

CITY OF BETHLEHEM
CONSTRUCTION CONTRACT AGREEMENT

1. **AGREEMENT:** This Contract is made this _____ day of _____, 2014, between BARAKET CONCRETE CONSTRUCTION, P. O. Box 250, Catasauqua, Pennsylvania, 18032, Party of the First Part, hereafter referred to as the "Contractor," and the CITY OF BETHLEHEM, a municipal corporation and City of the Third Class of the Commonwealth of Pennsylvania, domiciled in and with its principal offices and place of business situated at 10 East Church Street, Bethlehem, Northampton County, Pennsylvania, 18018, Party of the Second Part, hereafter referred to as the "City." The parties agree that the following terms and conditions shall govern this Agreement, as set forth herein below in this Section, and as set forth hereinafter in other sections of this Agreement:

- (a) **City Project Number:** The City's Project Number for the work covered by this Agreement is ST-14-C01, "Street Overlays 2014 – CDBG Curb Ramp Upgrades".
- (b) **Completion Time:** The Contractor agrees to complete this work within forty-five (45) consecutive calendar days from the date of the Notice to Proceed.
- (c) **Contract Sum:** The total sum of unit prices for all work required in this Agreement is and shall not exceed the sum of Sixty-One Thousand Dollars and No Cents (\$61,000.00).

2. **SCOPE OF THE WORK:** Contractor will furnish all labor, equipment, materials, scaffolding if applicable, building permits if applicable, hoisting if applicable, transportation, supervision, coordination, communication, shop drawings and storage to complete in a first-class and workmanlike manner all of the work shown on the Drawings and described in City's Specifications and City's Project Number, under the direction and supervision of City's Engineer and/or the City's assigned Independent Design Engineer/Architect (the City's Engineer and the City's Independent Design Engineer/Architect are collectively hereafter referred to as the "City's Engineer"), and shall do everything required by this Agreement, the Specifications, Drawings, City's Project Number and Contractor's Bid Proposal for said Project.

2.1 APPROVALS BY CITY ENGINEER: Unless otherwise expressly provided in the Contract Drawings, Specifications and Addenda, the work must be performed in accordance with the best modern practice, with materials and workmanship of the highest quality, all as determined by, and entirely to the satisfaction of the City's Engineer. Where equipment, materials or articles are referred to in the Specifications as "equal to" any particular standard, City's Engineer shall decide the question of equality. When, and to the extent required by the specifications, or as required by City's Engineer, Contractor shall furnish to City's Engineer, for his approval, full information concerning the materials or articles which Contractor contemplates incorporating in the work, and samples of the materials shall be submitted to City's Engineer, for approval, whenever required by him. Machinery, equipment, materials and articles installed without such approval, shall be at the risk of subsequent rejection.

3. TIME FOR COMPLETION OF WORK: The work to be performed under this Contract shall be commenced on a date to be specified in a written "Notice to Proceed" from City's Engineer to Contractor. The Contractor agrees to complete this work within that number of consecutive calendar days set forth hereinabove in Section 1(b) from the date of the Notice to Proceed. In the event that the Contractor fails to complete the work within said deadline; the Contractor agrees to become liable for any and all liquidated damages that are imposed by the City pursuant to the provisions hereof.

3.1 LIQUIDATED DAMAGES: It is agreed that any delay in the completion of the Project would cause the City to suffer damages, but that those damages would be extremely difficult and impracticable to precisely compute, and therefore the parties have agreed that a reasonable measure of such damages is the sum of \$500.00 per calendar day, which sum the Contractor will pay to the City for each calendar day of delay in the completion of the Project that is not excused by an extension of time granted by the City under the provisions of this Contract. This amount is estimated by City and Contractor to be a reasonable approximation of the City's actual damages, and is agreed to as liquidated damages and not as a penalty. The City may deduct and retain the amount of such liquidated damages out of the monies which may be due or become due to the Contractor under this Agreement.

4. THE CONTRACT SUM: City shall pay Contractor for the furnishing of all materials, equipment and the performance, complete, of all work referred to herein, subject to any additions or deductions provided herein, or which may hereafter be required or provided for

by City, in current funds, a sum not to exceed the aggregate of the unit prices for said work as submitted in Contractor's proposal as set forth hereinabove in Section 1(c).

5. PAYMENTS - Payments shall be made by City to Contractor in the following manner:

(a) If the work to be completed under this contract is being paid for by grant funds, City shall be responsible to pay Contractor only after receipt of the grant funds. The City shall submit invoices from Contractor to the appropriate entity in accordance with the grant agreement. Within fourteen (14) calendar days of receipt of grant funds the same shall be paid to the Contractor. The provisions set forth below regarding the holding of retainage are applicable regardless of whether grant funds are used.

(b) If the work to be completed under this contract does not use grant funds or all grant funds have been expended and additional work is contemplated as part of the Project, payment shall be as follows:

(1) Payments and Retainage: Until fifty percent (50%) of the contract is completed, on or about the 15th day of each month ninety percent (90%) of the value, and after fifty percent (50%) of the contract is completed, ninety-five percent (95%) of the value, said value being based on the contract prices of labor and materials incorporated in the work being contemplated under this contract up to the first day of that month, as estimated by City's Engineer, shall be paid to Contractor, but no payment whatever, or any time, shall be demanded or due, except under the written Certificates of City's Engineer to the effect that such payments have become due, and such Certificates shall, in every instance, be a condition precedent to the right to require payments, and the City's Engineer's decision thereon shall be final. The balance shall be held by the City as retainage.

(2) Additional Retainage in Disputes: In the event a dispute arises between City and Contractor, which dispute is based upon increased costs claimed by Contractor to be occasioned by delays or other actions of another contractor or otherwise, additional retainage in the sum of one and one half (1 1/2) times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the contractor causing the additional claim furnishes a bond satisfactory to City to indemnify City against the claim. All such monies retained by City may be withheld from Contractor until substantial completion of the Contract.

(3) Final Payment: Any payment or payments due Contractor by City shall not bind City to the acceptance of the work performed. The final payment representing retained percentages, shall be made within thirty (30) days following the date of substantial completion of the work included in this Contract, in the manner, form, and time required by this Contract, and the approval and acceptance thereby of City, providing Contractor has submitted, upon request, to City's Engineer, evidence satisfactory to the Engineer that all payrolls, materials, bills and other indebtedness connected with the work have been paid, and that Contractor has executed and delivered to City a Maintenance Bond, with approved corporate surety, to be approved by the City Solicitor, to indemnify and hold harmless City from all damages arising out of defective materials and/or workmanship for a period of one (1) year from the date of completion, approval and acceptance of the work provided for in this Contract. Provided, however, that City may retain one and one half (1 1/2) times such amount as is required to complete any then remaining, uncompleted minor items, which amount shall be certified by City Engineer.

(c) Substantial Completion Definition: Substantial completion shall mean construction that is sufficiently completed in accordance with the contract documents and certified by City Engineer, as modified by Change Orders agreed to by the parties, so that the project can be used, occupied or operated for its intended use. In no event shall a project be certified as substantially complete unless at least ninety (90%) percent of the work on the project is completed.

6. BONDS - Contractor shall furnish City with

(a) Performance Bond: A bond with approved surety, in an amount equal to one hundred percent (100%) of the total contract price, to guarantee the performance of the work, and to indemnify and save City harmless because of Contractor's default in this respect. The Bonding Company must have a rating of B+, A-, A or A+ as determined by Best's Rating Services or an equivalent agency.

(b) Labor and Material Payment Bond: A separate bond, with approved corporate surety, in an amount equal to one hundred percent (100%) of the total contract price, to secure the payment of all material furnished, and all labor performed, under the terms hereof; and

(c) Maintenance Bond: A maintenance bond, in an amount equal to ten

percent (10%) of the total sum of monies due and owing to Contractor by virtue of this Agreement and any additions thereto, or in the amount of One Thousand Dollars (\$1,000.00), whichever amount is the larger sum, to indemnify and save harmless City against all loss or damage arising out of defective materials or workmanship for a period of one (1) year from the date of the completion, approval and acceptance of the Contractor's work by the City. Upon approval of said bond by City's Solicitor, and the filing of same in the Solicitor's Office, City covenants and agrees, within thirty (30) days thereafter, to pay to the Contractor all sums of money retained by City and designated by the parties herein as "retained percentages". If Contractor does not wish to post a one (1) year maintenance bond with City, he must state this, in writing, at the time of the signing of this Contract. If this is the case, the City will retain an amount equal to ten percent (10%) of the total contract sum as the "retained percentage" designated by the parties herein until such time as the one year maintenance period expires and can be authorized to be released and paid to the Contractor.

7. CONTRACTOR'S COVENANTS

(a) Labor and Materials: The Contractor covenants and agrees that all of the materials furnished by Contractor and used on the work herein provided shall be of the very best quality; that all of the work performed shall be executed in the most skillful and workmanlike manner; that all work called for by the Drawings, Specifications, and this Contract, though every item is not particularly shown on the first, nor mentioned in the second, shall be executed and performed as though such work were particularly shown and mentioned in each respectively, unless otherwise specifically provided; that Contractor will make any omissions from, or additions to, the work or materials herein provided for, whenever required by City, the valuation of such work and materials, if not agreed upon, to be determined on the basis of the Contract unit prices of materials and the work referred to, or in the absence of such unit of value, on prevailing market rates, which market rates, in case of dispute, are to be determined by City's Engineer, whose decision, with reference thereto, shall be binding upon the Contractor and City; and that no claims for damages on account of such changes, or for anticipated profits, shall be made or allowed.

(b) Change Orders In Written Form Only: Contractor covenants and agrees that no claims for compensation for extra and/or additional materials or work are to be made or allowed, unless the same be specifically agreed upon by change order, in writing, by City, and

that no additions to, or omissions from, the work herein specifically provided for; shall make void or affect the other provisions or covenants of this contract. The difference in the cost thereby occasioned, as the case may be, shall be added to, or deducted from, the amount of the contract. In the absence of an express agreement, or provision, to the contrary, no addition to or omission from, the work herein specifically provided for shall be construed to extend the time fixed herein for the final completion of the work.

(c) Changes in Quantity of Work - Hardship: Contractor further covenants and agrees that where quantities originally contemplated are so changed that application of the agreed price to the quantity of work performed is shown to create a substantial hardship to the City or to Contractor, there shall be an equitable adjustment of the Contract to prevent such hardship, which adjustment shall be subject to mutual agreement of the parties and must be agreed to, in writing, to be binding on the City.

(d) Inspections By City: Contractor covenants and agrees that all of the materials furnished by Contractor, and the work done under this Contract by Contractor, shall be subject to the inspection of City's Engineer, and such Assistants as he may designate, with the right to reject any and all work, or materials furnished, not in accordance with this contract, and the decision of City's Engineer, as to quality and quantity, shall be final.

(e) Defective Work: Contractor covenants and agrees that Contractor will, at Contractor's own expense, within a reasonable time to be specified by City's Engineer, remedy or remove any defective or unsatisfactory materials furnished, or work performed, and that in the event of the Contractor's failure immediately to proceed and faithfully continue so to do, City may have the same done, and charge the cost thereof to the account of Contractor.

(f) No Waivers by City: Contractor covenants and agrees that until final inspection and acceptance of, and payment for, all of the materials furnished by Contractor, and the work herein provided for, no prior inspection, payment or act is to be construed as a waiver of the right of City to reject any defective work or materials furnished by Contractor, or to require the fulfillment of any of the terms of this Contract.

(g) Default by Contractor: Contractor covenants and agrees that if Contractor shall fail to complete the work herein contracted for, or any part thereof, in accordance with this Contract, within the time herein provided for, or shall fail to prosecute said work with such diligence as, in the judgment of City's Engineer, will insure the completion of said work within

the time provided for by the City's Engineer, City may withhold all payments for work in place until final completion and acceptance of the same, and City is authorized and empowered, after five (5) days due notice, in writing, served personally upon, or left at the shop, office, or usual place of abode of Contractor, or Contractor's agent, and Contractor having failed to take such action within said five (5) days as will, in the judgment of City's Engineer remedy the default for which said notice was given, City may in its sole discretion terminate this Contract and/or take possession of the work in whole or in part, and, of all machinery and tools employed thereon, and all materials belonging to Contractor delivered on the site, and, at the expense of the Contractor, to complete, or have completed, said work, and to supply or have supplied, all labor, materials, and tools of whatever character necessary to be purchased or supplied by reason of the default of Contractor, in which event Contractor shall be further liable for any damages incurred through such default, and for any and all other breaches of this Contract.

(h) No Assignment: Contractor covenants and agrees that Contractor will not assign the whole, or any part of, the within Contract without the prior written consent of and approval of the City.

(i) Inspection of Records: Contractor covenants and agrees that Contractor shall check all labor and materials entering into the work and shall keep such full and detailed accounts as may be necessary for proper financial management under this Contract and the system of accounts shall be such as is satisfactory to City's Engineer. City's Engineer, the Federal and/or State agency providing funding for this project, the Comptroller General of the United States, or any of their duly authorized representatives shall be accorded access to all Contractor's books, records, correspondence, instructions, drawings, receipts, vouchers, memoranda, etc. relating to this Contract, and Contractor shall preserve all such records for a period of three (3) years after the final payment hereunder.

(j) Compliance with Laws: Contractor covenants and agrees that Contractor shall comply with applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857[h]), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency Regulations (40 C.F.R. Part 15).

(k) Compliance with Energy Conservation Plan: Contractor covenants and agrees that Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with

the Energy, Policy and Conservation Act (Pub. L. 94-163).

8. INDEMNITY: Contractor shall defend, indemnify and hold harmless the City, its agents, servants, workmen, officials, officers and employees, the City's Engineer and the City's Independent Design Engineer, fully and completely from all loss, claims, suits, damages, fines, penalties, expenses and attorneys fees arising out of bodily injury, personal injury or death, or damage to or destruction of property arising out of or encountered in connection with the performance of any work provided for in this Contract, regardless of whether such is due in whole or in part or claimed to be due in whole or in part to any negligence or active negligence or passive negligence or fault of the Contractor and/or City and/or the City's agents, servants, workmen, officials, officers and employees.

9. CONTRACTOR'S RISK: Contractor agrees that the work shall be, in every respect, at the risk of the Contractor until completed, approved, and finally accepted by City.

10. TITLE TO THE WORK: Contractor agrees that the title to all work completed and in the course of construction, and to all materials on account of which any payment has been made, shall be in the City.

11. INSURANCE: Contractor covenants and agrees that before the commencement of the work herein provided for, that Contractor is protected by the following types of insurance issued by insurance carriers having an A.M. Best rating of B+ or better:

- (a) Workmen's Compensation Insurance with statutory limits of liability;
- (b) Employer's Liability Insurance;
- (c) Public Liability Insurance, including contractual liability to insure, among other obligations, Contractor's indemnity obligation set forth in Section 8 hereof with minimum limits of liability of \$1,000,000 combined single limit;
- (d) Such other insurance, fire or other, as will indemnify and protect City and Contractor insofar as their respective interests may appear.

11.1 ADDITIONAL INSUREDS: City of Bethlehem and its Independent Design Engineer/Architect, if any on this project, shall be named as additional insureds on all insurance contracts of Contractor in effect during the lifetime of this Contract, and none of such insurance contracts and/or endorsements and/or Certificates of Insurance naming the City and the Independent Design Engineer/Architect as additional insureds may be cancelled or materially

altered except after thirty (30) days advance written notice by the insurer to City. Duly authenticated Certificates of Insurance evidencing the required insurance coverage shall be provided to and approved by the City Solicitor prior to the commencement of work hereunder.

12. CONTRACT DOCUMENTS: The Contractor declares and asserts that Contractor has read and understood each and every sentence and clause in each of the following and that the following are incorporated in this Agreement by reference and made a part hereof as if fully set forth hereinafter at length:

- (a) All public advertisements by City relative to the work contemplated herein, including City's Advertisements for Bids and City's Instructions, Information and Requirements for Bidders;
- (b) Plans and Specifications, including any Supplemental Plans and Specifications, Addenda and Instructions to Bidders;
- (c) General conditions relating to the Contract and the work;
- (d) Contractor's Bid Form of Proposal for the work contemplated herein;
- (e) City's Acceptance of Contractor's Bid Proposal;
- (f) All standard Contract provisions appearing in all Plans and Specifications;
- (g) All Provisions in this Contract;
- (h) Contractor's Performance Bond in an amount equal to one hundred percent (100%) of the total contract sum; The Bonding Company must have a rating of B+, A-, A or A+ as determined by Best's Rating Services or an equivalent agency;
- (i) Contractor's Labor and Material Payment Bond in an amount equal to one hundred percent (100%) of the total contract sum;
- (j) Contractor's Maintenance Bond as provided in Section 6(c) hereof;
- (k) All applicable provisions required by the Statutory Laws of the Commonwealth of Pennsylvania, or City's Ordinances, required to be inserted in this Contract; whether actually inserted herein or not; and
- (l) Commonwealth of Pennsylvania, Department of Labor and Industry Prevailing Minimum Wage Predetermination; each of said Documents being made a part hereof with like force and effect as though actually copied herein at length.

12.1 COMPLIANCE WITH ALL LAWS - SAFETY: Contractor shall obey and conform to all federal, state, and local laws, regulations, and directives, including environmental protection statutes and regulations. Contractor shall ensure that it, its employees, agents, invitees, and lower-tier subcontractors and their employees, agents, and invitees, while at the project site, will comply with all applicable health and safety laws, rules, and regulations of all governing bodies having jurisdiction over the work or any part thereof including, without limitation, the Occupational Safety and Health Act of 1970 and the rules and regulations issued pursuant thereto.

12.2 INJURY PREVENTION: Contractor shall take all reasonable measures to prevent injury to persons or damage to any property on City's premises, or in the vicinity thereof, as a result of Contractor's performing the work, including, but not limited to: (1) all necessary steps to prevent fires; (2) the furnishing of fences, flagmen, warning signs, and barricades; (3) all necessary steps to eliminate excessive dust or smoke emission; (4) all steps necessary to protect overhead and underground utility lines, pipes, conduit, or cables; and (5) all steps necessary to protect existing work or work in progress by City or others. Should City request that Contractor take additional safeguards but Contractor fails to do so, City may provide such safeguards and Contractor shall reimburse City for the costs thereof.

12.3 FIRST AID: Contractor shall make its own arrangements to supply first aid to anyone who may be injured in connection with the work.

12.4 SAFETY COORDINATOR: Contractor shall designate one of its employees to work as Safety Coordinator. The Safety Coordinator shall be responsible for safe working conditions and compliance with all applicable safety laws, rules, regulations, and directives. Contractor shall submit, in writing to City, the name of Contractor's current Safety Coordinator.

13. OFFSETTING ACCOUNTS: Contractor stipulates and agrees that City may deduct, retain and offset against any and all amounts payable to Contractor under this Contract, any and all amounts owed by Contractor to City on account of any and all contracts, obligations, accounts, liens, judgments and/or any other thing or matter, whether the same is/are related or unrelated to this contract, regardless of amount.

14. GOVERNING LAW, VENUE AND LIMITATION OF ACTIONS: This Agreement shall be governed by and construed in accordance with the laws of the

Commonwealth of Pennsylvania. The exclusive venue for resolution of all disputes, claims and actions, whether the same involves litigation, arbitration or otherwise, shall be in Northampton County, Pennsylvania, only. Any and all civil actions and demands for arbitration by Contractor against the City pertaining to this Agreement and/or anything related thereto shall be subject to the following time limitation: civil actions must be commenced, and demands for arbitration must be filed with the American Arbitration Association, within six (6) months, it being the intent of the parties that this provision shall supercede any inconsistent statutory limitation period. This limitation of action provision shall not however apply to any civil actions and/or demands for arbitration by City against Contractor.

15. SEVERABILITY OF TERMS: If any of the terms of this agreement are subsequently or now illegal, they may be severed from the agreement without affecting the remaining terms.

16. NO WAIVER: No action, failure of action, or delay by City shall constitute a waiver of any of City's rights or remedies under this agreement.

17. HEADINGS: The headings used in this agreement are meant only as guidelines and are in no way to be considered controlling as to the content or interpretation of this agreement.

18. DISPUTE RESOLUTION: For all claims, disputes and actions, City may, at its sole option, either demand and require that the same be litigated in the Court of Common Pleas of Northampton County, or demand and require non-binding mediation under the auspices of and in accordance with the then applicable mediation rules and guidelines of the American Arbitration Association, and/or arbitration in front of a three (3) member arbitration panel under the then applicable Arbitration Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitration panel may be entered in the Court of Common Pleas of Northampton County, Pennsylvania. Election by the City of mediation and/or arbitration shall operate as an automatic stay of any litigation filed by the Contractor. The costs of any mediation and/or arbitration shall be borne equally by the parties.

19. LIMITATION ON DAMAGES: In the event of any claims, disputes, actions or arbitrations, by Contractor against City, Contractor waives and relinquishes any and all claims for consequential damages, damages for delay and damages for acceleration.

20. ENTIRE AGREEMENT: This agreement sets forth the entire agreement between

City and Contractor. No agreements or understandings shall be binding on either of the parties hereto unless specifically set forth in this agreement. Written amendments can be set forth subsequent to the execution of this agreement provided such are signed by duly authorized representatives of City.

21. TRUE INTENT: The contract, plans, specifications and other documents and things which form this Agreement, are intended to complement and supplement each other. Any item exhibited in one part of the contract documents shall be performed as if required in all parts of the contract documents. In the case of conflict and/or inconsistency, the higher quality or more stringent requirement will control, and City's instructions will be followed as to the resolution of the conflict.

22. BINDING EFFECT: The parties hereto, intending to be legally bound hereby, covenant and agree that this Contract shall extend to, and be binding upon the parties hereto, their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Contractor and City have caused this Contract to be duly executed and delivered.

ATTEST:

BARAKET CONCRETE CONSTRUCTION

Secretary

BY: _____
(President) (Individual)

ATTEST:

CITY OF BETHLEHEM

City Controller

BY: _____
Robert J. Donchez,
Mayor

The within contract is certified to be needed, necessary and appropriate.

By: _____
City of Bethlehem Department Head
Print Name: Michael Alkhal

