

CONSTRUCTION AGREEMENT

THE TOWN OF UNION BRIDGE, MARYLAND

THIS AGREEMENT is made this ___ day of _____, 201__, between **THE TOWN OF UNION BRIDGE**, a Municipal Corporation in the State of Maryland, hereinafter referred to as "Town", and _____, hereinafter referred to as "Contractor".

WHEREAS, the Town has advertised for bids and proposals and has awarded to Contractor the project known as _____ as set forth in the "Request for Bids" attached hereto as Exhibit "A"; and the Contractor has submitted a proposal or Bid Form dated _____ providing certain terms for carrying out the work attached hereto as Exhibit "B", all of this work and the specifications being hereinafter cumulatively referred to as the "Project". This Agreement, Exhibits A, B and ____, and any drawings, specifications or detail referenced therein shall be hereinafter referred to as the "Contract Documents"; and the work and materials described in Exhibits "A", "B" and "____" shall be hereinafter referred to as the "Project".

NOW THEREFORE, it is agreed as follows:

1. PERFORMANCE.

A. Contractor shall carry out the Project in accordance with the specifications attached hereto as Exhibits "A" and "B" as modified and described herein. The provision of all materials, labor, equipment, tools, machinery, utilities, transportation and other facilities and services necessary or incidental to completion of the Project are part of the work to be performed

as if they were expressly set forth herein. Performance and construction hereunder shall be in compliance with all Federal, State, County and Municipal laws, codes, ordinances or regulations. By acceptance hereof Contractor represents and warrants that the work and equipment specified, when installed, will operate, integrate and function as contemplated without the need for change orders, other work or added expense to Town. Contractor shall also provide technical support to Town in the event that further explanation or justification relating to the Project is requested by authorities under any grant or loan program used to finance the Project, including Maryland Program Open Space ("POS").

B. This Agreement is intended to be taken and read together with the other Contract Documents as a single instrument which are incorporated by reference herein constituting part of this Agreement whether they are separately executed or not. To the extent there is an inconsistency between the other Contract Documents and this Agreement, the terms of this Agreement shall control or, if consistent, shall be deemed to be in addition to the requirements of the other Contract Documents. Except as modified by this Agreement, each and every term or provision of the other Contract Documents shall remain in full force and effect.

2. PRICE.

A. In consideration of Contractor's performance and completion of the Project, the Town shall pay unto the Contractor the total sum of _____ (\$_____) to be paid in progress payments within thirty (30) days after submission of invoices, subject to the requisition procedures and requirements of the Maryland Program Open Space and retainage requirements in the Contract Documents.

B. It is understood that this Agreement is a lump-sum contract which requires the Contractor to complete the work as specified for the price herein stated notwithstanding any

unanticipated code requirements or site conditions encountered during performance.

3. APPLICATIONS FOR PAYMENT. Applications for Payment shall be submitted by Contractor to the Town in a form required by Town and in accordance with the Maryland Program Open Space.

4. TIME.

A. Contractor shall complete the Project within _____ (___) days from the date hereof. Time is of the essence of this Contract.

B. If Contract is delayed by reason of Force Majeure, then the schedule for completion of the Project shall be extended for a period equal to the period of delay. "Force Majeure" shall mean acts of God; acts of public enemies; orders of any kind or the government of the United States, or of the State of Maryland, or any political subdivision of the State, or any of their respective departments, agencies or epidemics; land-slides; lightning; earthquakes; fire; hurricanes; storms; floods; washouts; droughts; restraint of government and people; riots and civil disturbances; explosions; partial or entire failure of utilities; or any other cause or event not reasonably within the control of the Contractor.

5. TERMINATION. If Contractor breaches Contractor's obligations hereunder, or it becomes apparent that Contractor will not be able to meet Contractor's obligations for completion, the Town may immediately give Contractor notice of termination of this Contract, instruct the Contractor to stop work, and proceed to hire such others so as to complete the Project on time. In this event, Contractor will be entitled only to payment for the unpaid portion of the contract price after all payments to those substitute contractors completing the Project have been paid. If the Project cannot be completed by substitute contractors for the original Contract price,

Contractor shall be responsible for the difference.

6. SECURITY. Prior to commencement of construction the Contractor shall provide security as provided in the Contract Documents so as to comply at a minimum with the provisions of State Finance and Procurement Article, Section 17-101 et seq. "Little Miller Act".

7. PROJECT MANAGERS. _____ shall act as Project Manager on behalf of Contractor to meet formally or informally with the Town designee as the Project proceeds. The Town has appointed Michael Reynolds as designee to act as Project Manager on behalf of the Town during the construction phase. The Project Manager is authorized to make routine decisions on a day-to-day basis as they arise. However, any decisions requiring Change orders must be submitted to the Mayor or Town Council for approval and signature.

8. CHANGE ORDERS. All Change Orders must be prepared by the Contractor and signed by the Contractor and Mayor on behalf of the Town in order to be valid and enforceable. Each Change Order shall describe the change in the work in detail and amount of the adjustment in the contract price, if any. Also, no Change Order will be construed to extend the time for completion unless an express extension is made therein.

9. WARRANTY. The Contractor warrants to the Town that the materials and equipment furnished at the Project will be new and of good quality, and that the work will be free from defects for one (1) year after date completion is certified by Town's inspector. Work not conforming to these requirements, including substitutions not properly approved and authorized by the Town, may be considered defective. In addition to any manufacturer's warranties or other warranties arising out of the Contract Documents, Contractor warrants for two (2) years from the

date completion is certified by the Town's inspector or engineer, that it will remedy any material settling of trenches, sidewalks, yards, curb, piping, streets or pavement occurring on the Project. Any such defect arising within the warranty period shall be promptly corrected by Contractor upon notice from Town.

10. INSURANCE. Prior to commencing work hereunder, the Contractor shall produce certification of, and maintain during the term hereof, general liability insurance coverage, by an insurer satisfactory to Town, in an amount no less than Two Million Dollars (\$2,000,000.00) aggregate and One Million Dollars (\$1,000,000.00) per occurrence naming the Town as an additional insured thereunder and workmen's compensation insurance in amounts satisfactory to the Town.

11. NOTICE. Any notice arising out of this Contract shall be directed to the following:

A. Town:

The Town of Union Bridge
104 West Locust Street
Union Bridge, Maryland 21791
Attention: Mayor Perry L. Jones, Jr.

B. Contractor:

12. CONDITION OF PREMISES. The Contractor shall keep the work areas and surrounding area free from the accumulation of waste materials or rubbish relating to the work. Prior to final inspection, the Contractor shall remove any waste materials, rubbish, tools, construction equipment, machinery or extra materials from the Project. If Contractor fails to

comply with this provision, the Town may withhold payment and procure the removal of these items at the expense of the Contractor.

13. INDEMNIFICATION. The Contractor shall indemnify, defend and hold harmless the Town and its agents and/or employees from and against any claims, injury, losses, administrative violations, penalties or fines, expenses or other damages, including but not limited to attorney's fees, arising out of Contractor's performance under this Agreement.

14. NON-DISCRIMINATION. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap or national origin. The Contractor will take action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap or national origin.

In accordance with Federal law and U.S. Department of Agriculture policy, this institution is prohibited from discriminating on the basis of race, color, national origin, sex, age, or disability. (Not all prohibited bases apply to all programs).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights,

1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, or call (800) 795-3272 (voice), or (202) 720-6382 (TDD).

15. SUBCONTRACTORS. Before hiring any subcontractor to perform hereunder, the Contractor shall submit the name of such subcontractor to the Town for approval. The Town shall raise objection within five (5) days from the submission of the name of any subcontractor. The Contractor shall not contract with any person or firm to which the Town makes a reasonable and timely objection. The Contractor shall give the Town notice immediately if a dispute arises between Contractor and subcontractor which might result in the Contractor refusing to pay all or part of an amount due under a subcontract. The Town may withhold such payment from the Contractor until the dispute is resolved.

16. SAFETY. The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

17. BUILDING CODES. The Contractor shall perform the work and complete the Project in compliance with all building codes, sediment control laws, landscaping laws, and other governmental regulations. The Contractor shall procure any permits or approvals necessary for the execution of the Agreement. The Contractor shall be responsible for any code or safety violations during construction of the Project. Contractor's responsibility includes, but is not limited to, compliance with the Americans With Disabilities Act, as administered by the appropriate governing agency at the time of final completion.

18. ASSIGNABILITY. Contractor may not assign this Contract without the express approval of the Town.

19. LAW. This Contract shall be governed and construed in accordance with the laws of the State of Maryland.

20. DEFAULT. The Town shall be entitled to recover attorney's fees from Contractor incurred in any litigation, or in any proceeding under the dispute resolution provisions described in the Contract Documents, arising out of a default hereunder in which the Town prevails. Any such award shall be includable in any judgment entered by a court of competent jurisdiction.

21. AUDIT AND ACCESS TO RECORDS. The Contractor shall maintain books, records, documents and other evidence directly pertinent to performance under this Agreement in accordance with accepted professional practice, appropriate accounting procedures and practices, and shall make such materials available at all reasonable times during the period of this Agreement and for three years from the date of final payment on the Project to the Town, its agents and auditors, and any other governmental entity providing financial support on the project, its auditors or other authorized agents or officers.

22. NON-DISCRIMINATION. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, handicap or national origin. The Contractor will take action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, handicap or national origin.

23. W-9/TAX IDENTIFICATION INFORMATION. Contractor shall provide to the Town simultaneously herewith, but no later than the commencement of the work to be performed hereunder, Contractor's federal tax identification number and a properly executed federal tax form W-9.

ATTEST:

THE TOWN OF UNION BRIDGE

By: _____ (SEAL)
PERRY L. JONES, JR., Mayor

WITNESS/ATTEST :

CONTRACTOR

By: _____ (SEAL)

Federal Tax Identification No.
See Form W-9 Attached

APPROVED AS TO
LEGAL SUFFICIENCY:

Hollman, Maguire, Korzenewski
& Luzuriaga, Chartered
Town Attorneys

By: _____
John T. Maguire