



CITY OF CHARLESTON West Virginia



Council Member – 12th WARD

Joseph Jenkins
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Charleston, West Virginia 25303
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Finance Committee, Chair
Parking Committee, Chair
Public Safety Committee

AGENDA FINANCE COMMITTEE MEETING Monday, April 15, 2019 6:00 PM

I. RESOLUTIONS:

- a. Resolution No. 183-19 - Authorizing the Mayor or City Manager to sign Change Order No. 1 with Carl Walker Construction, Inc., in the amount of \$45,536.00, to perform the waterproofing and concrete repairs to the West deck near the connection bridge on the Charleston Coliseum & Convention Center.
- b. Resolution No. 184-19 - Authorizing the City Collector to refund \$5,022.44 for the over payment of B&O Taxes for the period of January 1, 2013 – December 31, 2015. (At the request of the City Manager and City Attorney, taxpayer identity information will be stricken from all records of Council and will not be made available to the public. The Clerk's Office will redact any pertinent information before making it available to the public.)
- c. Resolution No. 185-19 - Authorizing the City Collector to refund \$15,917.32 for the over payment of B&O Taxes for the 1st quarter 2018. (At the request of the City Manager and City Attorney, taxpayer identity information will be stricken from all records of Council and will not be made available to the public. The Clerk's Office will redact any pertinent information before making it available to the public.)

II. BILLS:

- a. Bill No. 7811 - A Bill and Order relating to the laying of levies on real, personal and public utility property within the City of Charleston, West Virginia, including excess levies previously provided for in the Official Municipal Budget Document for the fiscal year beginning the first day of July, two thousand nineteen.

III. DISCUSSION:

***Meetings may be recorded and broadcast via internet <https://charlestonwv.civicclerk.com>**

Resolution No. 183-19

Introduced in Council:

March 15, 2019

Introduced by:

Joseph Jenkins

Adopted by Council:

Referred to:

Finance

Resolution No. 183-19- Authorizing the Mayor or City Manager to sign Change Order No. 1 with Carl Walker Construction, Inc., in the amount of \$45,536.00, to perform the waterproofing and concrete repairs to the West deck near the connection bridge on the Charleston Coliseum & Convention Center. The area is approximately 3,500 SF with 1,065 LF of joint replacement. The additional costs will increase the contract price from \$686,707.90 to \$732,243.90.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized and directed to sign Change Order No. 1 with Carl Walker Construction, Inc., in the amount of \$45,536.00, to perform the waterproofing and concrete repairs to the West deck near the connection bridge on the Charleston Coliseum & Convention Center. The area is approximately 3,500 SF with 1,065 LF of joint replacement. The additional costs will increase the contract price from \$686,707.90 to \$732,243.90.

**CITY OF CHARLESTON
Parking Garage Repairs
2018**

CHANGE ORDER NO. 1

Date of Approval: **April 15, 2019**

Contractor: **Carl Walker Construction, Inc.
935 Vista Drive
Pittsburgh, PA 15205-1218**

The Contract is changed as follows:

Carl Walker has proposed to perform the waterproofing and concrete repairs to the West deck near the connection bridge on the Charleston Coliseum & Convention Center. The area is approximately 3,500 SF with 1,065 LF of joint replacement.

Description:

- Concrete Repairs – partial depth demolition, prep steel, pour high strength concrete.
- Caulking – removal and replaced of all caulking joints throughout.
- Coating – scrape and remove loose coating throughout, pressure wash, install new coating system.
- Plank Repair – demolition, shoring, steel reinforcing, pour concrete, attach supplemental
galvanized angle steel to existing beam.

Totaling	\$45,536.00
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Original Contract Price:	\$686,707.90
Total of this Change Order	\$ 45,536.00
Total of previously approved Change Orders	\$ 0.00
Contract Price with all Approved Change Orders:	\$732,243.90

Approved by:

Accepted by:

City of Charleston

Carl Walker Construction, Inc.

Date

Date

March 26, 2019

Mr. Chris Knox
City of Charleston Engineer
Charleston, WV 25301

Re: Charleston Civic Center – Waterproofing & Concrete Repairs West Deck

Mr. Knox,

Carl Walker Construction, Inc. (CWC) is pleased to provide the following proposal to perform the waterproofing and concrete repairs to the West deck near the connection bridge on the Civic Center. The following scope of work is based on walkthrough with engineer and includes recommendations from CWC.

Scope of Work;

Concrete Repairs

- Demolition of loose concrete down to solid substrate by mechanical means. (partial depth repairs appear to be all that is required.)
- Prep areas and place new reinforcement if needed
- Pour back using a 5,000psi bag mix (Sika 1000)
- Finish and prep for receiving caulking and coating

Caulking

- Removal and replacement of all caulking joints throughout the slab including the tooled joints in the topping slab, cold joints and cove joints.
- Caulking will be mechanically removed.
- Substrate will be prepared by diamond grinding the substrate.
- A two-component, self-leveling urethane sealant will be installed in all joint openings.

Coating

- CWC will scrape and grind the loose coating found throughout the deck and dispose.
- The substrate will be pressure washed to prep for receipt of new Coating.
- A new coating system will be installed consisting of the following components;
 - A primer placed at 300 SF/G.
 - A base coat placed at 80 SF/G.
 - A urethane wear course placed at 100 SF/G with Aggregate/every 100 SF.



- An aliphatic (UV stable) top coat will be placed at 100 SF/G.
- Clean up and curing of the material.

Plank Repair

- There is one existing plank that shows signs of failure from the underside.
- Plank will be shored up and demolished by mechanical means
- Engineered designed repair drawing will be supplied and followed to put back new reinforcement and concrete in old planks location.
- New concrete will be allowed to cure to proper strength before shoring will be removed.
- Once formwork is moved, a supplemental galvanized angle will be placed under the plank and attached to the two adjacent beams to carry the new plank.

Total Cost - \$45,536.00

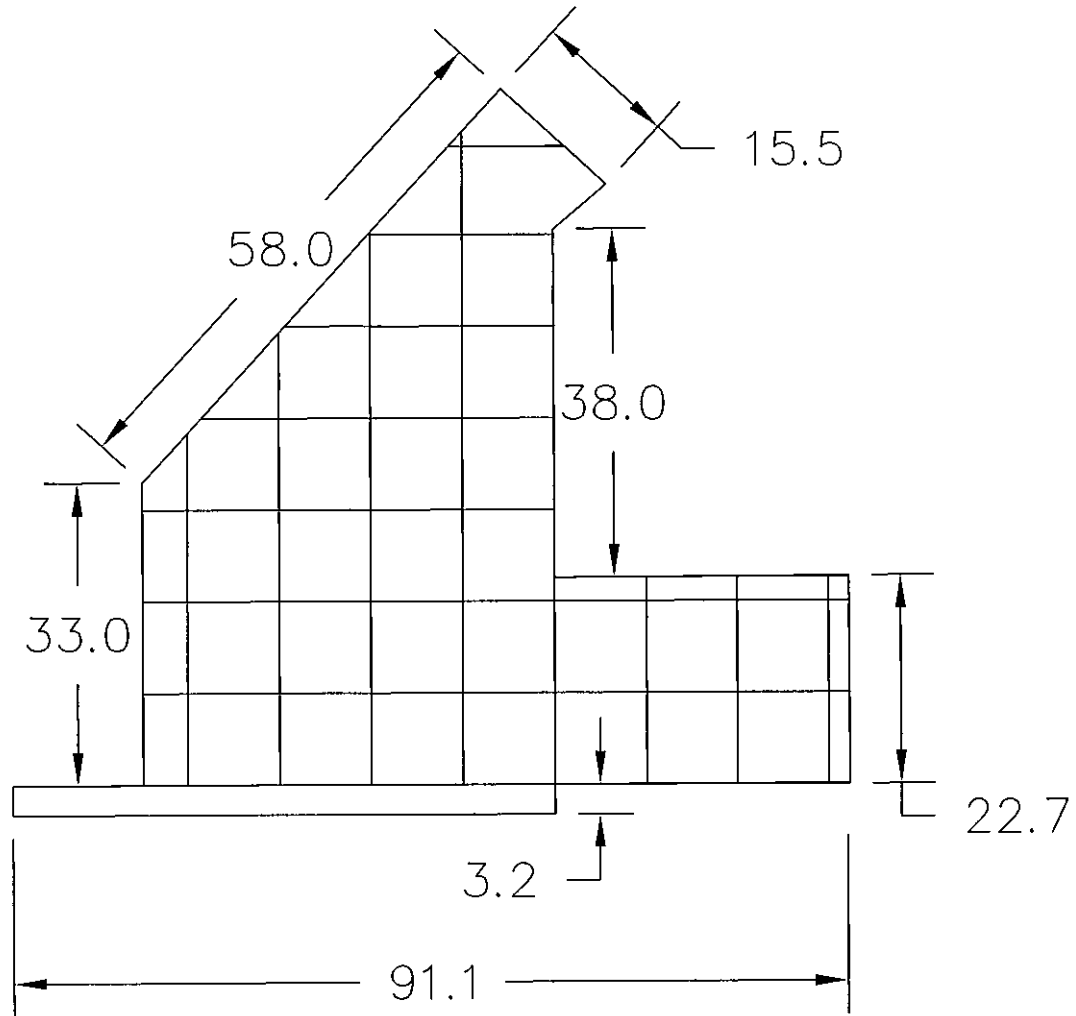
Thank you,

Kyle Cavanaugh
District Manager
Restoration Division

Notes:

- Permits, bonds and special insurances are excluded.
- CWC assumes that the deck will be shutdown during repairs.
- Normal work hours M-F, 7AM-3PM.
- All coating, caulking and expansion joint work comes with a 5 year warranty.

Resurfacing of Lee Street Walkway Civic Center



Area: 3500 SF

Joint Length: 1065 ft

AGREEMENT FOR PARKING GARAGE REPAIRS

THIS AGREEMENT is made as of this ^{5th SEPTEMBER} ~~24th~~ day of ~~August~~, 2018, between THE CITY OF CHARLESTON, a municipal corporation, hereinafter called "City," and CARL WALKER CONSTRUCTION, INC., hereinafter called "Contractor."

WHEREAS, City issued a Request for Bids and Project Manual for the performance and completion of certain tasks constituting repairs to various City parking garages (the "Services"), including the provision of material, equipment and other personal property (the "Materials"), to be performed in accordance with the plans, specifications and other specified provisions thereto, and has received Contractor's responses thereto (said Request for Bids, the Project Manual, the plans, specifications and specified provisions thereto, and Contractor's response thereto, including, but not limited to, specifications, warranty information, and all other information provided by Contractor are incorporated herein and made a part hereof, collectively, as "Attachment A"); and

WHEREAS, Contractor has been selected as the successful bidder under the terms of said Request and the provisions of this Agreement, and City intends to enter into this Agreement with Contractor for the provision of the Materials and Services; and

WHEREAS, Contractor has agreed to provide such Materials and Services at the prices and subject to the terms set forth herein and in Attachment A;

WITNESSETH:

In consideration of such payments and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor agrees to provide the Materials and perform the Services in accordance with the provisions of this Agreement, Attachment A, and all other exhibits attached hereto and documents incorporated herein by reference.

The parties acknowledge and agree that Attachment A is intended to and shall supplement the terms of this Agreement, but in the event of any inconsistency between the provisions of this Agreement and Attachment A, City shall have the exclusive right to elect which provision shall control. The parties further acknowledge and agree that in the event of any inconsistency between City's Request for Bids, including attachments thereto, and Contractor's responses, including any attachments thereto, contained in Attachment A, City shall have the exclusive right to elect which provision shall control.

Subject to the terms of this Agreement, City agrees to pay Contractor, and Contractor agrees to accept as payment in full for the Services, the sum not more than Six Hundred Eighty-six Thousand, Seven Hundred Seven Dollars and Ninety Cents (\$686,707.90) (the "Total Contract Amount") as set forth in Attachment A. The Total Contract Amount includes quantities of Materials which are estimates of the quantities needed. The City will pay for

quantities actually in place. The City reserves the right to vary the quantities up to fifty percent (50%) with no change in unit price. City shall not pay for any variances which result in an increase in the Total Contract Amount unless expressly agreed to by City in a written Change Order.

TERMS AND CONDITIONS:

ARTICLE 1 - REPRESENTATIONS AND WARRANTIES

1.1 Procurement of Agreement

- A. Contractor represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee, or any other compensation.
- B. Contractor represents and warrants that it is authorized to do business in the State of West Virginia and may lawfully perform the Services and provide the Materials required by this Agreement without violating any Federal, State or local law or regulation.
- C. The Contractor represents and warrants that the execution, delivery and performance hereof including the performance of the Services and the sale of the Materials have been authorized and approved by all necessary action on its behalf, constitutes its valid and binding obligation and that the same shall not violate any law or agreement binding on or applicable to Contractor.

1.2 Conflict of Interest

Contractor represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance of the Services or the provision of Materials as herein provided.

1.3 Fair Practices

Contractor, and each person signing on behalf of Contractor, represents, warrants and certifies, under penalty of perjury, that to the best of his knowledge and belief:

- A. The prices in Attachment A have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such price with any other bidder or with any competitor.

- B. Unless otherwise required by law, the prices stated in this Agreement and Attachment A, have not been knowingly disclosed by Contractor prior to the proposal opening, directly or indirectly, to any other bidder or to any competitor.
- C. No attempt has been made or will be made by Contractor to induce any other person, partnership, or corporation to submit or not to submit a proposal for the purpose of restricting competition.

ARTICLE 2 - AUDIT BY CITY

- 2.1 All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said vouchers or invoices are based, are subject to audit by appropriate City officials.
- 2.2 Contractor shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by City.
- 2.3 Contractor shall not be entitled to final payment under the Agreement until all requirements of this Agreement and Attachment A have been satisfactorily met.

ARTICLE 3 - COVENANTS OF THE CONTRACTOR

3.1 Prohibited Activity

Contractor shall not use any funds provided herein or personnel employed hereunder for political activities, inherently religious activities, lobbying, political patronage, or nepotism activities.

3.2 Employment Laws

Contractor shall comply with all Federal, State, and local employment laws, rules and regulations. If Contractor fails to comply with the aforementioned employment laws, the City may, at its discretion, take appropriate action, including, but not limited to, calling Contractors' bonds and/or terminating this Agreement immediately.

Contractor shall also comply with all Federal, State and local employment laws, rules, and regulations which are imposed contractually or otherwise by virtue of the public sources from which the City derives funding to meet its obligations under this Agreement.

3.3 Independent Contractor Status; Indemnity; Insurance; Bonds

Contractor is and shall remain at all times an independent contractor and shall not be and shall not represent itself to be the agent, joint venturer, partner or employee of City or to be related to City other than as an independent contractor. No representation shall be made nor act done by Contractor which could establish any apparent relationship of agency, joint venture, partnership or employment with City, and City shall not be bound in any manner whatsoever by any agreement, guarantee or representation made by Contractor to any person or by any action of Contractor.

In addition to, and not in lieu of the Indemnity provisions set forth in Section 3.4 herein, Contractor agrees that it shall indemnify, defend and hold harmless City, its officers, employees and agents (hereinafter collectively, "City" for purposes of the indemnity, defense, hold harmless and insurance obligations contained in this Agreement) from and against any and all claims, demands, obligations, causes of action, lawsuits, fines, costs, judgments and damages of any character whatsoever, and all expenses associated therewith (including, but not limited to, reasonable attorney's fees and costs), arising from or related in any way to: (i) the operations of Contractor, its officers, agents, employees, subcontractors and its related or affiliated companies (hereinafter collectively, "Contractor" for purposes of the indemnity, defense and hold harmless obligations contained in this Agreement); (ii) Contractor's provision of the Services or Materials; (iii) any act or omission, negligence or misconduct of Contractor; (iv) a breach of this Agreement, (v) failure of Contractor to complete any required work as specified in the Agreement, or (vi) failure of Contractor to perform any obligation contained in the Agreement or otherwise agreed to by Contractor, whether written or oral. Contractor specifically acknowledges that the indemnification, defense and hold harmless obligations imposed by this Agreement require Contractor to indemnify and defend City regardless of whether or not any claimant or litigant also alleges that City was negligent. Further, Contractor agrees that its duty to defend and indemnify City does not require a judicial determination of the Contractor's negligence as a precondition of the duty to indemnify and defend City.

In addition to, and not in lieu of the indemnity provisions set forth in Sections 3.3 and 3.4 herein, Contractor shall be solely responsible for all physical injuries or death to its officers, agents, employees and subcontractors and, consistent with the obligations imposed by this Agreement, shall indemnify, defend and hold harmless City for such injury or death. Contractor shall be solely responsible for the safety and protection of all of its employees whether due to the acts and omissions, negligence, fault or default of Contractor or not. Contractor hereby agrees to purchase and carry workers compensation insurance for all of its employees and to ensure that all of its subcontractors purchase and carry workers compensation insurance for all of their employees.

In addition to, and not in lieu of the indemnity provisions set forth in Sections 3.3 and 3.4 herein, Contractor shall be solely responsible for any and all damage to any property of the City or of any third-party related in any way to Contractor's operations, provision of the Services or Materials, or any act or omission, negligence or misconduct of Contractor. Consistent with the obligations imposed by this Agreement, Contractor shall indemnify, defend and hold harmless City for any and all such damage, and, in the event of damage to any property of City, shall promptly reimburse City for all costs and expenses of any character upon Contractor's receipt of a demand for reimbursement by City.

Contractor shall fully pay off and discharge and secure the release of any and all mechanics liens related in any way to this Agreement, Contractor's operations or the provision of the Services or Materials which may be placed upon any property by any subcontractor, laborer or material men and Contractor shall also save and keep harmless the City from all losses of any character and from any cause whatsoever related in any way to the operations of Contractor or provision of the Services or Materials.

Contractor shall maintain general liability insurance in the amount of \$1,000,000.00 and shall name City as an additional insured for purposes of this Agreement and the indemnity provisions herein. Contractor shall be responsible for the payment of all deductibles. Contractor shall also purchase and maintain all such other kinds of insurance and minimum amounts required to be purchased and maintained by Contractor throughout the term of this Agreement. All policies shall provide primary coverage, shall reflect that Contractor is responsible for any and all deductibles and shall otherwise be in such form and with such endorsements and riders as City shall specify. Contractor agrees to provide City with a copy of its insurance policies prior to the beginning of any work on this contract. In the event that Contractor's insurer denies coverage or terminates Contractor's insurance coverage, the City may, at its option, terminate this contract immediately.

Prior to the provision of the Materials or commencement of the Services, Contractor shall furnish City with performance and payment bonds, in the amount Six Hundred Eighty-six Thousand, Seven Hundred Seven Dollars and Ninety Cents (\$686,707.90), to assure the timely provision of Materials and completion of the Services pursuant to the terms of this Agreement, Attachment A, and all other exhibits attached hereto and documents incorporated herein by reference.

The indemnity provided for in Section 3.3 herein shall be deemed in addition to and in no way a limitation upon the right of common law indemnification of City, its officers, employees and agents from Contractor.

3.4 Indemnity for Environmental Problems

In addition to, and not in lieu of the indemnity provisions set forth in Section 3.3 herein, Contractor agrees to defend, indemnify and hold harmless City and its agents from any claims, liabilities, and/or any types of actions whatsoever, and from any and all fines, alleged damages, and/or expenses, including attorneys' fees and costs, arising out of alleged injury to person(s) or property, or contamination of the environment, whether or not prosecuted by a private or governmental entity. Contractor further agrees to defend, indemnify and hold harmless City, its officers, employees and agents in connection with any administrative proceeding arising out of alleged damage to person, property, or the environment, including, but not limited to, notification that City, its officers, employees or agents, are potentially responsible parties for any alleged damage to any environmental hazard created by Contractor as a result of its performance under this Agreement.

The indemnity provided for in Section 3.4 herein shall be deemed in addition to and in no way a limitation upon the right of common law indemnification of City, its officers, employees and agents from Contractor.

3.5 Books and Records

Contractor agrees to maintain and retain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

3.6 Retention of Records

Contractor agrees to retain all books, records, and other documents relevant to this Agreement for ten years after the final payment or termination of this Agreement, whichever is later. City, State and Federal auditors, and any other persons duly authorized by the City, shall have full access to and the right to examine any of said materials during said period.

3.7 Suspension of Work

Contractor shall at all times be solely responsible for the protection of all work and Materials against damage or injury. In the event of temporary suspension of work for any reason, including, but not limited to, inclement weather, Contractor shall immediately take all action(s) necessary to ensure the protection of all work and Materials against damage or injury.

City may suspend work if the City Manager or City Engineer determines that suspension is in the City's best interest and/or the City elects to terminate this Agreement for any of the provisions contained in 5.1 herein. The City Manager

and/or City Engineer will deliver to Contractor a Notice of Suspension specifying the extent and duration of the suspension and the effective date thereof. Upon receipt of such Notice of Suspension, Contractor shall immediately proceed to stop work, as specified in the notice, place no further subcontracts or orders for materials (except as necessary to complete any work that is not subject to suspension), and take all action(s) necessary, including any action(s) that the City Manager or City Engineer may direct, for the protection and preservation of the Materials and any property related to this Agreement.

If, in the opinion of the City Manager or City Engineer, any work or Materials have been damaged or injured by reason of failure on the part of the Contractor or his Subcontractors to protect their work or Materials, such Materials shall be removed and replaced at the expense of the Contractor.

3.8 Compliance with Law

Contractor shall render the Services under this Agreement in accordance with applicable provisions of Federal, State and local laws, rules and regulations. If Contractor fails to comply with the aforementioned laws, the City may, at its discretion, take appropriate action, including, but not limited to, calling Contractors' bonds and/or terminating this Agreement immediately.

3.9 Time of Completion; Delay; Default by Contractor; Remedies

Contractor shall provide the Materials and complete the Services to City's satisfaction on or before January 15, 2019, unless the term herein shall be extended by the mutual written agreement of the parties hereto. If Contractor fails to perform its obligation to provide the Materials and complete the Services by such date, or otherwise breaches the terms of this Agreement or Attachment A, City may, but without any obligation to do so, terminate this Agreement immediately, call Contractor's bonds, engage another contractor or contractors to provide the Materials and/or complete the Services as City may determine, and seek monetary damages from Contractor in addition to other remedies available under this Agreement, Attachment A, or applicable law. Contractor shall not be responsible for: (1) delays occasioned by circumstances beyond the control of Contractor, including property access, labor strikes, lockouts and unavoidable casualties or causes; or (2) changes ordered by City, unless the changes were necessary to correct defects or non-compliance of the Services or the Materials.

3.10 Contractor's Representation, Warranties and Guarantee

Contractor shall perform all Services in a safe and workmanlike manner and in accordance with industry standards and all specifications referenced herein, including any change orders hereto.

Unless otherwise agreed to in writing by City or expressly permitted by City in Attachment A, Contractor hereby represents, warrants and agrees that the Materials used in connection with the Agreement are new, in good and marketable condition, have never been used, are sufficient for their intended purposes, are in compliance with the specifications in Attachment A, and that Contractor owns them and has the right to sell and convey them to City free of liens and encumbrances. Contractor hereby assigns to City all rights to any and all warranties and/or guarantees, whether express or implied, made to Contractor by the manufacturers or distributors of the Materials or any part thereof. Contractor agrees to assist the City in enforcing any and all warranties and/or guarantees related to the Materials.

Contractor further warrants that, if any of its completed Services fail to conform to this Agreement or Attachment A, Contractor shall, at its own expense, and provided Contractor is notified of such defect or non-conformity within one year of the completion of the Services, either perform corrective services at no cost to City as may be required to correct such defect or non-conformity or refund to City the amount paid to Contractor for Services that are defective or non-conforming.

3.11 Diligent Review by Contractor and Ability to Perform the Services

Contractor agrees and acknowledges that:

- A. Contractor has examined and carefully studied this Agreement, Attachment A hereto and other related data identified in the request for bids and the plans, specifications and other specified provisions thereto;
- B. Contractor has visited the site of the project, has become familiar with it, and is satisfied as to the general, local and site conditions that may affect cost, progress, provision of the Materials and performance of the Services;
- C. Contractor is familiar with and is satisfied as to all Federal, State, and local laws and regulations that may affect cost, progress, provision of the Materials and performance of the Services;
- D. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and underground facilities) at or contiguous to the site of the project which may affect cost, progress, provision of the Materials or performance of the Services or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction expressly required by this Agreement, Attachment A, and all safety precautions and programs incident thereto;

- E. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the provision of the Materials or performance of the Services at the stated price herein.
- F. Contractor has given the City Engineer and/or the design engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in this Agreement and Attachment A hereto, and the written resolution thereof by the City Engineer and/or design engineer is acceptable to Contractor; and
- G. This Agreement and Attachment A hereto are generally sufficient to indicate and convey understanding of all terms and conditions for provision of the Materials and performance of the Services to the satisfaction of the City.

3.12 Traffic Control

During the performance of the Services, Contractor shall be solely responsible for putting in place adequate safety measures and warnings for both pedestrians and vehicular traffic. Contractor shall keep garage entrances clear and available to City, City's guests and employees, and emergency vehicles at all times. In the event that work directly impacts one or more entrance/exit lanes, Contractor shall keep at least one lane open at all times. Contractor shall provide City with 48 hours' notice of any activities that will affect City's operation of its parking garages.

3.13 Responsibility of Avoiding Structures

Contractor shall assume full responsibility for the protection of all property owned by City or by any third party in the vicinity of the project. Contractor shall notify the City Engineer if Contractor's work encroaches on structures or property owned by a third party in the area of the project. Contractor shall replace or repair at Contractor's expense any and all property of any kind damaged as a result of Contractor's work at no additional cost to the City.

3.14 Access

City agrees to take all actions necessary to allow Contractor and its subcontractor(s) authority to enter the property upon which Contractor's Services are to be performed. Contractor shall take all reasonable precautions to minimize any damage to the property covered by the Agreement, and to any adjoining property. Any cost of correction, repair or replacement to such property, or adjoining properties shall be borne by Contractor.

3.15 Compliance with Copeland "Anti-Kick Back" Act

Contractor agrees to comply with the requirements of the Copeland "Anti-Kick Back" Act (18 USC 874) as supplemented in US Department of labor regulations 29 CFR Part 3.

3.16 Drug-Free Workplace Requirements

Contractor agrees to comply with the requirements of the Drug-Free Workplace Act of 1988 (42 USC 701) in accordance with the Act and with HUD rules found at 24 CFR part 24, subpart F.

3.17 Immigration Reform and Control Act

Contractor shall certify that it is in complete compliance with the Immigration Reform and Control Act (IRCA).

ARTICLE 4 - PAYMENTS, CLEAN UP

4.1 Payment

Requests for interim payment for Materials provided and Services performed in any month may be prepared and submitted on a monthly basis by Contractor in the form of a proper detailed invoice as specified in Attachment A. The City will withhold ten percent (10%) of each interim payment. City will pay proper requests for interim payments within 30 days from the first or fifteenth day of the month following City's receipt of a proper request for interim payment. Contractor shall supply a certified payroll with each invoice submitted. Invoices shall be mailed to: City Engineer, P.O. Box 2749 Charleston, WV 25330, or hand delivered to City Engineer, 105 McFarland Street, Charleston WV 25301.

City may reject any Services or Materials that do not conform to this Agreement or Attachment A. Contractor shall immediately correct such non-conforming Services or Materials without additional cost to City.

City agrees to pay Contractor the retainage amount accrued and the remaining Total Contract Amount within thirty (30) working days of completion of all of the following:

1. Inspection of the Materials and Services by City;
2. Acceptance of the Materials by City;
3. Timely completion of the Services to the satisfaction of City; and
4. Receipt by City of a proper invoice from Contractor.

4.2 Clean up

Contractor shall pick up all debris resulting from its work and remove it from the job site. Contractor shall dispose of all debris resulting from its work at its own expense and in conformity with applicable Federal, State and local health and sanitary codes and laws. Contractor shall be responsible for complete and lawful removal of any and all hazardous material/debris resulting from Contractor's work activities from the job site.

ARTICLE 5 - TERMINATION

5.1 Termination of Agreement; Remedies

City shall have the right to terminate this Agreement, in whole or in part, in accordance with the following, or for reasons set forth elsewhere in this Agreement:

- A. Upon the default by Contractor under any covenant or other term or condition of this Agreement or Attachment A, or if any warranty or representation made by Contractor is untrue in any material respect; or
- B. Upon Contractor's becoming insolvent or upon commencement under the Bankruptcy Act of any similar proceeding either voluntarily or involuntarily; or
- C. If funds are not appropriated by City for the purposes of this Agreement. In the event of City's termination pursuant to this section of the Agreement, City agrees to compensate Contractor for all Services and Materials for which funds were appropriated and which were satisfactorily performed through the date of termination; or
- D. Upon failure by Contractor to perform the Services with sufficient and qualified employees, sufficient and suitable equipment, or with sufficient and suitable Materials to assure the prompt and satisfactory completion of the work; or
- E. If Contractor performs the Services unsuitably or neglects or refuses to remove and replace non-conforming Materials or to correct non-conforming Services to the satisfaction of the City; or
- F. If Contractor fails to maintain General Liability insurance as required herein, with the City and its agents as additional insureds, with limits of at least \$1 million.

Upon such termination resulting from the default of Contractor, City may, in addition to its other rights and remedies hereunder, institute a civil action for damages or specific performance and exercise such other rights and remedies as it may have

under applicable law.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by Contractor pursuant to this Agreement shall, at the option of the City, become property of the City.

ARTICLE 6 - CONDITIONS PRECEDENT

This Agreement shall neither be binding on City nor effective until: (1) the approval by the City Council of City of a resolution approving this Agreement or authorizing the Mayor or City Manager to execute this Agreement on behalf of City; and (2) the execution of this Agreement by the Mayor or City Manager. The requirements of this section of this Agreement shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Agreement to be effective and for the expenditure of City funds.

ARTICLE 7 - MISCELLANEOUS TERMS

7.1 General Release: Waiver of Mechanic's Liens

The acceptance by the Contractor and its assignees of the final payment under this Agreement, whether by check, voucher, judgment of any court of competent jurisdiction or any other administrative means, shall constitute and operate as a general release to City from any and all claims of and liability to Contractor arising out of the performance of this Agreement. Contractor waives its right to file a mechanic's or other lien in connection with the provision of the Services or Materials.

7.2 No Claim Against Officer, Agent or Employees

No claim whatsoever shall be made by Contractor against any officer, employee or agent of City for, or on account of, anything done or omitted in connection with this Contract.

7.3 Disclosure of Information Required by Law

Contractor acknowledges that City is a public entity and is subject to mandatory disclosure of certain information upon request under W.Va. Code § 29B-1-1 *et seq.* (the "Freedom of Information Act") and W.Va. Code § 6-9A-1 *et seq.* (the "Open Governmental Proceedings Act"). If City is requested or required to disclose any information deemed confidential by Contractor, City will promptly notify Contractor of each such request or requirement so that the appropriate entity may seek an appropriate protective order or other appropriate relief. To the extent permitted by Federal, State and local laws, each party agrees to cooperate fully with the other in seeking any protective order or other remedy. If, in the absence of a protective order

or the receipt of a waiver hereunder, City is, nonetheless, compelled to disclose confidential information, it may disclose such information pursuant to such request or requirement without liability hereunder.

7.4 Waiver

Waiver by City of a breach of any provision of this Agreement or Attachment A hereto shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless and until the same shall be agreed to in writing by City consistent with the requirements of Section 7.8 herein.

7.5 Assignment

Neither party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.

7.6 Dispute Resolution

Contractor and City will attempt to settle any claim or controversy arising out of this Agreement or the Services through consultation and negotiation in good faith and a spirit of mutual cooperation. Any dispute which cannot be resolved between the parties through consultation, negotiation or mediation within a reasonable time may then be submitted to a court of competent jurisdiction in the County of Kanawha, West Virginia. Nothing shall prevent either of the parties from resorting to the judicial proceedings mentioned in this paragraph if (a) good faith efforts to attempt resolution of the dispute under these procedures have been unsuccessful; or (b) interim relief from the court is necessary to prevent serious and irreparable injury to one of the parties or to others.

7.7 Notice between Contractor and City

Contractor and City hereby designate the business mailing addresses set forth in this Agreement as the places where all notice, directions or communications from one such party to the other party shall be delivered, or to which they shall be mailed. Such address may be changed at any time by either party by written notice to the other party in the manner prescribed herein.

Contractor shall identify and provide a superintendent, foreman or supervisor who shall have authority to act for Contractor for the purposes of this Agreement.

7.8 Modification

This Agreement may not be modified by the parties except in writing executed by City and Contractor and, in order for any modification to be enforced against City, shall reference the Section of this Agreement to be modified and specifically identify the term, condition, or obligation to be modified.

7.9 Forum Provision Choice of Law, Consent to Jurisdiction and Venue

This Agreement shall be deemed to be executed in The City of Charleston, State of West Virginia, regardless of the domicile of Contractor, and shall be governed by and construed in accordance with the laws of the State of West Virginia.

The parties agree that any and all claims asserted by or against City arising under this Agreement, or related thereto, shall be heard and determined either in the United States District Court for the Southern District of West Virginia or in the Circuit Court of Kanawha County, West Virginia.

7.10 Force Majeure

In the event of any condition or event, not existing as of the date of execution of the Agreement, not reasonably foreseeable as of such date, and not reasonably within the control of the parties which prevents in whole or in material part the performance of either party of its obligations hereunder, the obligations of each party to perform under the Agreement shall be suspended until the cause no longer prevents or makes impracticable either party's performance at which time all obligations shall resume. Either party shall have the right to terminate this Agreement upon written notice to the other should the condition or event continue for a period of two (2) days or more. Force Majeure events or conditions shall include, but not be limited to, riots, war, governmental action, strikes or lockouts (other than the parties), epidemics, flood, earthquake and explosion.

7.11 Entire Agreement

This Agreement, including Attachment A and all other exhibits attached hereto and documents incorporated herein by reference, constitutes the entire Agreement between City and Contractor and supersedes all prior or contemporaneous communications, whether electronic, oral or written between City and Contractor.

7.12 Section headings and subheadings

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

7.13 Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force or effect.

7.14 Survival

The insurance and indemnity obligations contained in Sections 3.3 and 3.4 herein shall remain in full force and effect and shall survive the completion or earlier termination of this Agreement.

IN WITNESS WHEREOF, The City of Charleston has caused its name to be signed hereto by its Mayor, Danny Jones, and Contractor has caused this Agreement to be properly executed by its officer thereunto duly authorized.

**THE CITY OF CHARLESTON,
a municipal corporation**

By [Signature]
Its City Manager

CARL WALKER CONSTRUCTION, INC.

By [Signature]
Its PRESIDENT

Mailing Address:

City of Charleston
Attn: City Manager's Office
501 Virginia Street, East
Charleston, WV 25301

Mailing Address:

Carl Walker Construction, Inc.
Attn: Kyle Cavanaugh
935 Vista Park Drive
Pittsburgh, PA 15205 - 1218

Bill No. 7811:

Introduced in Council:

April 1, 2019
Introduced by:

Joseph Jenkins

Adopted by Council:

Referred to:

Finance Committee

Bill No. 7811: A Bill and Order relating to the laying of levies on real, personal and public utility property within the City of Charleston, West Virginia, including excess levies previously provided for in the Official Municipal Budget Document for the fiscal year beginning the first day of July, two thousand nineteen.

WHEREAS, each Municipality is required to hold a Statutory meeting of the Council on the third Tuesday in April each year to make and enter a levy order and rate sheet; and

WHEREAS, written approval of the West Virginia State Tax Commissioner has been received and notice of the Levy Estimate has been duly published as required by law; and

WHEREAS, the levy rate attached hereto is included in the City of Charleston Municipal Budget for July 1, 2019 through June 30, 2020, before City Council for approval at a special meeting of Council held on April 16, 2019, now, therefore

Be it Ordained by the Council of the City of Charleston, West Virginia:

That the City of Charleston, West Virginia does hereby make and enter the levy order and rate sheet attached hereto, incorporated herein, and made a part hereof.