



NEWTON
BRILLIANT LEGACY + BRIGHT FUTURE

Purchasing Department

Post office Box 550 • Newton, NC 28658 • (828) 695-4328 • Fax (828) 465-7464

EMERGENCY CONTRACT FORM

THIS CONTRACT, made this _____ day of _____, **20**
by, _____ hereinafter called Contractor, and the **City**
of **Newton, North Carolina**, hereinafter called City.

WITNESSETH

WHEREAS, a Contract for _____ has
recently been awarded to _____
by the City for _____, a sum equal to the aggregate cost of the work to be
done and for labor, materials, equipment, apparatus, and supplies furnished at the prices
and rates respectively named therefore in the Proposal attached herewith;

AND WHEREAS, it was provided in said Award that a formal _____
contract would be executed by and between Contractor and City, evidencing the terms of
said Award, and an agreement on a start date to be specified in a written contract by the
City and would complete all work as outlined under SPECIAL PROVISIONS and
STANDARD SPECIFICATIONS. Contractor shall complete all required work as
specified within the SPECIAL PROVISIONS and STANDARD SPECIFICATIONS of
the award document within the specified days for completion. Failure by the Contractor
to meet this completion date shall be subject to a daily penalty rate as noted within this
Contract.

NOW, THEREFORE, Contractor does hereby covenant and agree with City that
it will well and faithfully perform and execute such work and furnish such labor,
materials, equipment, apparatus and supplies, in accordance with each and every one of
the conditions, covenants, stipulations, terms, and provisions contained in said Standard
Specifications and Special Provisions and in accordance with the scope of work, attached

hereto at and for a sum equal to the aggregate cost of the work done and labor, materials, equipment, apparatus and supplies furnished at the prices and rates respectively named therefore in the proposal attached hereto, and will well and faithfully comply with and perform each and every obligation imposed upon it by said Provisions, Specifications, Award and the terms of this Contract.

The Contractor shall provide the City with performance and payment bonds equal to one hundred percent (100%) of the contract price. This bond must be executed by a corporate surety licensed under the laws of North Carolina in accordance with North Carolina G.S. 143-129. The performance and payment bond must be in the form of a bond, or cashier's check (bank check). Company issuing the surety must be authorized to transact business in the State of North Carolina. Contractor shall, at all times during the term of this Agreement, carry insurance as required in the City's Exhibit A which is attached hereto and incorporated by reference. Failure on the part of the Contractor to provide the City with the required bonds and/or required Insurance Certificates may be grounds for the City to terminate any outstanding agreement and/or Purchase Order.

The Contractor shall create a visual digital log, video or photography, of existing conditions prior to beginning work. This log shall be submitted to the City, in an acceptable format, prior to beginning work.

Contractor shall make payments within thirty (30) days to all persons supplying materials used on this project and to all laborers and others employed thereon and shall provide documentation of same to the City of Newton upon request. Contractor shall also indemnify and hold harmless the City of Newton from any and all claims of lien filed by such party herein.

Contractor shall be responsible for all damages to the property of the City of Newton, North Carolina, that may be consequent upon the normal procedure of its work or that may be caused by or result from the negligence of Contractor and/or Subcontract, their employees, workmen or agents during the progress of or connected with the performance of the work, whether within the limits of the work or elsewhere. Contractor must restore all property so injured to a condition as good as it was when Contractor entered upon the work.

Contractor shall furthermore be responsible for and required to make good at its expense any and all damages of whatever nature to persons or property arising during the duration of the Contract, caused by carelessness, neglect, or want of due precaution on the part of Contractor and/or Subcontractor, their agents, employees or workmen. Contractor and/or Subcontractor shall also indemnify and save harmless the City of Newton, North Carolina, and the officers, agents and employees thereof from all claims, suits, and proceedings of every name and description which may be brought against the City of Newton, North Carolina, or the officers, agents or employees thereof, for or on account of any injuries or damages to persons or property received or sustained by any person or persons, firm or corporation, or by or in consequence of any materials used in said work or by or on account of any improper material or workmanship in its construction, or by or on account of any accident, or of any other act or omission of Contractor and/or Subcontractor, their agents, employees, servants or workmen.

It is agreed and understood that the Invitation for Bids, Proposal, Standard Specifications, Special Provisions, and the enumerated addenda and drawings are parts and parcels of this Contract to the same extent as if incorporated herein in full.

It is further mutually agreed that if at any time after the execution of this agreement and the surety bonds hereto attached for its faithful performance, City shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover performance and payment of the work, Contractor shall, at its expense, within five days after the receipt of notice from the City shall furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the City. In such event, no further payment to Contractor shall be deemed to be due under this agreement until such new or additional security for the faithful payment and performance of the work shall be furnished in manner and form satisfactory to City.

It is further agreed that the Contractor will not discriminate against any employee or applicant because of race, color, creed, sex, or religion.

The Contractor and/or Subcontractor shall comply with the CITY OF NEWTON'S Drug-Free Workplace Policy.

The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

- 1- all persons on the site or who may be affected by the work;
- 2- all work, materials and equipment to be incorporated therein, whether in storage on or off site, and
- 3- other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities.

The Contractor shall be responsible at all times for the safety of the general public and for the protection of persons who may enter within the limits of his work and shall comply with all the laws of the State of North Carolina and the United States with all valid rules and regulations now in force or hereafter adopted pursuant thereto. For the purpose of this Section, "limits of his work" shall mean the area undergoing work, and the area being used for the delivery of materials and transportation of workers. All areas closed for work shall be protected by effective barricades on which shall be placed acceptable warning and detour signs. The Contractor shall bear the entire expense and responsibility and shall not be reimbursed directly or separately by the City for providing and maintaining all necessary or required barricades, warning lights, danger signals, signs or other precautions for the protection of the work and safety of the public.

The Contractor and/or Subcontractor shall comply with the OSHA Standard 29CFR 1910.1200 Hazardous Communications as it pertains to the training, safety and equipment needed for all employees engaged in the work conditions associated with the Provisions and Specifications associated with this project. The Contractor and/or Subcontractor shall be responsible for this compliance on the date that any work for this project begins.

The City shall hereby covenant and agree with Contractor that it will pay to Contractor, when due payable under the terms of said Provisions, Specifications, Award, and Contract the above mentioned sum, and that it will well and faithfully comply with and perform each and every obligation imposed upon it by said Specifications and the terms of said Award.

All work (which term includes, but is not restricted to materials and workmanship) shall be subject to inspection and test by any City representative that has been authorized to oversee the project. These activities may be performed at all reasonable times and places prior to acceptance. Any such inspection is for the sole benefit of the City and shall not relieve the Contractor and/or Subcontractor of the responsibility of providing quality control measures to assure that the work strictly complies with the Provisions, Specifications and Contract documents.

It is also agreed that if the City should determine that it is in the City's best interest, the City will notify the Contractor to terminate the work within seven (7) days. The Contractor shall be entitled to compensation for all work properly executed and any expenses incurred in terminating the contract and vacating the construction site less an estimated amount due for any neglect or damage to any City owned assets. No claim shall be made by the Contractor for any change order or termination, by reason of any variation between the approximate quantities and the quantity of work as done, or for lost profits.

If the Contractor fails to complete the project within the specified **days for completion** they shall be subject to a daily penalty of _____.

The Contractor shall furnish, upon the request of the City, any shop drawings relating to work to be completed within the scope of this contract. Any shop drawings requested must be reviewed and approved by the City prior to ordering or moving materials to the site. The City shall make every effort to review and return shop drawings in the same working day as they are received. Due to the accelerated nature of this work, electronic mailing (email) of shop drawings and approvals shall be considered legal and binding to both parties. Shop drawings received via email by the City from the Contractor shall be considered to be reviewed and approved by the Contractor on the date the email was sent. Comments and approvals sent to the Contractor by the City via email shall be considered approved and dated on the date the email was sent. Hard copies of the shop drawings shall be stamped and dated with the Contractor's approval prior to review by the City. Shop drawings submitted via email should be sent to the following email address: _____.

The Contractor shall furnish, upon the request of the City, written clarification on means and methods to be utilized to complete any or all aspects of the work to be

completed within the scope of this contract. Due to the accelerated nature of this work, electronic mailing (email) of clarification and approvals shall be considered legal and binding to both parties. Clarification and approvals sent by the City via email shall be considered approved and dated on the date the email was sent. Hard copies of any clarification shall be stamped and dated with the Contractor's approval prior to review by the City. Clarifications submitted via email should be sent to the following email address: _____.

Contractor shall furnish with each pay application on City provided forms, beginning not later than the second application for payment, an affidavit certifying the total cost of materials and North Carolina Sales Tax paid on such materials has been satisfied as included in the application for payment. All such invoices will be paid within thirty (30) days by the City unless any items thereon are questioned, in which event payment will be withheld pending verification of the amount claimed, validity of the claim and verification that work performed meets owners requirements. Contractor shall provide complete cooperation during any such investigation.

Whenever used herein, the singular shall include the plural, the plural the singular and the use of any gender shall be applicable to all genders as the context may require.

IN WITNESS WHEREOF, said Contractor has hereunto set its hand and seal (or) has caused these presents to be signed in its corporate name by its corporate seal to be hereto affixed and attested by its Secretary and the City of Newton, North Carolina, has caused these presents to be signed in its corporate name by its authorized representative and seal to be hereto affixed and duly attested by its City Clerk, by authority of the City Council duly given, all as of the day and year first above written.

Award Date: _____

Start Date: _____

Days for Completion: _____

Completion Date: _____

(SEAL)

BY: _____
(CONTRACTOR)

TITLE: _____

Attest: _____
Secretary

(Corporate Seal)

CITY OF NEWTON, NC

By: _____
CITY MANAGER

Attest: _____
City Clerk

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

FINANCE DIRECTOR