

STANDARD FORM OF
AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is made between the City of Lakeland, hereinafter referred to as the "Owner," and ENSCOR, LLC hereinafter referred to as the "Contractor."

WHEREAS, the City of Lakeland is desirous of parking improvements to IH parking lot; and,

WHEREAS ENSCOR, LLC is able and willing to provide those services to the City of Lakeland, Tennessee.

NOW, THEREFORE, it is hereby agreed as follows:

ARTICLE 1. WORK.

Contractor shall perform all the work required by the Contract documents for INTERNATIONAL HARVESTER PARK PARKING IMPROVEMENTS Lakeland, Tennessee.

ARTICLE 2. ENGINEER.

The Project has been designed by the City of Lakeland Engineering Office, 10001 U.S. Highway 70, Lakeland, Tennessee, who is hereinafter referred to as the "Engineer" and who is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract documents in connection with completion of the Work in accordance with the Contract documents.

ARTICLE 3. CONTRACT TIME.

- 3.1 The Work will be substantially completed by May 5, 2023, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions by May 26, 2023. Substantially completed work will be defined as a completed parking lot surface. Final completion shall include, but is not limited to stabilization, fencing, striping, and parking stops.
- 3.2 Liquidated Damages. Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not substantially completed by the time specified in Paragraph 3.1 above, plus any extension thereof allowed in accordance with Article 15 of the General Conditions. They also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding, the actual loss suffered by Owner if the Work is not substantially completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner one Hundred Dollars (\$100.00) for each day that expires after the time specified in Paragraph 3.1 for substantial completion. After Substantial Completion, if the Contractor shall neglect, refuse, or fail to complete the remaining work within

the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by Owner, Contractor shall pay Owner One Hundred Dollars (\$100.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment. It is further agreed that such liquidated damages are not a penalty but represent the parties' best estimate of actual damages.

ARTICLE 4. CONTRACT PRICE.

In Consideration of the performance of the work in accordance with the Contract documents for this Unit Price Contract, Owner shall pay Contractor in current funds a not-to-exceed total contract price of One Hundred Seventy-One Thousand, Two Hundred Forty-Four Dollars (\$171,244.00), subject to additions and deductions by Change Order approved by the Owner. The contract fee shall be based on materials actually furnished and installed and services actually provided based on the unit prices contained in the Bid Form and Itemized Bid Schedule, included as Exhibit "A" (pages BF-1 -- BS-1) and by this reference made a part of this Agreement.

ARTICLE 5. PAYMENT PROCEDURES.

Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed through the Engineer as provided in the General Conditions.

- 5.1 Progress Payments. Owner shall make progress payments on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 25th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the Schedule of Values provided for in Paragraph 15 of the General Conditions, subject to the cutoff and submittal dates provided in the General Provisions.
 - 5.1.1 During the course of the Contract progress payments will be made in an amount equal to 95% of the Work completed, less in each case the aggregate of payments previously made.
 - 5.1.2 In the event the Contractor makes only one application for payment upon substantially completing the Work, progress payment will be made in an amount equal to 95% of the Work completed. Owner shall withhold five percent (5%) of the work completed as retainage, said retainage to be paid in accordance with the provisions of Paragraph 5.2, Final Payment.
- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Engineer shall recommend payment and present Contractor's Final Application for Payment to the City in accordance with Tennessee Statutes 54-5-122. Before final acceptance of the project as having been finally completed, the contractor shall furnish evidence of payment in full for materials and labor to the City in accordance with Tennessee 54-5-122. When this is done, full settlement may be made with the contractor, but not until thirty (30) day's notice is some newspaper published in the county where the work is

done, if there is a newspaper there, and if not, in a newspaper in an adjoining county that settlement is about to be made and notifying all claimants to file notice of their claims with the officials and the period for filing shall not be less than thirty (30) days after the last published notice. In the event claims are filed, the officials shall withhold a sufficient sum to pay the claims in the same way and manner as is provided for claimants making claims against contractors dealing with the Department of Transportation in accordance with Statutes 54-5-123, and claimants may bring suits against contractors in the way and manner provided in 54-5-124, as suits are brought against contractors dealing with the department. Where claims are allowed by the Courts, Statutes 54-5-125 and 54-5-127 shall be applicable.

ARTICLE 6. WITHHELD FUNDS.

Pursuant to Tennessee Statutes Section 66-11-104 et seq., withheld percentages for Contracts exceeding \$500,000.00 will be retained in an account in the name of the Contractor (except when specifically waived in writing by Contractor) which has been assigned to the Owner until the Contract is completely, satisfactorily, and finally accepted by the Owner. Unless a depository is designated by the Contractor in a written attachment hereto, the Contractor's signature hereon shall act as authority for the Owner to designate a retainage depository on behalf of the Contractor, for the purposes specified in Tennessee Statutes Section 66-11-104. The Contractor's signature hereon shall act as an assignment of the depository account to the Owner, as provided by Tennessee Statutes Section 66-11-104 et seq., whether the depository is designated by the Contractor or by the Owner.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- 7.1 Contractor has familiarized himself with the nature and extent of the Contract documents, Work, locality, and with all local conditions and federal, state, and local Laws and Regulations that in any manner may affect cost, progress, or performance of the Work.
- 7.2 Contractor has studied carefully all reports of investigations and test of subsurface and latent physical conditions at the site or otherwise affecting cost, progress, or performance of the Work which were relied upon by Engineer in the preparation of the Drawings and Specifications and which have been identified in the Supplementary Conditions.
- 7.3 Contractor has made or caused to be made examinations, investigations, and test and studies as he deems necessary for the performance of the Work at the Contract price, within the Contract Time, and in accordance with the other terms and conditions of the Contract documents; and no additional examinations, investigations, tests, reports, or similar data are or will be required by Contractor for such purposes.
- 7.4 Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the terms and conditions of the Contract documents.

7.5 Contractor has given Engineer written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract documents and the written resolution thereof by Engineer is acceptable to Contractor.

ARTICLE 8. CONTRACT DOCUMENTS.

The Contract documents which comprise the entire agreement between Owner and Contractor are attached to this Agreement, made a part hereof and consist of the following:

- 8.1 This Agreement (Pages SFA-1 to SFA-5, inclusive).
- 8.2 Joint Account Agreement or Letter of Forfeiture waiving same (if applicable)
- 8.3 Exhibit "A" Bid Form and Bid Schedule
- 8.4 Affidavit of Drug Free Work Program
- 8.5 Addenda
- 8.6 Performance and Payment Bonds
- 8.7 Certificates of Insurance, of Workers' Compensation Coverage, and of Unemployment Insurance Coverage.
- 8.8 2013 Standard General Conditions of the Construction Contract (Pages i to 62, inclusive).
- 8.8 Standard Supplementary Conditions (Pages SSC-1 to SSC-16, inclusive).
- 8.9 General Requirements
- 8.10 Special Provisions (Section 01810)
- 8.11 Technical Specifications
- 8.12 Notice of Award.
- 8.13 Notice to Proceed.
- 8.14 Minutes of the Pre-Bid Conference, if any.
- 8.15 Shop Drawings and other Submittals furnished by Contractor during performance of the Work and accepted by the Owner.

8.16 Any modifications, amendments, and supplements, including Change Orders, issued pursuant to Article 11 of the General Conditions, on or after the effective date of this Agreement.

8.17 Notice of Substantial Completion.

ARTICLE 9. MISCELLANEOUS PROVISIONS.

9.1 The CONTRACTOR hereby agrees, warrants, and assures compliance with the provisions of Title VI and VII of the Civil Rights Act of 1964 and all other federal statutory laws which provide in whole or in part that no person shall be excluded from participation or be denied benefits of or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the CONTRACTOR on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by federal, Tennessee State Constitutional or statutory law. The CONTRACTOR shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

Terms used in this Agreement, which are defined in the General Conditions, shall have the meanings designated in those conditions.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in one (1) original copy on the day and year first above written.

APPROVED AS TO FORM:

(PROJECT: _____)

DATED this day of _____ , 2023

ATTEST:

CONTRACTOR:

Name: ENSCOR, LLC

Address: 5566 Commander Dr.

Arlington, TN 38002

By: _____

By: _____

Title: _____

Title: _____

ATTEST:

OWNER:
CITY OF LAKELAND, TENNESSEE
A Municipal Corporation

By: _____
Debra Murrell
Title: City Recorder

By: _____
Michael Walker
Title: City Manager