

## CONSTRUCTION AGREEMENT

STATE OF GEORGIA,  
CITY OF MADISON:

THIS AGREEMENT is made this **14** day of **September, 2020**, between the Owner (**City of Madison**), by and through its Mayor and Council and the Contractor **Charles Harris**.

In consideration of the covenants and agreements recited the parties agree as follows:

1. Contractor will provide all labor, materials, tools, and other necessary items for the proper construction and completion on Owner's land, on which is located as follows: **Citywide**, of the work shown on Exhibit "A", consisting of bid request, drawings, plans, specifications, and other related documents, which has been initialed by both parties. The Contractor will be responsible for the means, methods, techniques, sequences and procedures of construction.

All materials shall be new, and both the workmanship and materials shall be first class and of good quality. Contractor will coordinate work with any other contractors on the project, and will not hold Owner responsible for problems or delays created by other contractors. Contractor will keep the work site neat and will remove all debris upon completion of the work, leaving the site broom clean.

The Contractor shall be familiar with the applicable requirements of governmental departments, public utilities, public carrier and utility companies for work within said entities' rights-of-way and/or easements. All work shall be done in conformance with the requirements of the entity granting the right-of-way or easement.

2. Substitutions of items, construction methods and construction procedures shall be allowed at the Engineer's discretion, subject to the Owner's approval, which approval shall not be unreasonably withheld. The Owner's approval of a substitution shall not relieve the Contractor for liability resulting from a substitution which causes defective work.

Owner may order extra work upon written agreement as to the scope of the extra work and the cost thereof, such agreement to be signed by both parties in writing. The Owner shall execute necessary change orders upon its reasonable satisfaction that such change order is in compliance with the requirements of the contract documents. Such execution of change orders shall not relieve the Contractor from responsibility for defective work.

If any modification in the contract documents necessitates a change in the Contract price or a change in the contract time, an equitable adjustment will be agreed upon by the parties. If the Owner or Contractor believes a modification of the contract documents necessitates an adjustment in the contract price or contract time, the parties may agree upon such change in writing or make a written claim therefor. Change orders prepared by the Engineer pertaining to differing subsurface or physical conditions and work performed in an emergency shall be executed by the Owner upon the Owner's approval thereof, which approval shall not be unreasonably withheld.

The cost of the work has been established by **annual contract, unit prices, labor only** as submitted by the Contractor. Adjustments to the amount paid by the Owner shall be made by written change order and only after agreement thereto in writing by all parties. All costs of construction have been taken into consideration by the Contractor in providing the bid price, subject to unanticipated conditions for which price adjustments shall be subsequently made by written agreement between the parties. The agreed upon price for this project is **\$0 (see Exhibit A for unit prices)**. It is understood that this price will vary if bid price is based on unit price method.

3. The work described in Exhibit "A" shall be commenced by **September 15, 2020**, and completed by **September 14, 2021**, weather permitting, as determined by Owner's reasonable judgment.

4. Within 15 days of the Owner's receipt of an approved application or certification for payment meeting the Owner's approval (which shall not be unreasonably withheld), the Owner shall pay the Contractor on the basis of the approved application of certification for payment less the retainage. The Engineer's recommendation to make a payment requested in an application for payment shall constitute a representation by the Engineer to the Owner as follows: Based on the Engineer's on-site inspections of the work as an experienced and qualified design professional and on the Engineer's review of the application for payment and the accompanying data, and based on the Engineer's actual knowledge, the work has progressed to the point indicated, the quality of the work is in accordance with the

contract documents (subject to an evaluation of the work as a functioning project upon substantial completion and subject to the results of any subsequent tests called for in the contract documents and any qualifications stated in the recommendation), and that the Contractor is entitled to payment of the amount recommended.

Upon completion and acceptance of the work, the Engineer will issue a certificate attached to the final application for payment, which certificate states that the work has been accepted by the Engineer under the conditions of the contract documents. Upon the Owner's subsequent approval (which shall not be unreasonably withheld), the entire balance found to be due the Contractor, including the retained percentages, (but except such sums as may be lawfully retained by the Owner), will be paid to the Contractor within 30 days of completion and acceptance of the work and after Contractor's execution of an affidavit in sufficient form that states all subcontractors and materialmen have been paid in full.

The Contractor will indemnify and save the Owner and the Owner's agents, officials and employees harmless from all claims (including Owner's reasonable attorneys' fees and court costs) growing out of the lawful demands of subcontractors, suppliers, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the work.

If the Contractor notifies the Owner and the Engineer in writing that the work is substantially completed and the Owner reasonably concludes that the work is not substantially complete, no certificate of substantial completion shall be issued until the work is substantially completed to the Owner's reasonable satisfaction. At the time of delivery of a tentative certificate of substantial completion, the Owner and Contractor will agree upon the division of responsibilities pending final payment with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties on the project. The Engineer shall not make any binding recommendation as to such division of responsibilities.

After the Engineer indicates that the work is acceptable (subject to the Owner's approval, which shall not be unreasonably withheld), the Contractor may make application for final payment following the procedure for progress payments. The Owner's approval for final payment shall not relieve the Contractor of liability for deficiencies in the work or violations of the contract documents. The Contractor's satisfaction of all conditions in the contract documents is a prerequisite to final payment. Final completion will be judged by the Owner's reasonable satisfaction, using as criteria the standards of the construction industry in the greater metropolitan Atlanta area.

5. Engineer's Inspections and Clarifications. If the Engineer's written clarifications shall become necessary, they will be binding only on the Contractor. In making determinations for unit prices, the Engineer's written decisions will be final and binding only upon the Contractor. However, the Contractor shall be given 10 days after the date of such decision to deliver written notice to the Owner and Engineer of Contractor's intention to appeal from such decision.

The Engineer's written decision on disputes between the Owner and Contractor shall be final and binding upon the Contractor. When functioning as an interpreter and judge of any disputes between the Owner and Contractor, the Engineer will act on behalf of the Owner and as the Owner's agent. Only as to the Contractor will the Engineer's decision as to a dispute under the Contract be a condition precedent to the exercise of other rights and remedies under the contract documents or laws or regulations.

6. Contractor will promptly remove and correct any defective work and work which fails to conform to this agreement, at no expense to Owner. Contractor bears the expense of making good and repairing defective and/or non-conforming work, and any other work destroyed or damaged by the removal or replacement.

Only if work is uncovered with the Owner's approval may the Owner be required to increase the contract price or the contract time where the work is found not to be defective. Such adjustment in contract price or contract time shall be limited to that directly attributable to the uncovering, exposure, observation, inspection, testing, replacement and reconstruction.

Contractor warrants that it will replace and repair any defects due to faulty materials or workmanship for any work it has done on the project which appear within a period of five years from final completion. This includes any work Contractor has done before signing this Agreement. This repair/replacement work shall be performed promptly upon notice from Owner of the appearance of the defective work, and shall be promptly completed at no expense or cost to Owner. This is not Owner's exclusive remedy.

7. If Contractor goes bankrupt or repeatedly fails to perform the work properly and/or timely, or fails to make prompt payments to subcontractors, laborers or materialmen, or is otherwise guilty of a violation of this agreement,

then Owner may terminate Contractor, take possession of the project and all materials, tools and equipment thereon, and finish the work by any means Owner deems necessary. Such action by Owner is without prejudice to any other right or remedy of Owner. Upon termination, Contractor shall not receive any further payment until work is completed.

If the Owner terminates the contract documents pursuant to the terms thereof and the cost of completing the project exceeds the unpaid balance due to the Contractor, the Contractor or the Surety shall pay the difference to the Owner. The costs incurred by the Owner will be calculated by the Engineer (subject to the Owner's approval, which shall not be unreasonably withheld), and incorporated in a change order.

If work is suspended through no act or fault of the Contractor or the Owner fails to pay the Contractor any sum recommended by the Engineer within 30 days of its presentation to the Owner, then the Contractor is entitled to the following remedies: Upon seven (7) days written notice to the Owner and Engineer, the Contractor may terminate the Agreement and recover from the Owner reasonable payment for all work completed plus a reasonable profit.

Termination by Owner which results in the Owner completing the work for less cost than the contract documents call for shall not entitle the Contractor to payment for the difference. A prerequisite to terminating the Agreement because the Engineer has failed to act on an application for payment or because the Owner has failed to make any payment, shall be a 14 day work stoppage after seven days' written notice to the Owner and Engineer of intent to stop work. If after the 21 day period there has been no action by the Engineer or payment by the Owner, the Contractor may then terminate the Agreement after seven days' further notice.

8. Contractor will maintain such insurance as will protect it from claims under the Workers Compensation Act. Contractor will also maintain insurance with a company listed on the U. S. Treasury's Circular 570 to protect it and Owner from claims for damages due to death, bodily injury or property damage that relate to Contractor's (or its subcontractors, agents or employees) performance under this agreement.

Owner shall be a named insured on this policy, and the limits shall be at least \$100,000.00 for property damage and \$1,000,000.00 for death or bodily injury. Contractor shall furnish Owner evidence of such insurance at the time of signing this agreement, and at any subsequent time upon reasonable notice from the Owner.

Contractor shall indemnify, defend and hold Owner harmless from and against any and all damages, claims or demands that arise from or may be occasioned by any defects in construction of the subject project that arise from the Contractor's negligence under the contract documents. Contractor shall defend Owner against any such damages, claims or demands and on demand reimburse Owner for any and all reasonable costs and expenses incurred by Owner in connection therewith, including Owner's reasonable attorney's fees and expenses.

9. Upon completion of the work described in Exhibit "A" of this agreement, Contractor shall insure that any and all recorded liens against the project have been cancelled. Contractor shall also furnish to Owner an affidavit that all bills for work and labor and materials have been paid in full.

At such time, and upon completion, which shall be reasonably determined by Owner, using as criteria the standards of the construction industry in the greater metropolitan Atlanta area, Owner will pay Contractor the balance due. Completion of the punch list/walk-through list said list shall be required before any retainage is released and the final completion payment is made.

A record copy of all specifications, drawings, addenda, modifications and shop drawings, with annotations showing changes, may be retained by the Owner for reference and use in subsequent repairs to the work.

10. Contractor will disclose in writing at the time of signature of this Agreement to Owner the names of all persons with whom it shall contract, with respect to work or materials to be furnished on the project, so Owner may independently confirm payment of said persons.

11. Before Contractor can receive any payments from Owner, Contractor shall present to Owner a written statement from all subcontractors, laborers, and materialmen, that up to that time they have waived any lien or liens, or alternatively Contractor may give to Owner a sworn statement that the agreed price or reasonable value of the work or materials from the laborers, subcontractors or materialmen has been paid, as provided by Georgia law.

12. Contractor represents that it is familiar with all local conditions, laws and regulations that can in any way affect his construction of the work it has agreed to in this Agreement, and that it will comply therewith.

13. Time is of the essence in this agreement, and Contractor realizes that the completion date set forth in this agreement is not a suggestion, but is a requirement.

14. "Completion" shall be defined as follows: The date determined by the Engineer (subject to the Owner's approval, which shall not be unreasonably withheld) when the construction of the work or an expressly stipulated part thereof is sufficiently completed, in accordance with the contract documents, so the work or stipulated part can be fully utilized for the purposes for which it is intended.

15. Accuracy of Data. The Owner will not be responsible for the accuracy or the completeness of the information and data in the contract documents regarding existing underground facilities. Furthermore, the Engineer will not be responsible for the accuracy or completeness of such data which has not been produced by the Engineer's own field investigations.

16. This Agreement shall benefit and bind the parties and their heirs, executors, administrators, successors and assigns: provided, however, that Contractor may not transfer or assign his rights and interests in or under this Agreement.

This Agreement shall be governed in accordance with the laws of Georgia, and venue and jurisdiction for the resolution of any disputes shall be in the Courts of Morgan County, Georgia.

This Agreement may not be modified except by written instrument signed by the parties. This Agreement supersedes all prior discussions and agreements between the parties and contains the sole and entire understanding between the parties with respect to transactions contemplated by this Agreement. All promises, inducements, offers, solicitations, agreements, representations and warranties heretofore made between the parties, if any, are superseded by this Agreement.

Except as expressly limited by the terms of this Agreement, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

No failure of any party to exercise any power given under this Agreement or to insist upon strict compliance with any obligation specified in this Agreement, and no custom or practice at variance with the terms of this Agreement, shall constitute a waiver of any party's right to demand exact compliance with the terms of this Agreement.

All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered to each party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any party may from time to time and at any time change its address for notices hereunder. Legal counsel for the respective parties may send to the other party any notices, requests, demands or other communications required or permitted to be given hereunder by such party.

Owner: **City Manager  
City of Madison  
P. O. Box 32  
Madison, Georgia 30650**

Contractor: **Charles Harris**  
**c/o Charles Harris**  
**PO Box 222**  
**Rutledge, GA 30663**

On and after the date of this Agreement, the parties shall, at the request of the other, make, execute and deliver or obtain and deliver all instruments and documents and shall do or cause to be done all such other things which any party may reasonably require to effectuate the provisions and intentions of this Agreement.

This Agreement shall be construed without regard to the identity of the person who drafted the various provisions hereof. Each provision of this agreement shall be construed as though all the parties participated equally in its drafting. Consequently, the parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

If any provision of this Agreement is held unenforceable such provision shall be fully severable. The Agreement shall be construed and enforced as if such unenforceable provision had never comprised a part hereof, and the remaining provisions shall remain in full force.

The signatories hereto state they have the authority to bind the party on whose behalf they are signing.

IN WITNESS WHEREOF, the parties have signed this Agreement under their hand and seal on the date set forth above.

CITY OF MADISON - Owner

By: \_\_\_\_\_ (SEAL)  
Mayor

Attest: \_\_\_\_\_ (SEAL)  
City Clerk

Contractor - **Charles Harris**

By: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_  
Print Name and Title

Attest: \_\_\_\_\_ (SEAL)  
\_\_\_\_\_  
Print Name and Title  
PO Box 222  
Address  
Rutledge, GA 30663  
City, State, Zip

## EXHIBIT A

1. Forming, pouring and finishing curb/gutter, sidewalks and/or other related improvements associated with installing said infrastructure on existing City streets. City crews will assist with site preparation as necessary such as tree removal, utility relocation, fill, storm drain piping, gravel, etc. Each job will be evaluated as to the necessary preparation.
2. Sawcut and removal of damaged pavements will be required for some repairs. Other repairs may need only removal of temporary fill (gravel). Place forms and steel reinforcements (if required) as needed to create a concrete patch that matches the grade of adjoining pavements.

The agreed upon price for concrete flatwork is \$2.25 per square foot.

The agreed upon price for concrete curb and gutter is \$9.00 per linear foot