

# AIA® Document A101™ - 1997

**Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM**

AGREEMENT made as of the Nineteenth day of December in the year of Two Thousand Eight.

*(In words, indicate day, month and year)*

**BETWEEN the Owner:**  
*(Name, address and other information)*

West Virginia Supreme Court of Appeals  
The Capitol Building  
Room 2000  
Charleston, West Virginia 25305

**and the Contractor:**  
*(Name, address and other information)*

Shilling Construction Company  
216 Seventh Avenue  
Huntington, West Virginia 25701

**The Project is:**  
*(Name and location)*

West Virginia Supreme Court of Appeals  
Capitol - East Wing - Fourth Floor Renovations  
Charleston, West Virginia

**The Architect is:**  
*(Name, address and other information)*

Shilling Associates, Incorporated  
404 Capitol Street, Upper Atrium  
Charleston, West Virginia 25301-1727

The Owner and Contractor agree as follows:

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201-1997, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.

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**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Addendums), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

**ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

The Date of Commencement of the Work shall be the date of this Agreement unless a different date is stated below. Any change made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

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Prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests for the Owner. A time requirement shall be as follows:

Contract Time shall be measured from the date of commencement.

The Contractor shall achieve Substantial Completion of the entire Work not later than 120 days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)*

Portion of Work

Substantial Completion Date

Subject to adjustments of this Contract Time as provided in the Contract Documents. *(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

The Contractor and the Contractor's surety, if any, shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete: Five Hundred Dollars (\$500.00).

**ARTICLE 4 CONTRACT SUM**

The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Work. The Contract Sum shall be Eight Hundred Seventy-Six Thousand One Hundred Fifty-Six Dollars and Zero Cents (\$876,156.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

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(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amounts for each and the date when that amount expires)

|   |                |
|---|----------------|
| 1. Bid Package #1   | \$877,000.00   |
| 2. Bid Package #2   | \$185,000.00   |
| 3. Capitol Business Interiors Contract for Office Furniture | (\$190,844.00) |
| 4. Revised Sheet H3.1 Dated 11/14/08                        | \$5,000.00     |
| TOTAL CONTRACT SUM  | \$876,156.00   |

7.4.3 Unit prices, if any, are as follows:

| Description | Units | Price (\$ 0.00) |
|-------------|-------|-----------------|
|-------------|-------|-----------------|

**ARTICLE 5 - PAYMENTS**

**5.1 PROGRESS PAYMENTS**

5.1.1 Subject to the Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month or as follows:

5.1.3 Provided that an Application for Payment is received by the Architect not later than the Fifth day of a month, the Owner shall make payment to the Contractor not later than the Twenty-Fifth day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made to the Contractor not later than Twenty (20) days after the Architect receives the Application for Payment.

5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data as shall indicate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of Ten Percent (10.00%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document A201-1997;

Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of Ten Percent (10.00%);

3 Subtract the aggregate of previous payments made by the Owner; and

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4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-1997.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
(Section 9.3.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-1997.

§ 5.1.8 The method or limitation of retainage, if any, shall be as follows:

(If it is intended prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the provisions of Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, then there are no provisions for such reduction or limitation.)

When the Work is Fifty Percent (50%) complete, the Owner shall pay Ninety Percent (90%) of the amount due the Contractor on account of progress payments. At the time the Work is Fifty Percent (50%) complete and thereafter, if the manner of completion of the Work and its progress are and remain satisfactory to the Owner and Architect, and in the absence of other good and sufficient reasons, the Architect will, on presentation by the Contractor of Consent of Surety, authorize any remaining partial payments to be paid in full.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials and equipment which have not been delivered and stored at the site.

#### § 5.2 GENERAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and

2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

#### ARTICLE 6 TERMINATION OR SUSPENSION

§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

#### ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

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§ 7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

( ) per annum

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 The Owner's representative is:  
(Name, address and other information)

Mr. Steven G. Canterbury  
West Virginia Supreme Court of Appeals  
State Capitol Building, Room E-100  
Charleston, West Virginia 25305

§ 7.4 The Contractor's representative is:  
(Name, address and other information)

Mr. David K. McCarty  
Project Manager  
1216 Seventh Avenue  
Huntington, West Virginia 25701

§ 7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

ARTICLE 3 - ENUMERATION OF CONTRACT DOCUMENTS

§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

§ 8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated [redacted] and are as follows:

Document

Title

Pages

[redacted] Project Manual, titled "WV Supreme Court of Appeals, Charleston, WV" prepared by Silling Associates Architects, Charleston, West Virginia, dated November 24, 2008. Project Manual is composed of Bidding Documents, Contract Forms, Conditions of the Contract, and Technical Specifications - Divisions 1 through 16 and is as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

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| DIVISION  | SECTION TITLE                       | PAGES |
|---|-------------------------------------|-------|
| <b>Division 1 - General Requirements</b>            |                                     |       |
| 01020   | Allowances                          |       |
| 01100   | Summary of Work                     | 1-2   |
| 01140   | Work Restrictions                   | 1-3   |
| 01230   | Alternates                          | 1-1   |
| 01250   | Contract Modification Procedures    | 1-1   |
| 01290   | Payment Procedures                  | 1-3   |
| 01310   | Project Management and Coordination | 1-4   |
| 01320   | Construction Progress Documentation | 1-5   |
| 01330   | Submittal Procedures                | 1-5   |
| 01400   | Quality Requirements                | 1-7   |
| 01420   | References                          | 1-5   |
| 01500   | Temporary Facilities and Controls   | 1-2   |
| 01600   | Product Requirements                | 1-10  |
| 01700   | Executive Requirements              | 1-7   |
| 01731   | Curing and Patching                 | 1-7   |
| 01751   | Selective Demolition                | 1-3   |
| 01770   | Cut-out Procedures                  | 1-3   |
|   |                                     | 1-7   |
| <b>Division 2 - Site Work</b>                       |                                     |       |
| 02411   | Selective Structure Demolition      | 1-5   |
| <b>Division 3 - Concrete</b>                        |                                     |       |
| Not Used  |                                     |       |
| <b>Division 4 - Masonry</b>                         |                                     |       |
| Not Used  |                                     |       |
| <b>Division 5 - Metals</b>                          |                                     |       |
| Not Used  |                                     |       |
| <b>Division 6 - Wood and Plastic</b>                |                                     |       |
| 06100   | Rough Carpentry                     |       |
| 06105   | Miscellaneous Carpentry             | 1-4   |
| 06402   | Interior Architectural Woodwork     | 1-4   |
|   |                                     | 1-6   |
| <b>Division 7 - Thermal and Moisture Protection</b> |                                     |       |
| Not Used  |                                     |       |
| <b>Division 8 - Doors and Windows</b>               |                                     |       |
| 08141   | Rough Carpentry                     |       |
| 08710   | Door Hardware                       | 1-4   |
| 08800   | Glazing                             | 1-7   |
|   |                                     | 1-7   |
| <b>Division 9 - Finishes</b>                        |                                     |       |
| 09250   | Gypsum Board Assemblies             |       |
| 09310   | Ceramic Tile                        | 1-10  |
| 09311   | Acoustical Panel Ceilings           | 1-7   |
| 09511   | Sheet Carpeting                     | 1-6   |
| 09912   | Painting                            | 1-5   |
|   |                                     | 1-9   |
| <b>Division 10 - Specialties</b>                    |                                     |       |
| 10280   | Toilet Accessories                  |       |
| 10441   | Fire Extinguisher Cabinets          | 1-3   |
|   |                                     | 1-4   |

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|  |  |        |
|--|--|--------|
| 10615                                  | Movable Partition Systems                        | 1 - 13 |
| <b>Division 11, 12, &amp; 13</b>       |  |        |
| 1221                                   | Horizontal Louver Blinds                         | 1 - 4  |
| <b>Division 14 - Conveying Systems</b> |  |        |
| Not Used                               |  |        |
| <b>Division 15 - Mechanical</b>        |  |        |
| 15010                                  | Basic Mechanical Requirements                    | 1 - 10 |
| 15030                                  | Electrical Requirements for Mechanical Equipment | 1 - 5  |
| 15050                                  | Basic Mechanical Materials and Methods           | 1 - 7  |
| 15081                                  | Duct Insulation                                  | 1 - 8  |
| 15082                                  | Equipment Insulation                             | 1 - 6  |
| 15083                                  | Pipe Insulation                                  | 1 - 11 |
| 15100                                  | General Duty Valves and Strainers                | 1 - 5  |
| 15120                                  | Piping and Equipment Specialties                 | 1 - 13 |
| 15145                                  | Hangers, Supports and Anchors                    | 1 - 7  |
| 15241                                  | Vibration Control                                | 1 - 7  |
| 15310                                  | Plumbing Piping                                  | 1 - 9  |
| 15430                                  | Plumbing Specialties                             | 1 - 5  |
| 15440                                  | Plumbing Fixtures                                | 1 - 8  |
| 15505                                  | Variable Frequency Drives                        | 1 - 9  |
| 15510                                  | Hydronic Piping                                  | 1 - 11 |
| 15520                                  | Steam and Condensate Piping                      | 1 - 8  |
| 15540                                  | HYDRA Hydronic Pumps                             | 1 - 6  |
| 15700                                  | Heat Exchangers                                  | 1 - 3  |
| 15830                                  | Heating Terminal Units                           | 1 - 3  |
| 15835                                  | Power Ventilators                                | 1 - 5  |
| 15840                                  | Air Terminal Units                               | 1 - 3  |
| 15856                                  | Exhaust Air Handling Units                       | 1 - 8  |
| 15891                                  | Metal Ductwork and Accessories                   | 1 - 10 |
| 15975                                  | Direct Digital Control System                    | 1 - 19 |
| 15985                                  | Sequence of Operation                            | 1 - 4  |
| 15990                                  | Tuning, Adjusting and Balancing                  | 1 - 9  |
| <b>Division 16 - Electrical</b>        |  |        |
| 16010                                  | Basic Electrical Requirements                    | 1 - 6  |
| 16050                                  | Basic Electrical Materials and Methods           | 1 - 10 |
| 16120                                  | Conductors and Cables                            | 1 - 5  |
| 16130                                  | Raceways and Boxes                               | 1 - 9  |
| 16135                                  | Cable Management Tray System                     | 1 - 6  |
| 16140                                  | Wiring Devices                                   | 1 - 4  |
| 16142                                  | Electrical Connections for Equipment             | 1 - 5  |
| 16190                                  | Supporting Devices                               | 1 - 3  |
| 16195                                  | Electrical Identification                        | 1 - 5  |
| 16452                                  | Grounding  | 1 - 3  |
| 16470                                  | Panelboards                                      | 1 - 4  |
| 16475                                  | Disconnect Switches                              | 1 - 4  |
| 16481                                  | Motor Controllers                                | 1 - 5  |
| 16515                                  | Interior Lighting Fixtures                       | 1 - 6  |
| 16721                                  | Digital, Addressable Fire-Alarm System           | 1 - 12 |
| 16741                                  | Telecommunications Structured Wiring             | 1 - 13 |

§ 8.1.5 The Drawings titled "Interior Renovations to West Virginia Supreme Court of Appeals, State Capitol - East Wing - Fourth Floor, Charleston, West Virginia", dated November 14, 2008 consisting of the following sheets:

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*Handwritten initials: SIC/CRW*

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:(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

**General**

Cover Sheet

**Architectural**

- A2-0 Existing/Demolition Plan 11/15/08
- A2-0 Floor Plan 11/15/08
- A3-0 Reflected Ceiling Plan 11/15/08
- A4-0 Interior Elevations 11/15/08
- A5-0 Floor Schedule & Details 11/15/08
- A12-0 Casework & Restrooms 11/15/08

**Plumbing**

- P1-1 Fourth Floor Plan - Plumbing 11/14/08

**HVAC**

- H1-1 General Notes & Symbol Legend - HVAC 11/14/08
- H2-1 Demolition - Fourth Floor Plan - HVAC 11/14/08
- H3-1 Demolition - Penthouse Floor Plan - HVAC 11/14/08
- H4-1 Ductwork - Fourth Floor Plan - HVAC 11/14/08
- H5-1 Piping - Fourth Floor Plan - HVAC 11/14/08
- H6-1 New Work - Penthouse Floor Plan - HVAC 11/14/08
- H7-1 Demolition - HVAC 11/14/08
- H4-2 Details - HVAC 11/14/08
- H5-2 Schedule - HVAC 11/14/08
- H6-2 Temperature Controls - HVAC 11/14/08
- H7-2 Flow Diagrams - HVAC 11/14/08

**Electrical**

- E1-1 Electrical Schedules 11/14/08
- E2-1 Demolition - Fourth Floor Plan - Elec 11/14/08
- E3-1 Demolition - Penthouse Plan - Elec 11/14/08
- E4-1 Lighting - Fourth Floor Plan - Elec 11/14/08
- E3-2 Piping - Fourth Floor Plan - Elec 11/14/08
- E3-3 Systems - Fourth Floor Plan - Elec 11/14/08
- E3-4 Pwr/Sys - Penthouse Plan - Elec 11/14/08
- E4-1 Electrical Details 11/14/08

5.4.1.6 The Addenda, if any, are as follows:

| Number         | Date              | Pages  |
|----------------|-------------------|--------|
| Addendum No. 1 | December 8, 2008  | 1 - 19 |
| Addendum No. 2 | December 11, 2008 | 1 - 3  |
| Addendum No. 3 | December 11, 2008 | 1 - 6  |

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

5.4.1.7 Addenda, if any, forming part of the Contract Documents are as follows:

*None. Additional documents that are intended to form part of the Contract Documents. AIA Document A201-2009, including but not limited to bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

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*Handwritten initials/signature*



This Agreement entered into as of the day and year first written above.

West Virginia Supreme Court of Appeals

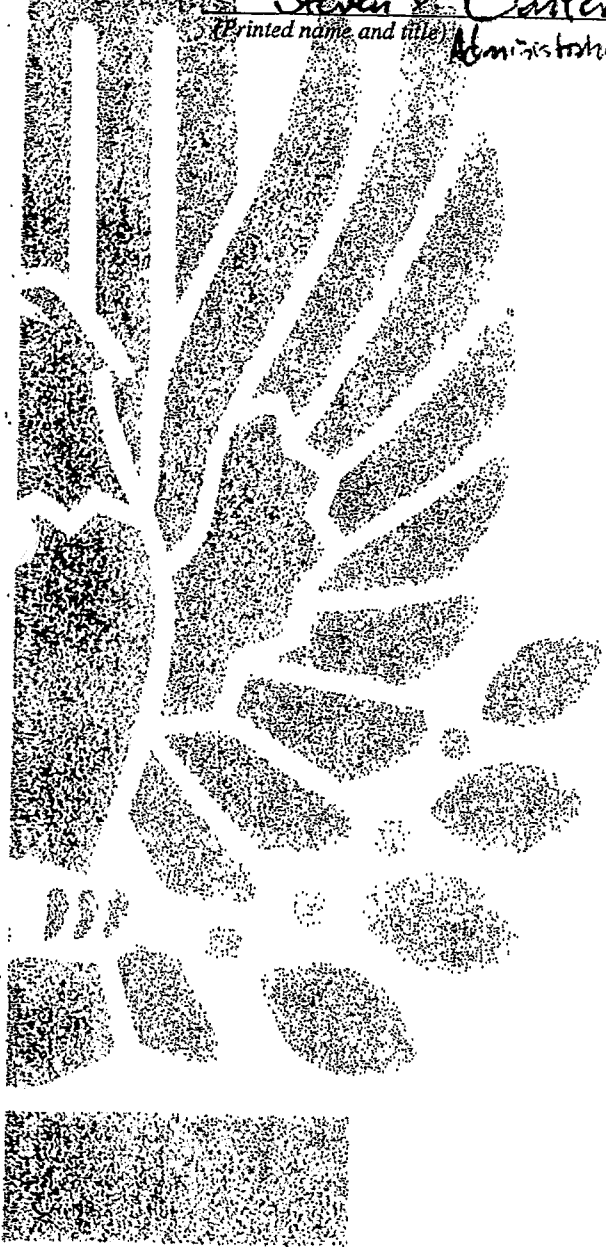
Neighborgall Construction Company

*Steven D. Canterbury*  
OWNER (Signature)

*C. R. Neighborgall, IV*  
CONTRACTOR (Signature)

Steven D. Canterbury  
(Printed name and title) Administrative Director

C. R. Neighborgall, IV, President  
(Printed name and title)



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*SJC/AM*

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