discontinue the Work immediately; (iii) sue the CONTRACTOR for damages suffered by the OWNER, including consequential damages, and (iv) seek and obtain whatever equitable relief by way of injunction or specific performance that may be available.

Seeking any one or more of the above remedies will not be a waiver of any other remedy available to the OWNER. The CONTRACTOR shall pay the cost and expense of the OWNER's enforcement of its rights hereunder, including but not limited to reasonable attorney's fees.

10. The CONTRACTOR shall be solely responsible for and shall have control over the means, methods, techniques and procedures for doing the Work. The CONTRACTOR is an independent contractor and neither CONTRACTOR nor any of its employees shall be deemed to be agents or employees of the OWNER. The CONTRACTOR agrees to maintain a professional workforce at all times. CONTRACTOR and its Subcontractors shall maintain current documentation related to the training, certification, and legal status (if applicable) of its employees and shall make documentation available to the OWNER for review upon request. The CONTRACTOR shall enforce good order and discipline among their employees and any other persons performing the Work. CONTRACTOR employees performing the Work shall present a neat appearance and shall treat OWNER's employees and customers in a polite manner. The CONTRACTOR shall not employ unfit persons or persons not skilled in the specific tasks of the Work. The CONTRACTOR, at his expense, shall promptly replace employees or Subcontractors who do not meet these minimum requirements without impeding the progress of the Work.

11. The obligation of the OWNER hereunder are payable solely from the revenues of the _____ Division of the Knoxville Utilities Board.
12. The CONTRACTOR shall indemnify and save harmless the OWNER in accordance with the terms and conditions of sections 4.06.G., 6.07, 6.11.A.3, and 6.20 of the General Conditions (Section 00700). The CONTRACTOR's indemnity obligations hereunder shall apply even though the OWNER may be chargeable with negligence in connection with the occurrence made the basis of any claim or suit, provided any such claim or suit is not due to the OWNER's sole negligence.
13. The CONTRACTOR is responsible for any and all tax liabilities, which may be imposed upon the Work, or any materials used therein under the sales or use tax laws of the State of Tennessee. It shall be the CONTRACTOR's responsibility to determine if taxes are due on the Work or materials installed under this Agreement.
14. The CONTRACTOR has thoroughly examined and carefully studied the Site of the Work and the Contract Documents and has identified any and all conflicts, errors, ambiguities, and discrepancies to the OWNER in writing and the written resolution thereof by the OWNER is acceptable to the CONTRACTOR; and the CONTRACTOR has determined that it can construct and deliver a fully completed Project which is functional for its intended purpose within the Contract Price and the Contract Time specified in the Contract Documents and this Agreement.
15. This Agreement shall be binding upon and shall inure to the benefit of the OWNER and the CONTRACTOR and each of their respective heirs, successors, partners, and assigns. The CONTRACTOR may not assign this Agreement or Subcontract any part of the Work without the prior written consent of the OWNER. No amendment, modification or interpretation of this Agreement by either party shall be effective unless the same is in writing and signed by a duly authorized representative of the OWNER.
16. In addition to all other rights and remedies available to KUB under the law and the Contract Documents, the CONTRACTOR agrees to provide a one (1) year warranty for all labor, materials, equipment, workmanship, and restorations. The warranty period will begin at Substantial Completion of the Work as determined by the OWNER. The CONTRACTOR agrees that it is his financial responsibility to repair all damages to public and private property, which result from his performance of the Work. Whenever feasible repairs to inhabited buildings and structures will be performed within 24 hours of notification from the OWNER or the property owner. If the CONTRACTOR fails to perform repairs in a timely manner as determined by the OWNER, the OWNER will complete said repairs and invoice the CONTRACTOR for costs associated with said repairs. For all contracts involving digging or any subsurface work, including exploratory boring, and or to which Specification Section 001725, "Underground Utility Damage Prevention Act, Protection of Utilities" is incorporated therein CONTRACTOR agrees to reimburse OWNER for costs to repair, replace, replenish product, or otherwise restore OWNER's facilities including

labor and equipment when it has been determined that damage was caused by CONTRACTOR or any of CONTRACTOR's subcontractors or agents according to the provisions of Specification Section 001725 therein. In the event the CONTRACTOR fails to reimburse the OWNER for at fault damages or damage repairs, the OWNER shall take action to collect payment as defined in Section 001725.

17. Neither party, nor its respective counsel, shall be deemed the drafter of this Agreement, and all provisions of this Agreement and the Contract Documents shall be construed in accordance with the fair meaning, and not strictly construed for or against either party.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate, as of the day and year first above written, each party hereto retaining an executed copy hereof.

(SEAL)

CONTRACTOR:

By _____

Printed Name _____

Title _____

Address _____

Phone _____ Fax _____

CONTRACTOR's License No. _____

Attest:

(Witness)

(SEAL)

**OWNER:
Knoxville Utilities Board**

By _____

Attest:

(Witness)

Name: ~~Brad Powell~~Michelle W. Wilson
Title: Acting Procurement Manager
Procurement Department
Address: 4505 Middlebrook Pike
Knoxville, TN 37921
Phone: 865-558-2433

END OF SECTION