

CITY OF PORTSMOUTH FIBER OPTIC NETWORK

AGREEMENT

This Agreement is entered into this ____ day of _____ 2019, by Danella Companies, Inc., hereinafter referred to as the “Contractor”, and the City of Portsmouth, hereinafter referred to as the “Owner”, the parties hereto.

WITNESSETH:

That the Contractor and the City, in consideration of the mutual covenants, promises, and documents and agreements herein contained or referred to, agree as follows:

PERIOD OF PERFORMANCE: This Agreement shall commence on the day of signing and will continue until the City’s final acceptance of the completed project, a term not to exceed seven hundred thirty (730) calendar days after the Notice to Proceed, unless that term is extended by mutual agreement of the Contractor and the City.

AGREEMENT DOCUMENTS: The Agreement Documents shall consist of:

1. The Request for Proposals P220-19-MA dated April 3, 2018 and all amendments thereto; and
2. The Contractor’s Proposal Submission, dated May 17, 2018, and all negotiated amendments thereto; and
3. This signed Agreement; including Appendix A - Agreement General Terms and Conditions, which is attached hereto and made a part hereof, and
4. All drawings, specifications, bonds, insurances, and all addenda issued prior to and all modifications issued after execution of the Agreement; and

SCOPE OF AGREEMENT: The Contractor shall provide services to the City as set forth in the Agreement Documents and specified below:

1. The Contractor shall perform all required Work and shall provide and furnish all labor, materials, necessary tools, expendable equipment and utility, transportation and all else required for the construction of an outside plant (OSP) for a City-owned fiber-optic network, including connections to Community Anchor Institutions (CAIs) and internet points of presence (POPs) within the City in strict accordance with the Drawings and Specifications, including any and all Addenda, and in strict compliance with the Agreement Documents, the terms of which are incorporated herein by reference.

2. It is understood and agreed that said labor, materials, tools, equipment and service shall be furnished and said Work performed and completed under the direction and supervision of the Contractor and subject to the approval of the Owner or its authorized representative.
3. Guarantee and Warranty. All materials and equipment, furnished by the Contractor shall be warranted in accordance with the manufacturer standard warranty. All construction involved in this Agreement shall be and the same are hereby guaranteed by the Contractor free from defects owing to faulty materials or workmanship for the warranty for a period of one (1) year from the time of installation.

All Work that proves defective, by reason of faulty material or workmanship within the warranty periods stated above, shall be replaced by the Contractor free of cost to the Owner. These guarantees shall not operate as a waiver of any of the Owner's rights and remedies for default hereunder or breach of the Agreement, which rights and remedies may be exercised at any time within the period of any applicable statute of limitations.

4. Substantial Completion Date. The undersigned Contractor agrees to commence Work within three hundred sixty-five (365) calendar days after the date of Notice to Proceed and further agrees to substantially complete all Work under this Agreement within seven hundred thirty (730) calendar days from the date of the Notice to Proceed.
5. Owner Representative. The Owner will assign an individual to oversee this project. That person will act as the Owner's Representative, and assume all duties and responsibilities, and have the rights and authority assigned to the Owner in the Agreement Documents in connection with completion of the Work in accordance with the Agreement Documents.

COMPENSATION AND METHOD OF PAYMENT

1. The Owner shall pay the Contractor as just compensation for the satisfactory performance of the Work, subject to any additions or deductions as provided in the Agreement Documents, the unit prices contained in the Contractor's proposal.
2. The Agreement Price shall not exceed **Six Million Six Hundred Twelve Nine Hundred Thirty One dollars and 78/100 (\$6,612,931.78).**
3. Payment Arrangements. The Contractor shall submit invoices to the Owner for the services provided in accordance with the approved schedule of work. A standard billing format shall be followed including, but not limited to, the Contractor's Federal Tax Identification Number of _____, and the Purchase Order Number assigned. The Owner shall cause said billing to be paid within thirty (30)

days after receipt of services, provided that the Contractor is not in default of any of the Agreement terms or conditions. The Contractor shall submit all invoices to the Owner at the address shown on the purchase order.

NOTICES

All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the appropriate party at the following address or such other address as may be given in writing to the parties:

Owner:

Mr. Daniel Jones
Chief Information Officer
Department of Information Technology
City of Portsmouth
801 Crawford Street
Portsmouth, VA 23704

Contractor:

ENTIRE AGREEMENT:

The Contractor and the City agree that this document and its attachments constitute the entire agreement between the two parties and may only be modified by a written mutual amendment or addendum signed by the parties.

NON-APPROPRIATION CLAUSE:

Agreements are made subject to the appropriation of funds by the City Council of the City of Portsmouth, Virginia, and are null and void in the event of non-appropriation by the City Council. Non-appropriation shall not be deemed a cancellation and shall terminate this Agreement without recourse and with no liability on the part of the City. In the event of termination of this Agreement due to non-appropriation of funds, the City agrees to pay the Contractor for work performed up to the date of termination.

REQUIRED COMPLIANCE WITH FEDERAL IMMIGRATION REFORM AND CONTROL ACT:

In accordance with the Code of Virginia § 2.2-4311.1, the Contractor warrants that it does not and shall not during the performance of this Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

REQUIRED COMPLIANCE WITH STATE LAW; FOREIGN AND DOMESTIC BUSINESSES AUTHORIZED TO TRANSACT BUSINESS IN THE COMMONWEALTH:

In accordance with Code of Virginia § 2.2-4311.2., the Contractor warrants that it is authorized to transact business in the Commonwealth as a domestic or foreign business entity as required by law and it provides the City with its Virginia State Corporation Commission registration number, which is _____.

The Virginia registered agent for Danella Companies, Inc. , is:

The Contractor agrees to notify the City at any time that the registered agent is changed and provide the name and address of the new registered agent.

NONDISCRIMINATION PROVISION:

Every agreement in excess of Ten Thousand Dollars (\$10,000.00) shall include the following provisions:

1. During the performance of this Agreement, the Contractor agrees:
 - a. That the Contractor will not discriminate against any employee or applicant for employment because of race, religion, including faith-based organizations, color, sex, national origin, age, disability or any other basis prohibited by law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. That the Contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

- c. That notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The Contractor will include the provision on the foregoing paragraphs in every subcontract or purchase order over Ten Thousand Dollars (\$10,000.00) so that the provisions will be binding upon each Subcontractor or Vendor.
3. The Contractor also agrees that it will not discriminate in the provision of services on any basis prohibited by law.

HOLD HARMLESS AND INDEMNIFICATION PROVISION:

To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the City of Portsmouth, and to protect and defend it and its officers, employees and agents from and against all claims and suits arising from acts of omission or commission of the Contractor's employees, agents or subcontractors, whether for alleged tort or breach of contract, made by any party, including but not limited to its employees, subcontractors, material men, workmen, consumers, invitees, guests, and agents or employees of the City, in the negligent performance of the Contractor's work. To the fullest extent permitted by law, the Contractor shall indemnify the City, and each of them and their officers, employees and agents, from and against any and all claims, losses or expenses, including but not limited to attorney's fees, which either or both of them may suffer, pay or incur as a result of claims or suits due to, arising out of or in connection with the Contractor's or Contractor's subcontractors negligent performance under this agreement. The Contractor shall, upon written demand by the City, insure and defend at the Contractor's sole expense any and all suits or claims arising from this Agreement.

INSURANCE REQUIREMENTS:

The Contractor shall maintain in full force and effect during the life of this Agreement and the warranty period such insurance as will protect it from claims for damages or personal injury including death, which may arise from its operations under this Contract. Comprehensive General Liability Insurance, property damage and bodily injury, shall be maintained by the Contractor to protect the City and its officers, employees and agents. The Contractor must provide proof of Comprehensive General Liability Insurance as stated below.

In addition, the Contractor shall maintain in full force and effect during the life of this Contract such other insurances in the amounts stated below. **The Comprehensive General Liability must carry a contractual liability endorsement and the insurance certificate filed with the City must show that the contractual liability coverage has been obtained.** Insurance coverage for personal injury and property damage, including insurance on vehicles and equipment, shall be from the same company.

Certification of Insurance – Naming City as an Additional Insured

The Contractor shall carry the required amounts of insurance specified below throughout the contract and warranty period **and submit a Certificate of Insurance certifying this and naming the City of Portsmouth including its elected and appointed officials, employees, and agents, shall be named as additional insureds and the required insurance coverage shall be primary coverage and provide contractual liability coverage.** The insurer shall provide notice of cancellation or non-renewal of insurance to the City of Portsmouth in writing upon being notified of said cancellation or non-renewal by the insured.

The Additional Insured Endorsement on Accord Form 26 must be attached to the Certificate of Insurance and must properly reference the above language.

1. Commercial General Liability:

\$ 1,000,000	Combined Single Limit Bodily Injury and Property Damage.
\$ 2,000,000	Aggregate.

2. Workers Compensation – Statutory requirements and benefits.

3. Motor Vehicle Liability, including No-Fault coverage, with limits of liability not less than \$1,000,000 per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage.

Coverage shall include all non-owned vehicles, and all hired vehicles.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed as of the date first above written.

Danella Companies, Inc.

City of Portsmouth:

By: _____

By: _____

(Typed or Printed)

(Typed or Printed)

Title

Title

Date

Telephone No.

Date

Telephone No.

APPENDIX A

AGREEMENT GENERAL TERMS AND CONDITIONS

ARTICLE 1

AGREEMENT DOCUMENTS

1.1 DEFINITIONS

1.1.1 The Agreement Documents

The Agreement Documents consist of the Invitation for Bids, the signed Agreement and Appendix A, the Contractor's submitted bid, all drawing and specifications, bonds, insurances, all Addenda issued prior to, and all modifications issued after execution of the Agreement. A Modification is either a written Change Order issued by the City or a written amendment signed by the parties.

1.1.2 The Agreement

The Agreement is the sum of all the Agreement Documents. This Agreement represents the entire and integrated agreement between the City and the Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. The Agreement may be changed only by a Modification as defined in Article 1.1.1.

1.1.3 The Work

The Work comprises the completed construction required by the Agreement Documents and includes all labor, material, equipment, supplies and other facilities or things necessary to complete such construction, and all materials, equipment and supplies incorporated or to be incorporated in such construction.

1.1.4 The Project

The Project is the total construction of which the Work performed under the Agreement Documents may be the whole or a part.

1.1.5 Furnish, Install, Provide

The terms "Furnish" or "Install" or "Provide," unless specifically limited in context, mean: furnishing and incorporating a specified item, product or material in the Work, including all labor, materials, and equipment necessary to perform the work required, ready to use.

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1.1.6 Firm, Fixed Price or Lump Sum

The terms “Firm, Fixed Price” or “Lump Sum” mean that the Work shall be performed for the price stated in the Agreement without any adjustment based on the Contractor's actual costs unless such adjustment is made by a properly executed Agreement Change or Modification.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Agreement shall be signed by the City and the Contractor.

1.2.2 By executing the Agreement, the Contractor represents that he has familiarized himself with, and assumes full responsibility for having familiarized himself with, the nature and extent of the Agreement Documents, Work, locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect performance of the Work.

ARTICLE 2

2.1 CITY’S RIGHT TO STOP OR TO SUSPEND WORK

2.1.1 If the Contractor fails to carry out the Work or supply labor and materials in accordance with the Agreement Documents, the City by written order may order the Contractor to stop the Work, or any portion thereof, without monetary compensation to the Contractor until the cause for such order has been eliminated.

2.1.2 The City may order the Contractor in writing to suspend, delay, or interrupt all or any part of the Work for such period of time as he may determine to be appropriate for the convenience of the City.

ARTICLE 3

3.1 REVIEW OF AGREEMENT DOCUMENTS

3.1.1 The Contractor shall carefully study and compare the Agreement Documents and shall at once report to the City any error, inconsistency or omission he may discover, including any requirement that may be contrary to any law, ordinance, rule, regulation or order of any public authority bearing on the performance of the Work. By submitting his bid for the Agreement and the Work under it, the Contractor agrees that the Agreement Documents appear accurate, consistent and complete. The Contractor shall perform no portion of the Work at any time without Agreement Documents.

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AGREEMENT GENERAL TERMS AND CONDITIONS

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 The Contractor shall supervise and direct the Work, using his best skill and attention. He shall be solely responsible for and have control over all construction means, uses, sequences, procedures, safety precautions and programs, and for coordinating all portions of the Work under the Agreement.

3.2.2 The Contractor shall be responsible to the City for the acts and omissions of his employees, Subcontractors, Suppliers, their agents and employees, and other persons performing any of the work and for their compliance with each and every requirement of the Agreement Documents, in the same manner as if they were fully employed by the Contractor.

3.3 CONTRACTOR'S REPRESENTATIONS

3.3.1 By entering into this Agreement with the City, the Contractor represents and warrants the following, together with all other representations and warranties in the Agreement Documents:

- .1 That he is experienced in and competent to perform the type of work required and to furnish the plant, materials, supplies or equipment to be so performed or furnished by him;
- .2 That he is financially solvent, able to pay his debts as they mature, and possessed of sufficient working capital to initiate and complete the Work and Changes required under the Agreement;
- .3 That he is familiar with all laws, ordinances, permits, regulations and resolutions that may in any way affect the Work or those employed therein, including but not limited to any special laws or regulations related to the Work or any part thereof;
- .4 That such temporary and permanent work required by the Agreement Documents that is to be done by him will be satisfactorily constructed and fit for use for its intended purpose and that such construction will not injure any person, or damage any property;
- .5 That he will fully comply with all requirements of the Agreement Documents;
- .6 That he will perform the Work in a skillful manner consistent with good workmanship, sound business practice, and in the most expeditious and economical manner consistent with the best interests of the City;
- .7 That he will furnish efficient business administration and experienced superintendence and an adequate supply of workmen, equipment, tools, and materials at all times;

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- .8 That he has carefully reviewed the Work required and that the Work can be planned and executed in a normal and orderly sequence of Work and reasonably scheduled so as to insure completion of the work in accordance with the Agreement Documents, allowing for normal and reasonably foreseeable weather, labor and other delays, interruptions and disruptions of the Work at the site designated;
- .9 That he will complete the Work within the Agreement Time and all portions thereof within any required Agreement milestones; and
- .10 That his Agreement Price is based upon the labor, materials, systems and equipment required by the Agreement Documents, without exception.

3.4 LABOR AND MATERIALS

3.4.1 Unless otherwise provided in the Agreement Documents, the Contractor shall provide and pay for all labor, materials, equipment, supplies, tools, construction equipment and machinery, heat, utilities, transportation, and other facilities and services necessary or proper for or incidental to the execution and completion of the Work required by and in accordance with the Agreement Documents and any applicable code or statute, whether specifically required by the Agreement Documents, or whether their provision may reasonably be inferred as necessary to produce the intended results, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Final Payment will not be made until the Work is so completed.

3.4.2 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. The City may, by written notice, require the Contractor to remove from the Work any employee the City deems incompetent, careless or otherwise objectionable.

3.5 WARRANTY

3.5.1 The Contractor guarantees and warrants to the City all Work as follows:

- .1 That all materials and equipment furnished under this Agreement will be new and the best of its respective kind unless otherwise specified;
- .2 That all Work will be first-class quality and free of omissions and faulty, poor quality, imperfect or defective materials or workmanship;
- .3 That where no standard is specified for such workmanship or materials, they shall be the best of their respective kinds;

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- .4 That all applicable Work shall be entirely watertight and leak proof in accordance with all applicable industry customs and practices, and shall be free of shrinkage and settlement;
- .5 That the Work, including but not limited to, mechanical and electrical machines, devices and equipment shall be fit and fully usable for its intended and specified purpose and shall operate satisfactorily with ordinary care;
- .6 That consistent with requirements of the Agreement Documents, the Work shall be installed and oriented in such a manner as to facilitate unrestricted access for the operation and maintenance of fixed equipment; and
- .7 That the Work will be free of abnormal or unusual deterioration that occurs because of poor quality materials, workmanship or unsuitable storage.

3.5.2 All work not conforming to guarantees and warranties specified in the Agreement Documents, including substitutions not properly approved and authorized, may be considered defective. If required by the City or the City's Authorized Representative, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.3 The warranties set forth in this Article and elsewhere in the Agreement Documents shall survive Final Completion of the Work under Article 5.4.

3.5.4 If, within one (1) year after the Date of Final Completion of the Work or designated portion thereof or within one (1) year after acceptance by the City of designated equipment or within such longer period of time as may be prescribed by law or by the terms of the applicable special warranty required by the Agreement Documents, any of the Work is found to be defective, not in accordance with the Agreement Documents, or not in accordance with the guarantees and warranties specified in the Agreement Documents, the Contractor shall correct it within five (5) working days, or replace it, after receipt of written notice from the City or City's Authorized Representative to do so.

3.5.5 If at any time deficiencies in the Work are discovered that are found to have resulted from latent defects, gross mistakes, fraud or misrepresentation by the Contractor, any Subcontractor or Supplier, the Contractor will be liable for replacement or correction of such Work.

3.5.6 Any materials or other portions of the Work, installed, furnished, or stored on site that are not of the character or quality required by the specifications, or are otherwise not acceptable to the City or the City's Authorized Representative shall be immediately removed and replaced by the Contractor to the satisfaction of the City.

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3.5.7 The Contractor shall bear the cost of making good all work of the City, or of separate contractors or subcontractors or others, destroyed or damaged by such correction or removal required under this Article, or elsewhere in the Agreement Documents.

3.6 **TAXES**

3.6.1 The Contractor shall pay all applicable Federal, State, and local taxes and duties for the Work or portions thereof provided by the Contractor that are legally enacted at the time the Agreement is awarded, whether or not yet effective. Increases in the rates of such taxes and duties during performance of the Agreement shall be the responsibility of the Contractor.

3.7 **PERMITS, FEES AND NOTICES**

3.7.1 The Contractor shall secure and pay for all permits, fees, licenses and inspections necessary for the proper execution and completion of the Work that are legally required at the time the proposals are received.

3.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

3.8 **CLEANING UP**

3.8.1 The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work and before Final Payment is made, he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, equipment and surplus materials.

3.8.2 If the Contractor fails to clean up during or at the completion of the Work, the City may do so and the cost thereof shall be charged to the Contractor.

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3.9 INDEMNIFICATION

3.9.1 To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, and hold harmless, the City, and the City's Authorized Representative, their agents, representatives, employees, successors and assigns from and against all claims, actions, judgments, costs, liabilities, penalties, damages, losses and expenses, including but not limited to, attorney's fees, arising out of or resulting from the performance of the Work, provided that any such claim, action, judgment, cost, liability, penalty, damage, loss or expense is:

- .1 Attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself); and
- .2 Is caused in whole or in part by any negligent act or omission of the Contractor, any Subcontractor or supplier, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable by law.

Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described in this Article 3.9.1.

ARTICLE 4

MISCELLANEOUS PROVISIONS

4.1 GOVERNING LAW

4.1.1 All applicable state laws, municipal ordinances, and rules and regulations of the authority having jurisdiction over the Agreement or projects shall apply throughout the term(s), and they will be deemed to be included in the Agreement the same as though written in full herein. This Agreement shall be governed by the laws of the Commonwealth of Virginia and the ordinances of the City of Portsmouth, Virginia. Venue for all judicial proceedings arising out of this Agreement shall be in the courts located in or serving the City of Portsmouth.

4.1.2 Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein.

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4.2 INSPECTIONS OR TESTS

4.2.1 If the Agreement Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested, or approved, the Contractor shall give the City or the City's Authorized Representative notice of its readiness so the City's Authorized Representative may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.

4.2.2 If the City or the City's Authorized Representative determines that any inspection or testing reveals a failure of the Work to comply with:

- .1 The requirements of the Agreement Documents, or
- .2 The conformance of the Work with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, then - The Contractor shall bear all costs of repair or work required to bring the problems into conformance, including compensation for the City's Authorized Representative and any additional services made necessary by such failure.

4.2.3 Certificates of inspection, testing or approval required by public authorities shall be secured by the Contractor and promptly delivered by him to the City or the City's Authorized Representative, in adequate time to avoid delays in the Work or Final Payment therefore.

4.2.4 The Contractor shall pay for and have sole responsibility for acquiring the proper inspections or testing necessary under this Agreement.

4.3 UNENFORCEABILITY OF ANY PROVISION

4.3.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of the Agreement shall be enforceable without such provision.

ARTICLE 5

PAYMENTS AND COMPLETION

5.1 AGREEMENT PRICE

5.1.1 The Agreement Price is stated in the Agreement Documents and, including authorized adjustments thereto, is the amount payable by the City to the Contractor for the performance of the Work under the Agreement Documents. The Agreement Price includes all applicable Federal, State and local taxes and duties.

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5.2 INVOICES

5.2.1 The City or the City's Authorized Representative will within 30 days after receipt of the Contractor's Invoices, either approve the invoice for payment, or notify the Contractor in writing of his reasons for not approving the invoice as provided in Article 5.3 "PAYMENTS WITHHELD."

5.3 PAYMENTS WITHHELD

5.3.1 The City's Authorized Representative may decline to approve the invoice or reduce payment because of subsequently discovered evidence or subsequent observations. In addition, he may nullify the whole or any part of any invoice previously approved to such extent as may be necessary in his opinion to protect the City from loss, including but not limited to:

- .1 Defective work not remedied;
- .2 Third party claims filed, whether in court or otherwise, or reasonable evidence indicating probable filing of such claims;
- .3 Failure of the Contractor to make payments properly to Subcontractors;
- .4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- .5 Damage to the City or to a separate Contractor;
- .6 Reasonable evidence that the Work will not be completed within the Contract Time, or within any Contract Milestones as established in the Contract Documents; or
- .7 Failure or refusal of the Contractor to carry out the Work in accordance with or to otherwise substantially or materially comply with the Contract Documents;

5.4 FINAL COMPLETION AND FINAL PAYMENT

5.4.1 Upon receipt of notice that the Work is ready for final inspection and acceptance, the City and the City's Authorized Representative will promptly make such inspection and, when he finds the Work acceptable under the Agreement Documents and the Agreement fully performed, he will accept the completed project. The Contractor shall submit a final invoice for payment to the City's Authorized Representative for his approval. Final Payment shall be made in full to the Contractor within thirty (30) calendar days after the approval by the City or the City's Authorized Representative.

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- 5.4.2** Should the City or the City’s Authorized Representative determine that the Work or a designated portion thereof is not complete, he shall provide the Contractor a written notice stating why the Project or designated portion is not complete. The Contractor shall expeditiously complete the Work and shall request in writing that the City or the City’s Authorized Representative perform a Final Completion re-inspection and the costs, if any, associated with such re-inspection shall be assessed to the Contractor.
- 5.4.3** The acceptance of Final Payment shall constitute a waiver of all claims by the Contractor and subcontractors against the City except those previously made in writing and identified by the Contractor as unsettled at the time of the Application for Final Payment.

ARTICLE 6

PROTECTION OF PERSONS AND PROPERTY

6.1 SAFETY PRECAUTIONS AND PROGRAMS

- 6.1.1** The City and the City’s Authorized Representative are not responsible for the means, methods, techniques, sequences or procedures utilized by the Contractor, or for safety precautions and programs in connection with the Work. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. This requirement applies continuously throughout the Agreement performance, until Final Payment is made, and is not limited to regular working hours.

ARTICLE 7

TERMINATION OF THE CONTRACT

7.1 TERMINATION FOR THE CONVENIENCE OF THE CITY

- 7.1.1** The City may, at any time upon ten (10) days written notice to the Contractor, terminate, without prejudice to any right or remedy of the City, the whole or any portion of the Work for the convenience of the City. This Notice of Termination shall specify that portion of the Work to be terminated and the effective date of termination. The Contractor's sole remedy, in the event of such termination, will be the cost of the Work performed as of the date of termination.

7.2 DEFAULT TERMINATION

- 7.2.1** The City may, upon ten (10) days written notice to the Contractor, terminate, without prejudice to any right or remedy of the City, the Agreement for default, in whole or in part, and may take possession of the Work and complete the Work by contract or otherwise if the Contractor refuses or fails to prosecute the Work or any separable part

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thereof with such diligence as will ensure the Substantial Completion of the Work within the Agreement Time, or fails to meet any milestones established in the Agreement Documents or fails to substantially complete the Work within said period or the Contractor is in default in carrying out any provision of the Agreement for a cause within his or his Subcontractors' control, including failure to pay subcontractors or any other breach of any provision of the Agreement documents or of laws or regulations governing this Work.

- 7.2.2** Upon termination of this Agreement under this Article, the Contractor shall remove all of his employees and property from the Project in a smooth, orderly, and cooperative manner.
- 7.2.3** If the City terminates the Agreement, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the expenses of another party completing the Work exceed the unpaid balance, the Contractor and his sureties shall be liable to the City for such excess amount.

ARTICLE 8

8.1 ASSIGNMENT OF AGREEMENT

- 8.1.1** The Contractor shall not assign or transfer any interest in this Agreement; except that claims for monies due or to become due from the City under the Agreement may be assigned to a bank, trust company, or other financial institution. Such assignments of claims shall only be made with the written concurrence of the City. If the Contractor is a partnership, this contract shall inure to the benefit of the surviving or remaining member(s) of such partnership as approved by the City.

8.2 SUBCONTRACTS

- 8.2.1** Definitions. As used in this Agreement:

- .1 "Subcontract" means any contract, purchase order, or other purchase agreement, including modifications and change orders to the foregoing, entered into by a subcontractor to furnish supplies, materials, equipment, and services for the performance of the prime contract or a subcontract.
- .2 "Subcontractor" means any supplier, vendor, or firm that furnishes supplies, materials, equipment, or services to or for the Contractor or another subcontractor.

- 8.2.2** The Contractor shall not enter into any subcontract with any subcontractor who has been temporarily denied participation in a HUD program or who has been suspended or debarred from participating in contracting programs by any agency of the United States Government or of the state in which the work under this Agreement is to be performed.

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8.2.3 The Contractor shall be as fully responsible for the acts or omissions of its subcontractors, and of persons either directly or indirectly employed by them as for the acts or omissions of persons directly employed by the Contractor.

8.2.4 The Contractor shall insert appropriate clauses in all subcontracts to bind subcontractors to the terms and conditions of this Agreement insofar as they are applicable to the work of subcontractors.

8.2.5 Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and the City or between the subcontractor and HUD.

8.3 **SUBCONTRACTING WITH SMALL AND MINORITY FIRMS, WOMEN'S BUSINESS ENTERPRISES AND LABOR SURPLUS ARE FIRMS**

8.3.1 The Contractor shall take the following steps to ensure that, whenever possible, subcontracts are awarded to small business firms, minority firms, women's business enterprises, and labor surplus area firms by:

- .1 Placing qualified small and minority businesses and women's business enterprises on solicitation lists; or
- .2 Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources; or
- .3 Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises; or
- .4 Establishing delivery schedules, where the requirements include such of the Agreement permit, which encourage participation by small and minority businesses and women's business; or
- .5 Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small and minority business development agencies.

8.4 **EQUAL EMPLOYMENT OPPORTUNITY**

8.4.1 During the performance of this Agreement, the Contractor agrees as follows:

- .1 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or handicap.

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- .2 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin, or handicap. Such action shall include, but not be limited to, (1) employment, (2) upgrading, (3) demotion, (4) transfer, (5) recruitment or recruitment advertising, (6) layoff or termination, (7) rates of pay or other forms of compensation, and (8) selection for training, including apprenticeship.
- .3 The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
- .4 The Contractor shall, 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, national origin, or handicap.
- .5 The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other Agreement or understanding, the notice to be provided by the City advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- .6 The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- .7 The Contractor shall furnish all information and reports required by Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto. The Contractor shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- .8 In the event of a determination that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this Agreement may be canceled, terminated, or suspended in whole or in part, and the Contractor may be declared ineligible for further City contracts, or Federally assisted construction contracts under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
- .9 The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order unless exempted by the rules, regulations, or

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orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

The Contractor by signing below indicates that it has read and agrees to comply with these Terms and Conditions.

Danella Companies, Inc.

Authorized Representative

Date of signing: _____