

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Mikell Ross Scarborough, Master-in-Equity

Opinion No. 2020-UP-004 (S.C. Ct. App. Filed Jan. 8, 2020)

Emory J. Infinger and Associates Construction Company, Inc. Respondent

v.

North Charleston Community Interfaith Shelter, Inc., Bobby Knight, in his official capacity as Chairman and President of Board for The Good Neighbor Center, bank of America, N.A., S.C. State Housing and Development Authority, Atlantic Construction Services, Inc., L & W Supply Corporation dba CK Supply, Now Mechanical, Inc., Wilson and Associates Electrical Contractor, Inc., Defendants,

Of which North Charleston Community Interfaith Shelter, Inc. is..... Petitioner

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM THE NINTH CIRCUIT COURT OF COMMON PLEAS
MIKELL ROSS SCARBOROUGH, PRESIDING JUDGE IN CHARLESTON COUNTY

APPELLATE CASE NUMBER: 2016-002366

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July 8, 2018

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ISSUES ON APPEAL

1. Did the trial court err in hearing the mechanic's lien claim, which was time barred under *S.C. Code* §29-5-90?
2.
 - A. Did the trial court err in granting Respondent a judgment on a breach of contract claim when the Respondent was also in breach of the contract?
 - B. Did the trial court err in proceeding to trial after Appellant demanded arbitration pursuant to the parties' Contract?
3. Did the trial court err in granting sum certain damages, a portion of which, were not specified?

STATEMENT OF THE CASE

Defendant's grant for the construction of the shelter was approved in 2008 (R. pp. 53-4). Plaintiff and Defendant had their first meeting to discuss the construction of the shelter in July of 2010 (R.). Plaintiff and Defendant entered into a contract to construct the shelter on Dec. 10, 2010 (R. p. 2). Construction did not begin immediately; it was delayed until the State approved its grant for the shelter (R. p. 53 lines 12 - 21). The Defendant gave its notice to Plaintiff to proceed with construction in March of 2011 (R. p. 3). Design, and construction of the shelter, began in June of 2011 (R. p. 124 lines 7 - 19). Plaintiff was aware that the project was to be financed by the Veteran's Administration ("VA") and the South Carolina State Housing authority ("State Housing") (R. p. 53 line 18 - p. 54 line 15). Plaintiff was aware that the funding was split with the VA providing sixty-five (65%) percent and State Housing providing thirty (35%) percent (R. p. 11). Funding issues for the project were apparent as early as Aug. 30, 2011 (R. p. 124 lines 17 - 25). Construction continued until Plaintiff issued a "stop work" letter to its subcontractors; informing them to cease construction on the project on Nov. 7, 2011 (R. p.23, para. 15). Plaintiff is required to file its certification of mechanic's lien within ninety (90) calendar days from the last date of construction. Ninety (90) calendar days from Nov. 7, 2011 is Feb. 5, 2012. Plaintiff did not file its certification of the mechanic's lien until Feb. 6, 2012 (R. p, 24, paras. 20 -21).

The contract between Plaintiff and Defendant requires that any claim, as defined by § A.4.1.1 of the contract, be initiated within 21 days after the occurrence of the event giving rise to the claim or within 21 days after the claim first recognizes the condition giving rise to the claim, whichever is later (R. p. 195, § A.4.1.1-A.4.1.2). The contract also requires that the builder

submit to the owner a schedule of values allocated to the various portions of the work (R. p. 201 § A.9.2.1). Unless objected by the owner, the schedule was to be used as the basis for reviewing the builder's application for payment (R. p. 202 § A.9.2.3). Should the owner fail to make a payment, the contract allowed the builder, with seven day's written notice, to cease construction and extend the contract time (R. p. 204 § A.9.7.1). The only written notice given by the Plaintiff was the Nov. 7, 2011 "stop work" order to its subcontractors (R. p. 113 line 14 – p. 114 line 3). The delay in payment would entitle the builder to increase the contract sum to include any reasonable costs incurred due to a shutdown, delay, and start-up, plus interest (R. p. 204 § A.9.7.1). The funding and issues regarding payment were known to the Plaintiff as early as Aug. 30, 2011 (R. p. 124 lines 16 - 20). Despite the Plaintiff's knowledge of the ongoing funding issues, it made no notice or demand on the Defendant until Dec. 26, 2011, well outside the 21-day deadline imposed by the contract (R. p. 284 and p. 195 § A.4.1.2).

The contract also requires that any claim must first be referred to a Neutral for a decision (R. p. 195 § A.4.2.1). If no Neutral is identified, the Owner must provide the initial decision (R. p. 195 § A.4.1.2). The initial decision, subject first to mediation, shall be binding (R. p. 195 § A.4.1.3). Requests for mediation may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution, but mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for 60 days from the date of filing (R. p. 197 § A.4.3.2). Any claim not resolved by mediation shall be subject to arbitration (R. pp. 197-8 § A.4.4-4.4.1). The Plaintiff was permitted to pursue a mechanic's lien in compliance with applicable law while awaiting the resolution of any claim subject to arbitration or mediation (R. p. 197 § A.4.2.5).

The contract required that the Design-Build payments be based on the amount of materials and equipment delivered and suitably stored at the site for incorporation in construction (R. p. 202 § A.9.3.2). Any payment for material suitably stored off the site had to be agreed upon in writing (R. p. 202 § A.9.3.2).

DISCUSSION

I. SUBJECT MATTER JURISDICTION OF MECHANIC'S LIEN CLAIM (SCRCP Rule 12(b)(1))

The Plaintiff ceased providing labor or materials to the project site on or before November 7, 2011. *S.C. Code §29-5-90, Code of Laws of South Carolina 1976*, as amended, provides in pertinent part:

Such a lien shall be dissolved unless the person desiring to avail himself thereof, within ninety days after he ceases to labor on or furnish labor or materials for such building or structure, serves upon the owner or...upon the person in possession and files in the office of the register of deeds or the clerk of court of the county in which the building or structure is situated a statement of a just and true account of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien sufficiently accurate for identification, with the name of the owner of the property, if known, which certificate shall be subscribed and sworn to by the person claiming the lien or by someone in his behalf and shall be recorded in a book kept for the purpose by the register or clerk who shall be entitled to the same fees therefor as for recording mortgages of equal length....

Thus, ninety (90) days after November 7, 2011, the trial was court's subject matter jurisdiction to grant mechanic's lien was extinguished. That date was February 5, 2012, the day before the Plaintiff's Notice/Certificate of Mechanic's Lien was filed with the Register of Deeds in Charleston County, South Carolina. This defect is fatal and uncorrectable. Further, the clear meaning of the statute dictates that it operates to dissolve any lien claim without any act or affirmative action by the Owner.

The Plaintiff's complaint avers in paragraphs 20 and 21:

20....Plaintiff filed, in accordance with S.C. Code§29-5-20, a Mechanic's Lien on the Property on February 6, 2012, 2012 (sic) in the Register Mesne Conveyance in Book O-232, at Page 031....

21. Upon information and belief, said Mechanic's Lien was served on the Good Neighbor Center, the owner of the Property, within ninety (90) days of the last furnishing of labor and construction materials by the Plaintiff to the property. (R. p. 24 paras. 20 - 1).

The Defendant's timely filed answer provides:

14. These Defendants lack sufficient information with which to admit or deny the allegations of paragraphs 20, 21...of the Complaint and deny those allegations.... (R. p. 37 para. 14).

32. These Defendants plead the statute of limitations.... (R. p. 39 para. 32).

37. Plaintiff is barred from relief to the extent that it has unclean hands and/or engaged in any improper, unlawful, illegal, fraudulent and/or prohibited act.... (R. p. 40 para. 37).

40. These Defendants plead the statute of limitations and/or laches to the extent that Plaintiff untimely filed suit.... (R. p. 40 para. 40)

44. Doctrines of waiver and/or estoppel bar Plaintiff's claims against these Defendants.... (R. p. 41 para. 44).

49. Plaintiff's claims are barred to the extent that it lacks standing. (R. p. 42 para. 49).

Clearly, this issue was joined in the pleadings; however, the trial court erred in its conclusions of law, specifically:

11. Under S.C. Code §29-5-10, a mechanic who contracts directly with the owner, or his agent has a lien in the amount of the debt owed to him under the contract, and the owner is liable to him for the total amount. A claim of lien must be filed no later than 90 days after the last day on which the claimant furnished labor or materials to the project. (R. p. 12 para. 11).
15. On February 6, 2012, less than ninety days from the last day it had provided labor, services or material to the Project pursuant to a written contract with the Shelter, Infinger filed and served, in accordance with S.C. Code §29-5-10, a Mechanic's Lien ("Lien") in the amount of \$196,412 on the real property commonly known as 1905 Burton Lane a/k/a 2713 Spruill Avenue in North Charleston, South Carolina with TMS No. 466-03-00-097. Infinger's Lien was recorded in the Charleston County Register Mesne Conveyance in Book O 232 at Page 031. (R. p. 12 para. 15).
17. Accordingly, Infinger has established a lien in the amount of \$196,412. (R. p. 12 para. 17).

The trial record is devoid of any evidence to support the proposition that any labor or material were delivered to the job site after November 7, 2011. Thus, no lien was available to the Plaintiff in this action once its lien dissolved on February 5, 2011. This conclusion is logically inescapable.

Further, any attorney fee award to the Plaintiff under the mechanic's lien statute is improper. Moreover, this Defendant is entitled to an award of reasonable attorneys' fees as the prevailing party in the mechanic's lien claim. The Appellant would ask this Honorable Court to remand the issue of Plaintiff's attorneys' fees to the trial court for proper determination.

II. PRIOR BREACH BY PLAINTIFF/FAILURE TO COMPLY WITH CONTRACTUAL TERMS

Where the existence of contract is admitted but parties have differed about proper construction, practical construction by the parties is relevant concerning their intention when contract was made, but the rule cannot be invoked to show existence of partly written and partly oral contract. *Hudepohl Brewing Co. V. Bannister*, 50 F. Supp. 422 (D. C. S. C. 1943). When determining whether a contract exists, the intention of the parties should be determined from the testimony of all witnesses, and subsequent acts are relevant to show whether the contract was intended. *Wright v. Trask*, 495 S.E. 2d 222, 329 S.C. 170 (S.C. App. 1997). Under S.C. law, assent to proffered terms and conditions need not be express, but may be inferred from parties' conduct. *Laidlaw Environmental Services (TOC), Inc. v. Honeywell, Inc.*, 966 F. Supp. 1401, Affirmed 114 F. 3d 1232 (D.S.C. 1996). Finally, if [an] agreement is manifested by words, resulting contract is said to be "express", if it is manifested by conduct, it is said to be "implied". *Wade v. Brooks*, 413 S.E. 2d 33, 306 S.C. 553, Cert. Den. (S.C. App. 1992).

The contract controlling the relationship between these parties was freely and voluntarily entered into on December 10, 2010. (R. pp. 175 - 213). It defined the Design-Builder in Article A.1 and the Owner in Article A.2. (R. p. 176 § A.1 and A.2). The agreement set forth a method of dispute resolution in Article A.4 and a payment process in Article A.9. (R. pp. 177 - 178 § A.4 and R. pp. 202 - 5 § A.9).

From the outset this project faced challenges. Financing was being provide by two (2) separate government sources: the Veterans Administration (“VA”) and the South Carolina State Housing Authority (“State Housing”). (R. p. 53 line 18 - p. 54 line 15). All parties were aware that at the time of contracting the construction funding was to be split with the VA providing sixty-five (65%) percent and State Housing providing thirty-five (35%) percent. (R. p. 11). While the contract provided that the Owner was to pay the Design Builder, it was apparent from the outset that funding was actually passing through the Owner as a conduit to the Design Builder as work was to progress.

Issues arose concerning items not initially included in the design work through oversight or inadvertence. Additional issues arose when a different VA funding program issuing funds to the Owner for a different purpose triggered an audit of the Owner. This imperiled continued VA financing of this project.

However, the Design Builder continued to work through short payments and delayed payments until November 7, 2011 when it issued a “stop work” order to its subs. (R. p. 113 line 14 - p. 114 line 3). The timing here is key.

The contract provides in pertinent part:

Article A.4 Dispute Resolution

§A.4.1 CLAIMS AND DISPUTES

§A.4.1.1 Definition. A claim is a demand or an assertion by one of the parties seeking, as a matter of right,...payment of money....

§A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such

claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

The first notice/demand issued by the Plaintiff, even after knowing for months that payment issues were growing, occurred on December 26, 2011. (R. p. 284). Thus, no claim prior to December 5, 2011 is viable. That is arguably the earliest “whichever is later” condition could occur. Failure to comply with the time deadlines imposed for this administrative remedy is fatal to the Plaintiff’s breach of contract claim. The only viable claim available to the Plaintiff is for work or services provided after December 5, 2011.

The contract cannot logically allow the Plaintiff’s submission under Article 9 of a payment schedule to constitute “a claim” as set forth in Article 4. To do so, would expose the Design Builder to loss of a claim every month of the first week or so of work performed (months with 30 days through day 8; months with 31 days through day 9 and months with 29 days through day 7). Thus, something more must be required of the Design Builder in the way of filing a claim under Article 4 in compliance with terms of the express contract between the parties. Exactly what constitutes the filing of a claim is a matter of conjecture, but the only document sent by the Plaintiff and directed to the Owner in the record is the December 26, 2011 letter.

These issues were joined in the pleadings. Appellant again refers to the Complaint paragraphs 27, 28 and 29 and it’s Answer paragraphs 17, 33, 35, 37, 40,

43, 44 and most especially 55. (R. p. 25 para. 27 - 29; p. 37 para. 17; p. 39 paras. 33 and 35; p. 40 paras. 37 and 40; and p. 43 para. 55).

Assuming *arguendo* that the Respondent posits the November 7, 2011 “stop work” order satisfies Article 4.1.2 “claim”, the Appellant would again urge that said document is not directed to the Owner, but rather to the subs. Even an overly broad interpretation of that document would only entitle the Plaintiff to work performed and materials provided after October 21, 2011.

At best, the Plaintiff breached the contract in bringing its dispute for breach of contract before exhausting its contractual remedies. The clarity of this position is buttressed by the inclusion of §A.4.2.5 which envisions a mechanic’s lien claim in addition to a breach of contract claim under this Agreement:

§A.4.2.5 If a Claim relates to or is the subject of a mechanic’s lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim. (R. p. 197 § A.4.2.5).

This allows a mechanic’s lien claim to proceed while the breach of contract dispute remains subject to the dispute resolution regime set forth in the parties’ Agreement. Mechanic’s lien claims are also subject to arbitration. ***General Equip. & Supply Co. v. Keller Rigging and Constr. S.C., Inc.***, 344 S.C. 553 (S.C. App. 2001).

§A.4.2 RESOLUTION OF CLAIMS AND DISPUTES sets forth two (2) alternate procedures for resolving claims: (1) Decision by a Neutral (§A.4.2.1) or (2) Decision by Owner (§A.4.2.2). (R. p. 197 § A.4.2.1 and § A.2.2). The record is devoid of any “Neutral”. Thus, §A.4.2.2 must control and provides in pertinent part:

...[T]he Owner shall provide an initial decision. An initial decision by the Owner **shall** be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner. (R. p. 197 § A.4.2.2).

Here, no claim was properly filed by the Plaintiff with the Owner until December 26, 2011 or, at best for the Plaintiff, on November 7, 2011. No pre-filing mediation was held in compliance with §A.4.3, nor was there any pre-filing Arbitration in compliance with (§A.4.4. R. pp. 197 - 8 § A. 4.3 and § A.4.4)

Pursuant to the Administrative Order requiring mediation in all non-exempt filed cases in the Court of Common Pleas, this matter was mediated post-filing. It is Appellant's contention that this did not "cure" the breach of the Plaintiff moving forward to litigation in derogation of the contract provisions requiring mediation and subsequent arbitration if mediation was unsuccessful. The Plaintiff herein skipped all its contractually-mandated remedies and proceeded to trial in breach of the very contract it seeks to enforce in this action.

III. LACK OF SPECIFICITY OF DAMAGES/FAILURE TO MITIGATE

The contract between the parties provides in §A.9.3.2:

Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payments may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

In reviewing the trial record, it is devoid of a breakdown between materials "incorporated into the structure" and materials "stored". It is neither itemized by piece goods, nor by economic value. Further, the contract language requires "payment for materials...shall be conditioned upon compliance...with procedures satisfactory to the Owner..." No procedure was even posited by Plaintiff's agent(s), much less a demonstration that Plaintiff had complied with the Owner's specified procedure. This brings the entire calculation of damages into question. You cannot simply assert that one subtotal is unspecified and that somehow the total does not become infected with the variable.

The trial court determined that Defendant's "expert" was "invading the province of the Court". Appellant contends this decision was misguided. Thus, should this Honorable Court determine the failure to comply with the dispute resolution regime is not fatal to the Plaintiff's breach of contract claim,

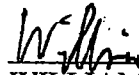
the Appellant would ask the Court to remand this damages issue to the trial court for a proper damage determination with specificity, if possible.

CONCLUSION

Based on the foregoing, this Honorable Court is compelled: (1) to overturn the trial court's verdict in favor of the Plaintiff on its mechanic's lien claim, (2) remand the case or controversy to the trial court for a proper determination of the Plaintiff's attorneys' fees and award same to the Defendant; (3) to dismiss the Plaintiff's breach of contract and *S.C. Code* §29-5-10 claims or, in the alternative, (4) remand these causes of action for mandatory arbitration.

Respectfully submitted,

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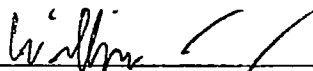
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APPELLANT'S COUNSEL'S CERTIFICATION
AS TO APPELLANT'S BRIEF

I certify that the Brief of Appellant mailed to the Honorable South Carolina Court of Appeals in this matter complies with SCACR 211(b) and contains no matter which was not included in the Appellant's Initial Brief other than as allowed under SCACR Rule 211(b).

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RESPONDENT'S FINAL BRIEF

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in hearing the mechanic's lien claim?
- II. Did the trial court err in granting Respondent a judgment on its breach of contract claim and awarding it specified damages pursuant to the contract of the parties?
- III. Did the trial court err in denying Appellant's day of trial demand for arbitration?

STATEMENT OF THE CASE

This is a straight-forward case involving a property owner's failure to pay its contractor the amount due pursuant to the terms and conditions of a written contract.

On February 6, 2012, Respondent, Emory J. Infinger & Associates Construction Company, Inc. ("Infinger") filed and served a mechanic's lien against North Charleston Community Interfaith Shelter (the "Shelter") arising out of the general construction of a new dormitory building (the "Project") located at 1905 Burton Lane a/k/a 2713 Spruill Avenue in North Charleston, South Carolina (the "Property"). Infinger foreclosed its lien by filing a Lis Pendens, Summons and Complaint on May 1, 2012 ("Infinger's Lawsuit"). In conjunction with its filing, Infinger mailed a certified letter to the Shelter pursuant to S.C. Code §27-1-15 demanding payment of \$196,412 due for work performed at the Property. The Shelter and Good Neighbor Center accepted service of the Lis Pendens and Complaint on May 7, 2012. Defendants Bobby Knight, The Good Neighbor Center and North Charleston Community Interfaith Shelter filed an Answer to the Complaint on July 18, 2012. The S.C. State Housing Finance and Development Authority ("Housing Authority"), a defendant by virtue of its mortgage on the Shelter's Property, filed an Answer to the Complaint on January 14, 2013. Infinger joined many of its subcontractors on the Project and other interested entities as additional defendants by virtue of their respective interests in the Property.

Many of Infinger's subcontractors on the Project filed their own liens and foreclosure actions against the Property, and in those actions included breach of contract and payment bond claims against Infinger. The subcontractor's actions were consolidated into Infinger's Lawsuit by Order dated August 14, 2013. On October 8, 2013, the Court entered a Scheduling Order in Infinger's Lawsuit requiring mediation before November 11, 2013, discovery to be complete by November 22, 2013, dispositive motions to be filed no later than November 29, 2013, and trial on or after December 16, 2013.

The Shelter deposed Infinger's 30 (b) (6) corporate designee on November 7, 2013. The case was mediated on November 20, 2013. Many of the parties settled at the mediation; however, the entire case was not resolved and Infinger's Lawsuit continued. On March 13, 2014 the Court entered a Form 4 Order transferring the case to the Master-in-Equity. A Mutual Stipulation of Dismissal of certain parties and certain claims was filed on August 5, 2014 dismissing all parties and claims from the case except for Infinger, the Shelter and the Housing Authority. On October 29, 2014 the Court issued a Form 4 dismissing the case for failing to pay the filing fee to Master-in-Equity. The case was restored by Entry of Order on November 25, 2014.

On March 3, 2015, the Court granted the Shelter's counsel's motion to be relieved, and gave the Shelter until May 1, 2015 to retain new counsel. The Shelter obtained new counsel and Infinger's Lawsuit continued. The case was scheduled for trial in September 2015. On September 28, 2015, the Master granted the Shelter's motion for a continuance, gave the Shelter (at its request) until November 6, 2015 to reach a settlement with Infinger, and scheduled trial for December 2015 if no agreement could be reached.

The Shelter filed a motion for summary judgment on November 23, 2015 asserting five grounds upon which it was entitled to judgment as a matter of law, and filed a motion to amend its answer to assert additional defenses. The trial was scheduled for December 8, 2015. The Shelter's motion for summary judgment and motion to amend its pleadings to assert additional affirmative defenses were heard on the morning of December 8, 2015 prior to trial. The Master denied the Shelter's motion for summary judgment, except as to ground number three which he found moot due to the prior dismissal of the claims against Defendant Bobby Knight individually. The Master granted the Shelter's Motion to Amend its Answer. During pre-trial motions the Shelter requested that the Master order the parties to arbitrate the dispute. The Shelter's motion was denied. The case was tried on December 8, 2015 following the disposition of pre-trial motions.

The Master issued his final Order dated March 11, 2016 granting judgment to Infinger in the sum of One Hundred Ninety-Six Thousand Four Hundred Twelve and 00/100 (\$196,412.00) Dollars, attorney's fees of Thirty-Three Thousand Four Hundred Eighty-Five and 97/100 (\$33,485.97) Dollars and costs of One Thousand Four Hundred Fifty and 74/100 (\$1,440.74) Dollars, which Order was filed March 18, 2016. Appellant's Motion for new trial and motion to reconsider were denied. A notice of appeal was filed.

STATEMENT OF THE FACTS

The Shelter entered an agreement (the "Agreement") with Infinger dated December 10, 2010 for the design and construction of a building located at 1905 Burton Lane a/k/a 2713 Spruill Avenue in North Charleston, South Carolina (the "Project"). R. p. 51, line 15 - p. 53, line 4. Pursuant to their Agreement, and in consideration of the labor, services and materials to be provided by Infinger, the Shelter agreed to pay Infinger a total Contract Sum of \$799,456 as modified by executed change

orders. R. p. 174-221. From March 1, 2011 through September 9, 2011 the Shelter approved Change Orders 1 - 6 to the Agreement which increased the Contract Sum from \$799,456 to \$920,333. R. p. 118, line 2 - p. 122, line 3.

The Shelter's primary funding sources for the construction of the Project were a United States Department of Veterans Affairs ("VA") capital grant and a loan from the Housing Authority. R. p. 122, lines 4-11. Upon receiving Payment Applications from Infinger, the Shelter requested draws from the VA and the Housing Authority. R. p. 122, line 4 - p. 124, line 6. In or around November 16, 2011 the VA suspended the funding of draw requests made by the Shelter for the construction work by Infinger based on the increased costs of the Project and the Shelter's inability to provide matching funds for the increased grant funds it was requesting. R. p. 125, line 24 - p. 126, line 16. As a result of the VA's actions the Shelter told Infinger it would be unable to pay it for the services it was providing to the Project. R. p. 126, lines 13-16; R. pp. 285-286.

Infinger was ready, willing and able to complete construction of the Project but suspended its work as a result of non-payment. R. p. 136, line 14 - p. 137, line 4. Exhibit A to the Agreement at § A.9.7.1 permitted Infinger to suspend the work for the Shelter's failure to pay amounts due under the Agreement. R. pp. 174-221. Infinger mailed a letter to its subcontractors dated November 7, 2011 notifying them of its plan to temporarily suspend the work at the Project due to non-payment. Infinger's subcontractors stopped their work on the day that Infinger mailed its letter or days shortly thereafter. R. p. 113, line 24, p. 114, line 8; R. pp. 17-34 Complaint Para. 20-22 and Exhibit A - Verified Statement. Infinger also recommended that the building be secured and covered in order to protect it from the elements. By letter dated December 26, 2011 to the Shelter, Infinger expressed its continuing concern regarding the exposed condition of the building and recommended that the

rescue option it had previously recommended be undertaken in order to protect the current investment in the unfinished building. R. p. 81, line 7 - p. 82, line 8. Infinger also inquired about the Shelter's plans to continue or abandon the Project. Ultimately, the Shelter was not able to secure additional funding from the VA or other sources in order to continue with the construction and the building remains as it did when construction was suspended in mid-November 2011. R. p. 178, lines 13-16.

Article 5 of the Agreement and § A.9 of Exhibit A to the Agreement set forth the terms and conditions of the pay application process. R. pp. 174-221. Pursuant to those terms and conditions, Infinger submitted nine Payment Applications to the Shelter for labor, services and materials it provided to the Project. Infinger's Pay Applications totaled \$664,215 but it only received payments from the Shelter totaling \$467,803 leaving an unpaid balance of \$196,412. R. p. 83, line 14 - p. 85, line 22. Mr. Knight, the Shelter's Board Chairman and its representative under the Agreement with Infinger, executed all six change orders to the Agreement and did not dispute that Infinger's balance under the Agreement was \$196,412. R. p. 121, line 20 - p. 122, line 3. Rather, Mr. Knight asserted that the balance due Infinger was the responsibility of the VA and/or Housing Authority and not the Shelter.

On February 6, 2012, Infinger filed and served a mechanic's lien against the Shelter arising out of the general construction of a new dormitory building located at 1905 Burton Lane a/k/a 2713 Spruill Avenue in North Charleston, South Carolina. Infinger's Project Manager, David Haun, issued a verified statement of account which was attached to its mechanic's lien verifying that Infinger was due \$196,412, and that ninety (90) days had not elapsed since the last date Infinger had performed work at the Property. R. p. 85, line 23 - p. 86, line 9. Infinger foreclosed its lien by filing

a Lis Pendens, Summons and Complaint on May 1, 2012, within six months of the last labor, services and materials it provided to the Shelter. Infinger mailed a certified letter to the Shelter pursuant to S.C. Code §27-1-15 demanding payment of \$196,412 due under the Agreement. The Shelter accepted service of the Lis Pendens and Complaint on May 7, 2012.

STANDARD OF REVIEW

An action to foreclose a mechanic's lien is an action at law in South Carolina. *Keeney's Metal Roofing, Inc. v. Palmieri*, 345 S.C. 550, 553, 548 S.E.2d 900, 901 (Ct. App. 2001). "In an action at law, tried without a jury, the judge's findings will not be disturbed unless they are without evidentiary support." *King v. PYA/Monarch, Inc.*, 317 S.C. 385, 388-89, 453 S.E.2d 885, 888 (1995). "His findings are equivalent to those of a jury in an action at law." *Id.* at 389, 453 S.E.2d at 888.

An action for breach of contract seeking money damages is an action at law. *Sapp v. Wheeler*, 402 S.C. 502, 507, 741 S.E.2d 565, 568 (Ct. App. 2013). An appellate court will not disturb the master's findings of fact unless the findings are found to be without evidence reasonably supporting them." *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 590, 658 S.E.2d 539, 541-42 (Ct. App. 2008).

It is in the sound discretion of the trial judge to determine whether administrative remedies must be exhausted, and a judge's decision will not be disturbed on appeal absent an abuse thereof. *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994).

Admission of expert testimony is within the sound discretion of the trial judge and will not be overruled absent a finding of an abuse of discretion and prejudice to the complaining party. *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344 (1995).

ARGUMENT

I. This Court should uphold the Master-in-Equity's Judgment in favor of Infinger where the evidence demonstrated Infinger's right to a mechanic's lien.

Infinger is entitled to a mechanic's lien where it filed and served its lien and a sworn verified statement ninety (90) days or less from the last time it provided labor, services or material to the Project, and thereafter commenced and filed its Lis Pendens and Summons and Complaint within six months after the last day it provided labor, services or material to the Project. S.C. Code §29-5-10(a) (2007); S.C. Code §29-5-90 (2007); and S.C. Code §29-5-120 (A) (2007).

The Shelter's argument that the Master-in-Equity lacked subject matter jurisdiction to grant Infinger a mechanic's lien where it allegedly failed to comply with the requirements of the statute is based on a faulty premise. Subject-matter jurisdiction is the "power to hear and determine cases of the general class to which the proceedings in question belong." Dove v. Gold Kist, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). Here, the Master undisputedly had subject-matter jurisdiction to decide this foreclosure action. Rule 53(b) SCRCP. Although the Shelter purports to challenge the jurisdiction of the court to render judgment in favor of Infinger on its mechanic's lien, in reality the Shelter is challenging whether the Master properly exercised his authority given the Shelter's assertion that the mechanic's lien is invalid.

As the Shelter never raised the issue of whether Infinger's mechanic's lien was valid during trial or in any post-trial motion, it is not, therefore, allowed to challenge the validity of the mechanic's lien for the first time on appeal. "It is axiomatic that an issue cannot be raised for the first

time on appeal." *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). An argument not presented to the master on the record is not preserved for appellate review. *See Knight v. Waggoner*, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App. 2004) (stating appellants' justifications for a specific finding were asserted for the first time on appeal and, therefore, were not preserved for appellate review); Rule 210 (c), SCACR (record on appeal shall not include matter which was not presented to lower court). In recently clarifying the law on the presentation and use of additional sustaining grounds in an appeal, the Court emphasized that it did not "mean to dilute the important principle that all parties should raise all necessary issues and arguments to the lower court and attempt to obtain a ruling." *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000).

Moreover, the Shelter mischaracterizes the evidence where it asserts that Infinger ceased providing labor or material to the Project on or before November 7, 2011. The evidence demonstrated that Infinger's subcontractors continued working for days shortly after the letter dated November 7, 2011. Even taken in the light most favorable to the Shelter, the earliest "last date of work" would be on November 8, 2011 thereby making the 90th day on February 6, 2012 not February 5, 2012 as asserted by the Shelter. Additionally, Infinger's project manager authenticated his verified statement attached to Infinger's Complaint and Mechanic's Lien verifying that Infinger's lien was filed within ninety (90) days of the last time it provided labor and/or materials to the Project. Accordingly, the Shelter's assertion that Infinger's lien was dissolved on Sunday, February 5, 2012, the ninety-first (91st) day after the date of Infinger's letter to its subcontractors, is without merit.

As there is clear evidentiary support that Infinger's lien was filed ninety days or less from Infinger's last day of work, the Master's finding should not be disturbed. *See King v. PYA/Monarch*,

Inc., 317 S.C. 385, 388-89, 453 S.E.2d 885, 888 (1995). Likewise, the Shelter's assertion that it was the prevailing party and entitled to attorney's fees on the mechanic's lien claim is without merit. Further, for the reasons set forth above, the Court's award of attorney's fees to Infinger is valid under its lien claim, as well as under Infinger's claim pursuant to S.C. Code §27-1-15 which the Shelter did not appeal.

II. This Court should uphold the Master-in Equity's Judgment in favor of Infinger where the evidence demonstrated that the Shelter failed to pay Infinger for the agreed upon amounts due under the contract.

The Agreement provided for a pay application procedure whereby the contractor would submit a sworn application for payment for the amount due and owing, and the owner would review it and certify the amount due. Infinger submitted nine Payment Applications to the Shelter for labor, services and materials Infinger provided to the Project. The Shelter's Board President certified all nine Payment Applications which totaled \$664,215 and forwarded them to the VA and Housing Authority for payment. Infinger only received payments from the Shelter totaling \$467,803 leaving an unpaid balance of \$196,412. The Shelter's Board President conceded that the only reason Infinger wasn't paid in full was because the VA suspended the Shelter's grant.

The Shelter now contends that Infinger breached the Agreement by filing a mechanic's lien and lawsuit for breach of contract before exhausting its contractual remedies. This argument is posited despite the unequivocal trial testimony by the Shelter's Board President that he notified Infinger that the Shelter's funding was frozen and that the Shelter could no longer pay Infinger which resulted in the suspension of the work, and where the Agreement permitted Infinger to file a mechanic's lien. *See* § A.4.2.5 of Exhibit A to the Agreement at R p. 197.

More importantly, Infinger's action of suspending the work based on non-payment was in express compliance with the Agreement. § A.9.7.1 of Exhibit A at R. p. 204 to the Agreement specifically provides that:

[i]f for reasons other than those enumerated in § A.9.5.1¹ the Owner does not issue a payment within the time period required by § 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional day's written notice to the Owner, stop the Work until payment of the amount owing has been received.

The Shelter's attempt to characterize its failure to pay Infinger as a "dispute" covered by Article A.4 and its circular logic that Infinger is barred for seeking payment for work performed or materials provided prior to October 21, 2011 are an obvious attempt to avoid an undisputed debt.

Even if the Shelter's characterization of a failure to comply with contractually-mandated remedies is analogous to a failure to exhaust administrative remedies which is disputed, the Shelter's argument that Infinger's alleged actions "deprived the trial court of subject matter jurisdiction" would still fail. The South Carolina Supreme Court has explained that:

"[t]he doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Ward v. State*, 343 S.C. 14, 17 n. 5, 538 S.E.2d 245, 246 n. 5 (2000) (citations omitted). In contrast, "subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Id.* "Thus, the failure to exhaust administrative remedies goes to the prematurity of a case, not subject matter jurisdiction." *Id.*

Moreover, it is in the sound discretion of the trial judge to determine whether administrative remedies must be exhausted, and a judge's decision will not be disturbed on appeal absent an abuse thereof. *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 582-83 (1994).

¹§ A. 9.5.1 provides the Owner the right to withhold payment under certain circumstances such as defective work, the Contractor not paying its subs, Contractor failing to perform, among others, and is not applicable hereto.

In this case, the Shelter hasn't demonstrated an abuse of discretion by the Master, and in fact, the Shelter didn't even raise the issue of Infinger's alleged failure to exhaust contractually-mandated remedies at trial, and therefore that issue was not preserved for appeal. *Creech v. South Carolina Wildlife and Marine Resources Dep't*, 328 S.C. 24, 491 S.E.2d 571 (1997). Even assuming that Infinger was required to follow the contractual dispute procedures as alleged by the Shelter, such a process would have been futile where the Shelter conceded from the outset that Infinger was due the money and was not being paid because of the VA's actions. See *Brown v. James*, 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct. App. 2010) [a commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act].

III. The Master-in-Equity properly denied the Shelter's motion to compel arbitration.

On the morning of trial, three and one-half (3 ½) years after the Complaint was filed, the Shelter orally moved to compel arbitration. This was the first time during the litigation that the Shelter moved for arbitration. The sole basis offered by the Shelter in support of its "right" to arbitrate was that its seventeenth affirmative defense in its Answer filed on July 16, 2012 stated that *[t]hese Defendants plead for arbitration to the extent that any valid and binding contract that the parties might have entered required arbitration of this dispute.* The Shelter did not make a substantive argument by written motion prior to trial or even offer an oral explanation on the day of trial as to why it waited until the day of trial to seek arbitration.

"The right to enforce an arbitration clause may be waived." *Davis v. KB Home of S.C., Inc.*, 394 S.C. 116, 131, 713 S.E.2d 799, 807 (Ct. App. 2011). "In order to establish waiver, a party must show prejudice through an undue burden caused by delay in demanding arbitration." *Liberty*

Builders, Inc. v. Horton, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999). "There is no set rule as to what constitutes a waiver of the right to arbitrate; the question depends on the facts of each case." *Id.*

South Carolina considers three factors when determining whether a party has waived its right to compel arbitration: (1) whether a substantial length of time transpired between the commencement of the action and the commencement of the motion to compel arbitration; (2) whether the party requesting arbitration engaged in extensive discovery before moving to compel arbitration; and (3) whether the non-moving party was prejudiced by the delay in seeking arbitration. *Davis*, 394 S.C. at 131, 713 S.E.2d at 807. "To establish prejudice, the non-moving party must show something more than mere inconvenience." *Id.* In addition to the above factors, it is important to consider the extent to which the parties have availed themselves of the circuit court's assistance. See *id.* at 133, 713 S.E.2d at 808.

Infinger's Lawsuit was filed on May 1, 2012 containing claims for foreclosure of mechanic's lien, breach of contract and recovery pursuant to S.C. Code § 27-1-15 . The case was mediated and partially settled in 2014. The case continued on before the Master - in - Equity. The case was finally tried on December 8, 2015. On the morning of trial the Shelter's counsel asked the court to compel the parties to arbitrate their dispute on the basis that the Shelter's Answer included a general affirmative defense that the dispute resolution clause in the Agreement provided for arbitration.

Infinger's counsel contested the Shelter's untimely demand where the Shelter had: 1) never sought to compel arbitration during the 3 ½ year pendency of the lawsuit; 2) participated in extensive written discovery, deposition discovery, motion hearings, status hearings, and a court-ordered

mediation; and 3) where Infinger had incurred substantial time, cost and efforts in preparing the case for trial and would have been prejudiced had the case been further delayed by arbitration.

The Shelter's inclusion of the potential right to arbitration as an affirmative defense without ever moving to compel arbitration until the day of trial does not constitute a demand for arbitration as now asserted by the Shelter. Moreover, the Shelter's characterization of the discovery process as being "limited and minor" is simply inaccurate where the parties engaged in extensive document production, written discovery, requests for admissions, and a SCRCP 30(b)(6) deposition was taken. Moreover, the Shelter clearly availed itself of the court's assistance, where, among other things, it participated in court-ordered mediation, filed multiple motions with the court, including a motion for summary judgment, and sought the court's assistance in settlement resolution. Finally, Infinger would have been substantially prejudiced had the case been ordered to arbitration after Infinger had incurred substantial time and cost in preparing its case, had its witnesses present at trial and was ready to proceed.

For all of the above reasons, the Master did not err when he denied the Shelter's motion to compel arbitration.

IV. The Master-in-Equity properly determined Infinger's damages.

The Shelter cites § A.9.3.2 of Exhibit A to the Agreement at R. p. 202 which provides in relevant part that: *[p]ayments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work* in an attempt to support the argument that the Master erred by failing to breakdown materials incorporated into the structure and materials stored. The Shelter contends that the Master's alleged failure in this regard infected his damage award.

The Shelter's contention is misplaced where the Shelter's Board President testified at trial that Infinger was owed the amount of money certified as due under the pay application process, and where the pay applications included billing for *all labor and materials and equipment delivered and suitably stored*. There was no reason for the Master to breakdown the materials incorporated into the structure where the Shelter's Board President acknowledged and agreed that he signed and agreed to the amounts owed to Infinger, and there was no evidence offered by the Shelter to the contrary. When the Shelter raised this issue following the close of evidence, the Master pointed out that the Shelter didn't offer any evidence to dispute that the stored materials weren't incorporated into the Project, and then set forth the evidence in the record that supported his ultimate damage award. R. p. 154, line 3 - p. 188, line 6. Specifically, the Master noted Infinger's compilation of billings and payments showing an unpaid balance of \$196,412 which was entered without objection, and noted that it was consistent with the percentage of completion as determined by the Housing Authority's inspector. R. p. 283; R. p. 83, line 4 - p. 85, line 22.

The Shelter also contends without any supporting law or argument that the Master incorrectly determined that the Shelter's expert's proffered testimony invaded the province of the Court. The Shelter called David Raymond LaRow, a principal of a development and economic finance consulting company for affordable housing and non-profit organizations, as its first witness. R. p. 141, line 22 - p. 142, line 17. The purpose of LaRow's testimony according to the Shelter was for "validating the understanding of work completed and bricks and mortar in place". R. p. 142, line 24 - p. 143, line 4. Infinger objected to LaRow based on the Shelter's failure to identify him until the day of trial, not having a chance to depose him prior to trial, and that any opinions or conclusions

that he may give regarding the terms and conditions of the contract were the province of the court.

R. p. 143, lines 6-15.

The Master ruled that any opinions that LaRow would offer regarding the contract terms would be interfering with the province of the Court, but allowed the Shelter to proffer LaRow's testimony for the record. R. p. 143, line 16 - p. 144, line 8. LaRow explained that "bricks and mortar in place is the specific percentage of the work that has been completed as defined by the scope of work". R. p. 145, lines 17-25. He also provided an explanation about what terms are usually included in the payment provisions in construction contracts; however, he acknowledged that he hadn't reviewed the contract documents between the Shelter and Infinger. R. p. 146 - p. 147, line 8.

The trial court is charged with the duty of determining issues of law. As a part of this duty, the trial court serves as the gatekeeper and must decide whether the evidence submitted by a party is admissible pursuant to the Rules of Evidence as a matter of law. The admission of expert testimony is governed by Rule 702, SCRE, which provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

See Watson v. Ford Motor Co., 389 S.C. 434, 446, 699 S.E.2d 169, 175 (2010).

In this case, even though LaRow wasn't identified as an expert witness until he was called at trial and could have been excluded on that basis alone, a review of his proffered testimony demonstrates that the Master's decision to exclude LaRow's testimony was not in error where the Master decided it was unnecessary for his interpretation of the terms of the Agreement. R. p. 147, lines 23-25. Specifically, it is unclear as to what possible assistance LaRow's testimony could have

offered the Master where LaRow hadn't even reviewed the contract documents between the Shelter and Infinger. As the Shelter has neither demonstrated that the Master abused his discretion nor shown how the Shelter was prejudiced, there is no reversible error. *Lee v. Suess*, 318 S.C. 283, 457 S.E.2d 344 (1995)(admission of expert testimony is within the sound discretion of the trial judge and will not be overruled absent a finding of an abuse of discretion and prejudice to the complaining party).

CONCLUSION

For the foregoing reasons, the Master-in-Equity's Order granting Judgment in favor of Emory J. Infinger and Associates Construction Company, Inc. should be upheld where there was evidentiary support for each of the Master's rulings.

Respectfully Submitted,

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May 22, 2018

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

APPEAL FROM THE NINTH CIRCUIT COURT OF COMMON PLEAS

MIKELL ROSS SCARBOROUGH, PRESIDING JUDGE IN CHARLESTON COUNTY.

APPELLATE CASE NUMBER: 2016-002366

Emory J. Infinger and Associates Construction Company, Inc.,.....Respondent

v.

North Charleston Community Interfaith Shelter, Inc., Bobby Knight, in his official capacity as Chairman and President of Board for The Good Neighbor Center, Bank of America, N.A., S.C. State Housing and Development Authority, Atlantic Construction Services, Inc., L & W Supply Corporation dba CK Supply, Now Mechanical, Inc., Wilson and Associates Electrical Contractor, Inc., Defendants, Of whom North Charleston Community Interfaith Shelter, Inc. is Appellant

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ROA 118 – 126 [Pg. 107-116]; ROA 127 – 130 [Pg. 133-136]; ROA 131 – 152 [Pg. 151-170];
ROA 153 [Pg. 178]; & ROA 154 – 159 [Pg. 183-188].

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CERTIFICATE OF SERVICE **END**

CHARLESTON COUNTY MASTER-IN-EQUITY ORDER FOR TERM OF COURT

Case Name:

Case No: 2012 -CP-10- 2872

Emory J Infinger
v.

ORDER FOR TERM OF COURT

North Charleston Interfaith CCS

Pre-trial Checklist:

I. Pre-trial brief submitted:

- a. Plaintiff _____
b. Defendant _____

II. Witness list submitted:

- a. Plaintiff _____
b. Defendant _____

III. Estimated time needed for trial: _____

ROSTER MEETING for term of court set for November 30, 2015

TERM OF COURT set for the Week(s) of December 7, 2015

*Once a case has been set for trial, a motion for a continuance will be entertained by the court only upon: (1) written motion; (2) supporting affidavit; (3) in open court with counsel and parties present and; (4) if "good and sufficient cause" is shown, the court may grant the motion.
Rule 40(i), SCRPC.

9/28 2015
Charleston, SC

T. Manos
Attorney for Plaintiff

S. Whipper
Attorney for Defendant

Mikell R. Scarborough
Master-in-Equity 5062

FILED
2015 SEP 30 AM 11:03
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

FILED CASE NO 2012 CP-10-2872

Emory J. Infinger

2015 SEP 30 AM 11:03

NCCS

PLAINTIFF(S)

JULIE L. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by

Attorney for ☒ Plaintiff ☐ Defendant
or
☒ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

Court grants Defendant's Motion for Continuance until 11/6/2015 to come to an agreement on terms

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order.		

for Settlement.
If no agreement, case to be scheduled for Dec. TOL.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

9/28/15

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO 2012 CP. 10-2872

Infinger

NCCIS

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☒ Plaintiff ☐ Defendant

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

Defendant's Motion to Amend Answer
is Granted Subject to pleadings conforming to the Plead

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
If applicable, describe the property, including tax map information and address, referenced in the order.		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-10-2872

Emory J Infinger and Associates Constuction Company, Inc.

North Charleston Community Interfaith
Shelter, Inc. et al

FILED
2016 MAR 18 PM 4:16
JULIE J. STRONG
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: 3062

Attorney for: ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX		
(Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.)		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Emory Infinger Construction Co.	North Charleston Community Interfaith Shelter, Inc.	\$231,348.71
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

SCRPC Form 4C (10/2011)

3062

Judge Code

3/15/16

Date

Page 1 of 2

APPENDIX 0048 CERTIORARI

004

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or
placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or
to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Emory J. Infinger and Associates
Construction Company, Inc.,
Plaintiff,

vs.

North Charleston Community Interfaith
Shelter, Inc., Bobby Knight, in his official
capacity as Chairman and President of Board
for The Good Neighbor Center, The Good
Neighbor Center, Bank of America, N.A., S.C.)
State Housing Finance and Development
Authority, Atlantic Construction Services,
Inc., L&W Supply Corporation dba CK
Supply, Now Mechanical, Inc., Wilson &
Associates Electrical Contractors, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-2872

FINAL ORDER

FILED
2016 MAR 18 PM 4:16
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Hearing Date:

December 8, 2015

Presiding Judge:

Master-in-Equity Mikell R.
Scarborough

Plaintiff's Attorney:

Theodore L. Manos, Esq.

Attorney for Defendant:

North Charleston Community Interfaith Shelter, Inc.
The Good Neighbor Center

J. Seth Whipper, Esq.

Attorney for Defendant:

S.C. State Housing Finance and Development Authority

Did not participate at trial



The above-captioned foreclosure action was tried before me on December 8, 2015. The Plaintiff, Emory J. Infinger and Associates, Inc., was represented by Theodore L. Manos of Robertson Hollingsworth and Flynn, LLC. The Defendants North Charleston Community Interfaith Shelter, Inc. and the Good Neighbor Center were represented by J. Seth Whipper. Defendant S.C. Housing Finance and Development Authority appeared in the action by answering the Complaint, but did not participate through counsel at trial.¹ The remaining named defendants were previously dismissed pursuant to a Mutual Stipulation of Dismissal dated August 5, 2014.

Pre-trial motions were disposed of prior to trial. Specifically, Defendant's Motion to Amend its Answer to include a Thirty-Fifth Defense was granted to the extent that the allegations therein conformed to the evidence to be presented at trial. Defendant's Motion for Summary Judgment was denied.

I. BACKGROUND AND FACT SUMMARY

A. The Good Neighbor Center

The Good Neighbor Center now referred to as the North Charleston Community Interfaith Shelter, Inc. is a non-profit entity which provides transitional housing shelter for homeless veterans at a facility located at 1905 Burton Lane a/k/a 2713 Spruill Avenue in North Charleston, South Carolina. The facility contains thirty-two (32) beds located in an old two-story motel-like building. The shelter was operated by an executive director throughout its history up until her termination in 2011. The shelter is currently operating under the direction of a volunteer board of directors.

In the mid-2000s, as part of its operational funding, the Good Neighbor Center was receiving per-diem grants from the Department of Veterans Affairs Veteran's Health Administration ("VA"). In order to expand its services to the veterans, the Good Neighbor Center decided to construct a new two-story structure on the property where its existing facility operates. In furtherance thereof, it applied for a capital grant from the VA and a forgivable loan from the South Carolina State Housing Finance and Development Authority ("State Housing Authority"). Ultimately, funds were secured from the VA and State Housing Authority for use in the design and construction of a new facility.

By agreement dated December 10, 2010, The Good Neighbor Center contracted with Emory J. Infinger and Associates Construction Company, Inc. ("Infinger") for the design/construction of a new, two-story, fourteen (14) bed, transitional housing project for veterans located in North Charleston, South Carolina (hereinafter the "Project"). The Agreement provided for a Contract Sum of \$799,456.00 subject to modifications as set forth in Infinger's Proposal dated December 8, 2010 which was incorporated into the Agreement.

¹ S.C. Housing Finance and Development Authority was named as a defendant based on virtue of its mortgage on the subject property recorded in Book 0176, Page 769, in the Charleston County R.M.C. Office.

By Change Order dated March 1, 2011, the Agreement was modified to: 1) increase the Contract Sum by \$10,264 for the purchase of Performance and Payment Bonds; 2) change the legal name of the Owner from Good Neighbor Center to North Charleston Community Interfaith Shelter; 3) to modify Contract retainage per Article No. 5.4.3 to reflect retainage and percentages of funds by the Housing Authority and VA; and 4) to note delays and impacts on estimated budget.

A Pre-Construction Conference was held on March 15, 2011. In attendance at the meeting were Bobby Knight (the President and Chairman of the Board for the Shelter), Emory Infinger (the President and Owner of Infinger), the Project's engineers, and three additional representatives of Infinger including its Project Manager, David Haun. A "Notice to Proceed" was issued at the conference establishing a date to commence work on or before March 16, 2011, and it was agreed that the engineers would be notified to proceed with soil borings and site design. A number of other issues were also discussed including, but not limited to: 1) payment procedures; 2) chain of command; and 3) change orders. At the time of the meeting, the exact procedures for payment were not known. Mr. Knight was designated as the Owner's representative and in charge of initiating change orders.

Following the conference, Infinger's design consultants proceeded with the design, and the construction began thereafter. Pursuant to the Agreement, Infinger submitted Applications and Certifications for Payment ("Payment Applications") to the Shelter for approval and payments. Infinger's Pay Applications included a summary page containing the various line items including but not limited to: 1) the Original Contract Sum; 2) Net change by Change Orders; 3) Contract Sum to date; 4) Total Completed and Stored to Date; 5) Current Payment Due; and 6) Balance to Finish, including retainage. Each Payment Application also included Continuation Sheets providing detailed line items describing the work, providing the scheduled value of each line item of work, and explanations of the amount of work performed and stored to date for each individual line item.

The Shelter submitted draw requests from the VA and the Housing Authority based on the information provided by Infinger. The VA wired funds directly to the Shelter's account, and the Housing Authority mailed its payments to the Shelter. The Shelter in turn wrote checks out of its account to pay Infinger for the labor, services and materials being provided under the Agreement. The Housing Authority's payments to the Shelter were subject to inspections being performed relating to percentage of completion.

Throughout the design and construction process, Infinger submitted a total of nine (9) Payment Applications to the Shelter from April 15, 2011 through December 31, 2011. Infinger's Pay Applications totaled \$664,215, but it only received payments from the Shelter totaling \$467,803 leaving an unpaid balance of \$196,412. The Housing Authority did not release any funds to the Shelter to pay for the first draw request. Thereafter, the Housing Authority's and VA's release of funds to the Shelter were based on their respective determinations.

Following Change Order Number One, the Parties executed Change Orders 2-6 between April 2011 and September 2011 increasing the Contract Sum in excess of \$100,000 from \$799,456 to \$920,333. The Change Orders included multiple items including but not limited to: 1) insurance

costs; 2) concrete and foundation work; 3) structural steel; 4) finish materials and impact glass; and 5) a ductless AC system.

In August 2011, pursuant to its investigation of the Shelter's ongoing operations (unrelated to the VA's capital grant for the new construction by Infinger), the VA sent the Shelter a pre-determination letter identifying an over-billing of per diem by \$122,073.

On or around September 30, 2011, the Shelter notified the VA of the increased costs to the Project. On November 7, 2011, Infinger notified its subcontractors and material suppliers that it was directing that all work and material deliveries be temporarily suspended due to the VA cutting its September invoice and temporarily putting a hold on future payments to the Shelter until the Shelter provided additional paperwork.

By letter dated November 16, 2011, the VA notified the Shelter that the capital grant payments would be held until such time as the Shelter could demonstrate it had matching funds needed to complete the Project. The Shelter was unable to procure additional funds to comply with the VA's requirements and its funding remained frozen.

By letter dated December 26, 2011 to the Shelter, Infinger expressed its concern regarding the exposed condition of the building and recommended that the rescue option it had previously recommended be undertaken in order to protect the current investment in the unfinished building. Infinger also inquired about the Shelter's plans to continue or abandon the Project.

Ultimately, the Shelter was not able to secure additional funding from the VA or other sources in order to continue with the construction, and the building remains as it did when construction was suspended in mid-November 2011. The Housing Authority also suspended its funding under its loan to the Shelter at the end of 2011.

Thereafter, after various communications by and between the Shelter and the VA, the VA by letter dated May 6, 2013 notified the Shelter that its capital grant was terminated and that the Shelter's eligibility to receive grant and per diem payments was revoked and would not be reinstated. 

Mr. Knight filed a lawsuit against the VA in the United States Court of Federal Claims on October 17, 2013 seeking damages arising out of the termination of the grant. Mr. Knight's lawsuit was dismissed by Order dated October 2, 2014.

II. PROCEDURAL HISTORY

On February 6, 2012, Emory J. Infinger and Associates Construction Company, Inc. filed a Mechanic's Lien on the Shelter's Property, and thereafter foreclosed on its lien by filing a Lis Pendens, Summons and Complaint on May 1, 2012. The Shelter and Good Neighbor Center accepted service of the Lis Pendens and Complaint on May 7, 2012. Defendants Bobby Knight, The Good Neighbor Center and North Charleston Community Interfaith Shelter filed an Answer to the

Complaint on July 18, 2012. The Housing Authority filed an Answer to the Complaint on January 14, 2013.

During this same time period, a number of Infinger's subcontractors on the Shelter Project, including Atlantic Construction Services, Inc. L&W Supply Corporation d/b/a CK Supply, Now Mechanical, Inc., Charleston Interior Construction, LLC, and Wilson & Associates Electrical Contractors, Inc. filed their own liens and foreclosure actions against the Shelter's property. Those separate actions were consolidated into Infinger's action by Order dated August 14, 2013. Thereafter, Defendants Bank of America, N.A., Atlantic Construction Services, Inc. L&W Supply Corporation d/b/a CK Supply, Now Mechanical, Inc., Charleston Interior Construction, LLC and Wilson & Associates Electrical Contractors, Inc. were dismissed from Infinger's action by a Mutual Stipulation of Dismissal filed on August 5, 2014.

On March 5, 2015, the Court granted Turner Padgett's Motion to be relieved as counsel for the Shelter, and provided the Shelter until May 1, 2015 in order to secure new counsel. J. Seth Whipper appeared for the Shelter on May 1, 2015.

The case was tried on December 8, 2015. David Haun and Bobby Knight testified as witnesses. Defendant also called David B. LaRoe to provide opinion testimony regarding interpretation of certain contractual terms between the Shelter and Infinger. Infinger objected to Mr. LaRoe's testimony on the grounds that: 1) he was not identified during discovery; 2) Infinger did not have an opportunity to depose him to evaluate his opinions; and 3) the opinions that Defense counsel intended to elicit were the province of the Court and not the proper subject matter of expert testimony. The Court permitted the Shelter to proffer Mr. LaRoe's testimony but sustained Infinger's objection. 

Plaintiff entered Exhibits 1- 18, and 20 - 25 without objection. Defendant entered one compilation exhibit without objection by Plaintiff but only for the purpose that Knight received certain documents contained therein. Plaintiff did not concede that all information contained in the numerous documents included in Defendant's Exhibit 1 could be used for the truth of the matter asserted.

The Court denied Plaintiff's Motion for a Directed Verdict at the end of its case. Plaintiff renewed its Motion for Directed Verdict at the close of the trial.

III. THE CLAIMS

The Complaint included five causes of action as follows: 1) mechanic's lien foreclosure; 2) breach of contract; 3) quantum meruit/unjust enrichment; 4) claim pursuant to S.C. Code Section 27-1-15; and 5) Negligence against Bobby Knight as Chairman of the Board for the Shelter. The negligence claim had been dismissed prior to trial by a Mutual Stipulation of Dismissal dated August 5, 2014. The Plaintiff abandoned its claim for quantum meruit/unjust enrichment at trial and proceeded only on its contract and lien claims. The claim under S.C. Code Section 27-1-15 simply

provides Plaintiff an additional avenue in which to recover attorney's fees and interest if successful on his substantive claims under the lien foreclosure and/or contract.

IV. FINDINGS OF FACT

1. The Shelter entered an Agreement with Infinger dated December 10, 2010 for the design and construction of a building located at 1905 Burton Lane a/k/a 2713 Spruill Avenue in North Charleston, South Carolina.

2. Pursuant to their Agreement, and in consideration of the labor, services and material to be provided by Infinger, the Shelter agreed to pay Infinger a total Contract Sum of \$799,456 as modified by executed change orders.

3. From March 1, 2011 through September 9, 2011 the Shelter approved Change Orders 1 -6 to the Agreement which increased the Contract Sum from \$799,456 to \$920,333.

4. The Shelter's primary funding sources for the construction of the Project were a VA capital grant and a loan from the Housing Authority. Upon receiving Payment Applications from Infinger, the Shelter requested draws from the VA and the Housing Authority.

5. In or around November 2011, the VA suspended the funding of draw requests being made by the Shelter for the construction work by Infinger based on the increased costs of the Project and the Shelter's inability to provide matching funds for the increased grant funds it was requesting.

6. As a result of the VA suspending funding, the Shelter was unable to pay Infinger for the services it was providing to the Project.

7. Infinger was ready, willing and able to complete the construction, but suspended its work in November 2011 as a result of non-payment. Infinger recommended that the building be secured and covered in order to protect it from the elements.

8. By letter dated December 26, 2011 to the Shelter, Infinger expressed its continuing concern regarding the exposed condition of the building and recommended that the rescue option it had previously recommended be undertaken in order to protect the current investment in the unfinished building. Infinger also inquired about the Shelter's plans to continue or abandon the Project.

9. Ultimately, the Shelter was not able to secure additional funding from the VA or other sources in order to continue with the construction, and the building remains as it did when construction was suspended in mid-November 2011.

10. Infinger submitted nine Payment Applications to the Shelter for labor, services and materials it provided to the Project. Infinger's Pay Applications totaled \$664,215 but it only received payments from the Shelter totaling \$467,803 leaving an unpaid balance of \$196,412.

V. CONCLUSIONS OF LAW

Mechanic's Lien Foreclosure Action

11. Under S.C. Code § 29-5-10, a mechanic who contracts directly with the owner, or his agent has a lien in the amount of the debt owed to him under the contract, and the owner is liable to him for the total amount. A claim of lien must be filed no later than 90 days after the last day on which the claimant furnished labor or materials to the project.

12. An action to enforce a mechanics lien must be initiated within six (6) months from the last day on which the claimant furnished labor and/or materials to the project. S.C. Code § 29-5-120.

13. Infinger contracted with Shelter by written agreement dated December 10, 2010 for the design and construction of a building on the Shelter's property.

14. Infinger submitted nine Payment Applications to the Shelter for labor, services and materials it provided to the Project. Infinger's Pay Applications totaled \$664,215 but it only received payments from the Shelter totaling \$467,803 leaving an unpaid balance of \$196,412.

15. On February 6, 2012, less than ninety days from the last day it had provided labor, services or material to the Project pursuant to a written contract with the Shelter, Infinger filed and served, in accordance with S.C. Code §29-5-10, a Mechanic's Lien ("Lien") in the amount of \$196,412 on the real property commonly known as 1905 Burton Lane a/k/a 2713 Spruill Avenue in North Charleston, South Carolina with TMS No. 466-03-00-097. Infinger's Lien was recorded in the Charleston County Register Mesne Conveyance in Book O 232 at Page 031.

16. On May 1, 2012, less than six months from the last day it provided labor, services or material to the Project, Infinger commenced a suit to foreclose its Lien and filed a Lis Pendens, Summons and Complaint against the Good Neighbor Center and Shelter.

17. Accordingly, Infinger has established a lien in the amount of \$196,412.

Breach of Contract

18. A binding, valid contract must exist for there to be a cause of action for breach of contract. See Tidewater Supply Co. v. Industrial Elec. Co., 253 S.C. 483, 171 S.E.2d 607 (1969); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). A valid and enforceable contract requires a meeting of the minds between the parties with regard to all essential and material terms of the agreement. Patricia Grand Hotel, LLC v. MacGuire Enters., 372 S.C. 634, 638, 643 S.E.2d 692, 694 (Ct. App. 2007). "In a contract for services two essential terms are the scope of the work to be performed and the amount of compensation." W.E. Gilbert & Assocs. v. S.C. Nat. Bank, 285 S.C. 421, 423, 330 S.E.2d 307, 309 (Ct. App. 1985).

The necessary elements of a contract are offer, acceptance, and valuable consideration. Sauner v. Pub. Serv. Auth. of South Carolina, 354 S.C. 397, 581 S.E.2d 161 (2003). To recover for a breach of contract, the plaintiff must prove: (1) a binding contract entered into by the parties; (2) a breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962).

Damages in a breach of contract action are to place the non-breaching party in the position he or she would have been had there been no breach and the contract was performed. See Drews Co. v. Ledwith-Wolfe Assocs., Inc., 296 S.C. 207, 371 S.E.2d 532 (1988). The proper measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach. South Carolina Fin. Corp. v. West Side Fin. Co., 236 S.C. 109, 113 S.E.2d 329 (1960). In the normal case, the damage will consist of two distinct elements: (1) out-of-pocket costs actually incurred as a result of the contract; and (2) the gain above costs that would have been realized had the contract been performed. Collins Entm't, Inc. v. White, 363 S.C. 546, 611 S.E.2d 262 (Ct. App. 2005).

19. In this case, both parties' witnesses agreed that a written agreement dated December 10, 2010 set forth the terms and obligations agreed upon between Infinger and the Shelter, and that those terms generally consisted of Infinger agreeing to design and construct a building for the Shelter in exchange for payment of the costs of such work.

20. Specifically, pursuant to their Agreement, and in consideration of the labor, services and material to be provided by Infinger, the Shelter agreed to pay Infinger a total Contract Sum of \$799,456 as modified by executed change orders.

21. From March 1, 2011 through September 9, 2011 the Shelter approved written Change Orders 1 -6 to the Agreement which increased the Contract Sum from \$799,456 to \$920,333.

22. Infinger submitted nine Payment Applications to the Shelter for labor, services and materials it provided to the Project. Infinger's Pay Applications totaled \$664,215 but it only received payments from the Shelter totaling \$467,803 leaving an unpaid balance of \$196,412

23. Mr. Knight, the Shelter's Chairman and the Owner's representative under the Agreement, testified that he executed all six change orders to the Agreement, and he did not dispute that Infinger's balance under the Agreement was \$196,412.

24. Mr. Knight asserted that the balance due Infinger was the responsibility of the VA and/or Housing Authority and not the Shelter. The Court disagrees. Whether the VA (and/or Housing Authority) had grounds to freeze the grants which the Shelter was using to pay Infinger is not before the Court, and is not relevant to the Shelter's ultimate responsibility to comply with its contractual obligations to Infinger which were breached by the Shelter's failure to pay Infinger.



S.C. Code Ann. 27-1-15

25. SC Code Section 27-1-15 provides: [w]henver a contractor, laborer, design professional, or materials supplier has expended labor, services, or materials under contract for the improvement of real property, and where due and just demand has been made by certified or registered mail for payment for the labor, services, or materials under the terms of any regulation, undertaking, or statute, it is the duty of the person upon whom the claim is made to make a reasonable and fair investigation of the merits of the claim and to pay it, or whatever portion of it is determined as valid, within forty-five days from the date of mailing the demand. If the person fails to make a fair investigation or otherwise unreasonably refuses to pay the claim or proper portion, he is liable for reasonable attorney's fees and interest at the judgment rate from the date of the demand.

26. In conjunction with the filing of the Complaint on May 1, 2012, Infinger's counsel mailed Plaintiff a certified letter demanding payment of \$196,412 due Infinger.

27. As previously discussed herein, Mr. Knight acknowledged Infinger's balance due of \$196,412 on its contract for the improvement of the Shelter's property, and testified that the Shelter's reason for failing to pay said balance was lack of funding due to the VA freezing its grant funds which occurred in or around November 2011.

28. Accordingly, the Court finds that Infinger is entitled to reasonable attorney's fees and interest at the judgment rate on an award amount of \$196,412 from May 1, 2012.

IT IS THEREFORE,

ORDERED, that Infinger's claim to Foreclose its Mechanic's Lien is hereby granted, and that the Shelter's real property commonly known as 1905 Burton Lane a/k/a 2713 Spruill Avenue in North Charleston, South Carolina, TMS No. 466-03-00-097 shall be sold subject to S.C. Code § 29-5-260; and it is further

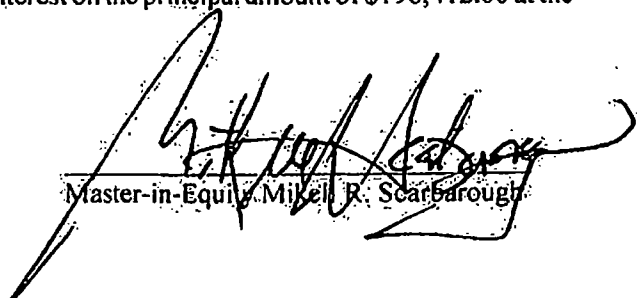
ORDERED, that Infinger is entitled to a Judgment against North Charleston Community Interfaith Shelter, Inc. and The Good Neighbor Center, jointly and severally, in the amount of \$196,412 on its breach of contract claim; and it is further

ORDERED, that Infinger is entitled to reasonable attorney's fees and costs as set forth in its Affidavit of Attorney's Fees totaling \$34,936.71; and it is further

ORDERED, that Infinger is entitled to interest on the principal amount of \$196,412.00 at the judgment rate from May 1, 2012.

AND IT IS SO ORDERED.

This 11 day of March, 2016.
Charleston, South Carolina


Master-in-Equity Mikel R. Scarborough

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. CP- 10 - 2872

Indigo's Associates

North Charleston Community

Interfaith Shelter, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant
	☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

As Motion for New Trial and to Alter or Amend Judgment (59 a.i.e. SCRPC) is respectfully DENIED.

JUDGMENT INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order.		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Emory J. Infinger and Associates Construction
Company, Inc..

Plaintiff,

vs

North Charleston Community Interfaith Shelter, et
al..

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO 2012-CP-10- **2072**

) CIVIL ACTION COVER SHEET

Submitted By: Theodore L. Manos, Esq.
Address: Robertson Hollingsworth & Flynn
177 Meeting Street, Suite 300
Charleston, SC 29401

SC Bar #.
Telephone #: 843-723-6470
Fax #: 843-853-9045
Email: tlm@roblaw.net

NOTE The cover sheet and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this Cover Sheet must be served on the Defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts-Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20__-CP-_____ ☐ Notice/File Med Mal (230) ☐ Other (299)	☐ Assault/Slander/Label (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Product Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☒ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions	Administrative Law/Relief	Judgment/Settlements	Appeals
☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	☐ Reinstate Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (870) ☐ Forfeiture - Petition (840) ☐ Forfeiture - Consent Order ☐ Other (899)	☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript of Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799)	☐ Arbitration (900) ☐ Magistrate - Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOJ (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Commission (990) ☐ Employment Security Commission (991) ☐ Other (999)
Special/Complex/Other			
☐ Environmental (600) ☐ Automobile Arb (610) ☐ Medical (620) ☐ Other (699) ☐ Sexual Predator (510)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out of State Depositions ☐ Motion to Quash Subpoena in Out of County Action (660)		

Submitting Party Signature: _____

Date: May 1, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Civil Proceedings Sanctions Act, S.C. Code Ann. §15-16-10 et seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

5-1-2012
1:54pm

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Emory J. Infinger and Associates Construction
Company, Inc.,

Plaintiff,

vs.

North Charleston Community Interfaith Shelter,
Bobby Knight, in his official capacity as
Chairman and President of Board for The Good
Neighbor Center, The Good Neighbor Center,
Bank of America, N.A., S.C. State Housing
Finance and Development Authority, Atlantic
Construction Services, Inc., L & W Supply
Corporation dba CK Supply, Now Mechanical,
Inc., and Wilson & Associates Electrical
Contractors, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-2872

LIS PENDENS

FILED
2012 MAY -1 PM 1:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Notice is hereby given that an action has been commenced and is pending in this Court upon Complaint of the above named Plaintiff against the above named Defendants for the Foreclosure of a Mechanic's Lien dated February 3, 2012, and filed in the RMC Office for Charleston County on February 6, 2012, in Book O 232 , Page 03, on the below described real estate:

All those certain pieces, parcel or lots of land, together with the buildings and improvements thereon, situate, lying and being on the West side of South Carolina Highway No. 525 (Spruill Avenue) near Five Mile in St. Phillip and St. Michael's Parish, County and State aforesaid. and being shown on Plat thereof made by Joseph Needle, C.E., dated March 27, 1951, and recorded in the RMC Office for Charleston County in Book T, Page 43 and Book W at Page 37 and being designated thereon as "Portion of "Lot V" and "Lot U". Being the same property, conveyed to the Grantor, Nancy Cook, by Deed of David Wellings Baickmon dated January 2, 1998 and recorded in the RMC office for Charleston County in Deed Book J-295, at page 342.

TMS No. 466-03-00-097

ROBERTSON HOLLINGSWORTH & FLYNN
Wells Fargo Center
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Fax: 843-893-9045
Email: tlm@roblaw.net

BY:

Theodore L. Manos, Esq.
Attorneys for the Plaintiff

May 1, 2012
Charleston, South Carolina

APPENDIX 0063 CERTIORARI

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Emory J. Infinger and Associates Construction
Company, Inc.,

Plaintiff,

vs.

North Charleston Community Interfaith Shelter,
Bobby Knight, in his official capacity as
Chairman and President of Board for The Good
Neighbor Center, The Good Neighbor Center,
Bank of America, N.A., S.C. State Housing
Finance and Development Authority, Atlantic
Construction Services, Inc., L & W Supply
Corporation dba CK Supply, Now Mechanical,
Inc., Wilson & Associates Electrical
Contractors, Inc.,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-2872

SUMMONS

BY

2012 MAY -1 PM 1:46
JULIE J. ARSTRONG
CLERK OF COURT

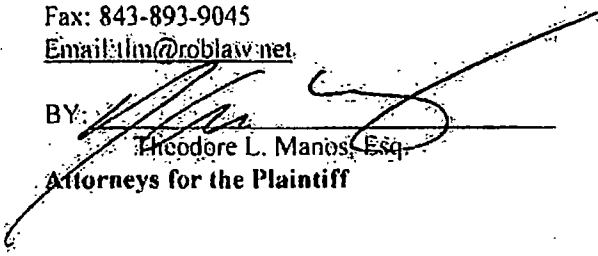
FILED

TO. THE DEFENDANTS NAMED ABOVE

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon PLAINTIFF'S ATTORNEY: Theodore L. Manos, Esq. of Robertson Hollingsworth & Flynn 177 Meeting Street, Suite 300 Charleston, South Carolina 29401 an answer to the Complaint which is herewith served upon you, within 30 days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

ROBERTSON HOLLINGSWORTH & FLYNN
Wells Fargo Center
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Fax: 843-893-9045
Email: tlm@roblaw.net

BY:


Theodore L. Manos, Esq.
Attorneys for the Plaintiff

May 1, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-203 **2872**

Emory J. Infinger and Associates)
Construction Company, Inc.,)
)

Plaintiff,)

vs.)

North Charleston Community Interfaith)
Shelter, Bobby Knight, in his official)
capacity as Chairman and President of)
Board for The Good Neighbor Center, The)
Good Neighbor Center, Bank of America,)
N.A., S.C. State Housing Finance and)
Development Authority, Atlantic)
Construction Services, Inc., L & W Supply)
Corporation dba CK Supply, Now)
Mechanical, Inc., Wilson & Associates)
Electrical Contractors, Inc.,)
)

Defendants.)

COMPLAINT
(NON-JURY)
(Mechanic's Lien Foreclosure)
(Breach of Contract)
(Negligence)
(S.C. Code Ann. § 27-1-15)

FILED
2012 MAY -1 PM 1:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Emory J. Infinger and Associates Construction Company, Inc. ("Plaintiff"), complaining of the Defendants above-named, alleges and shows unto this Honorable Court:

1. Plaintiff is a corporation which is organized under and by virtue of the laws of South Carolina, is doing business in Charleston County, South Carolina.
2. Defendant, North Charleston Community Interfaith Shelter owns the real estate identified with TMS No. 466-03-00-097 (the "Property") which is the subject of this action by virtue of a deed recorded in Book N322, Page 484, in the Charleston County R.M.C. Office.
3. Defendant, Bobby Knight ("Knight"), is the Chairman of the Board and President of Defendant, Good Neighbor Center, the parent organization of Defendant North Charleston Community Interfaith Shelter. Upon information and belief, Knight is the officer/director

responsible for the Board's oversight of the facilities located on the Property.

4. Bank of America, N.A. is named a Defendant herein by virtue of its mortgage on the subject property.

5. South Carolina State Housing Finance and Development Authority is named a Defendant by virtue of its mortgage on the subject property recorded in Book 0176, Page 769, in the Charleston County R.M.C. Office.

6. Defendant Atlantic Construction Services, Inc. is named a Defendant by virtue of its mechanic's lien against the subject property recorded in Book 0219, Page 927, in the Charleston County R.M.C. Office in the amount of \$8,927.00.

7. L & W Supply Corporation dba CK Supply is named a Defendant herein by virtue of its mechanic lien on the subject property in the amount of \$19,047.64.

8. Now Mechanical, Inc. is named a Defendant by virtue of its mechanic's lien against the subject property recorded in Book 0228, Page 805, in the Charleston County R.M.C. Office in the amount of \$27,416.50.

9. Wilson & Associates Electrical Contractors, Inc. is named a Defendant by virtue of its mechanic's lien against the subject property in the amount of \$19,414.00.

10. CharlesTown Interior Construction, LLC is named a Defendant by virtue of its mechanic's lien against the subject property in the amount of \$43,890.50.

FACTS

11. Plaintiff contracted with The Good Neighbor Center, the parent organization of the North Charleston Community Interfaith Shelter, (collectively hereinafter referred to as the "Good Neighbor Center") on December 10, 2010 (the "Contract") for the design/construction of a new, two-story, 14 bed, transitional housing project for veterans located in North Charleston, South Carolina

(hereinafter the "Project") in exchange for a stipulated sum of \$799,456, subject to modifications.

12. Upon information and belief, the Good Neighbor Center was primarily relying on grants from the Department of Veteran Affairs ("VA") and South Carolina State Housing Finance and Development Authority ("SCSHFDA") to pay for the design and construction of the Project. These grants required the Good Neighbor Center to comply with various regulations. Grant funds were released on an ongoing basis as the construction proceeded, based, in part, on Plaintiff's payment applications for the labor, services and materials performed through a specific period of time.

13. Pursuant to the Contract, the Project was to commence within four months subject to the issuance of a building permit. Upon receipt of the building permit, the Plaintiff proceeded with construction of the Project, and furnished the agreed upon materials and services used to improve the subject real estate.

14. Upon information and belief, on or about November 3, 2011 the VA reduced the amount of funds due the Plaintiff for its September 2011 payment application, and thereafter temporarily suspended all additional funding to the Good Neighbor Center until further notice.

15. On or about November 7, 2011, the Plaintiff notified all of its subcontractors that all work and material deliveries were to be suspended due to the VA cutting the Plaintiff's September payment application, and temporarily putting a hold on future payments until the Good Neighbor Center complied with various requirements demanded by the VA.

16. At the time that the VA suspended funding, the Project was incomplete, and Plaintiff was due a payment totaling \$196,412.00 for labor, services and materials provided to the Project.

For a First Cause of Action
against North Charleston Community Interfaith Shelter
(Foreclosure of Lien)

17. Plaintiff hereby restates all of the preceding paragraphs as if restated herein verbatim.

18. Plaintiff provided labor and construction materials for the improvement of the Property through the Contract with the Good Neighbor Center valued at Seven Hundred Ninety-Nine Thousand Four Hundred Fifty-Six and 00/100ths (\$799,456.00) Dollars, subject to modifications.

19. Although Plaintiff demanded payment for the labor and construction materials it provided, the Good Neighbor Center wrongfully refused and continues to refuse to pay Plaintiff for said labor and construction materials, and there is now a balance due and owing to Plaintiff in the principal amount of One Hundred Ninety-Six Thousand Four Hundred Twelve and 00/100ths (\$196,412.00) Dollars, plus costs, interest, and attorney's fees as provided by contract and statute.

20. By reason of the Good Neighbor Center's failure to pay Plaintiff as herein fully alleged, Plaintiff filed, in accordance with S.C. Code §29-5-20, a Mechanic's Lien on the Property on February 6, 2012, 2012 in the Charleston County Register Mesne Conveyance in Book O 232 at Page 031. (A copy is attached hereto as Exhibit "A").

21. Upon information and belief, said Mechanic's Lien was served on the Good Neighbor Center, the owner of the Property, within ninety (90) days of the last furnishing of labor and construction materials by the Plaintiff to the Property.

22. The Plaintiff commenced this action for enforcement of its mechanic's lien within six months of the last furnishing of construction materials to the Project.

23. Simultaneously with filing this Complaint, the Plaintiff filed with the Clerk of Court for Charleston County its Notice of Lis Pendens.

24. By virtue of the filing and serving of its Mechanic's Lien, as a direct and proximate result of the Good Neighbor Center's indebtedness to Plaintiff for the labor and construction materials provided for the improvement of the Property, and pursuant to S.C. Code §29-5-20, et. seq., Plaintiff is entitled to an order foreclosing its Mechanic's Lien, said Order requiring that the Property should be sold and that the proceeds of the sale, after deducting all lawful charges, expenses, and superior liens, if any, shall be applied to the account of Plaintiff, plus the costs, interest, and attorney's fees as provided by statute.

For A Second Cause of Action
against The Good Neighbor Center
(Breach of Contract)

25. Plaintiff hereby restates all of the preceding paragraphs as if restated herein verbatim.

26. Plaintiff contracted with the Good Neighbor Center for the design/construction of the Project in exchange for a stipulated sum of \$799,456, as subject to modifications.

27. Although Plaintiff has fully, properly, and timely performed its continued obligations under the Contract with the Good Neighbor Center, the Good Neighbor Center has breached its agreement with Plaintiff by failing to remit payment for the current pay application due.

28. Based on the Good Neighbor Center's failure to pay Plaintiff for over 120 days, the Good Neighbor Center has breached/constructively terminated the Contract.

29. As a direct and proximate result of its breach of the agreement, the Good Neighbor Center is liable to Plaintiff for actual damages in an amount to be determined, lost profits, plus incidental and consequential damages, including interest, costs, and attorney's fees associated with bringing this action.

For a Third Cause of Action
against The Good Neighbor Center
(Quantum Meruit/Unjust Enrichment)

30. Plaintiff repeats and realleges the preceding paragraphs as if restated herein verbatim.

31. Plaintiff has fully, properly, and timely performed its continued obligations under the Contract with the Good Neighbor Center as demanded by and agreed to by the Good Neighbor Center, and Plaintiff is entitled to payment for the labor, material, and services provided to the Project.

32. The Good Neighbor Center has accepted the work performed by the Plaintiff as meeting the requirements for the Project, and has enjoyed the actual and beneficial use of the labor, materials, and services provided by the Plaintiff without paying the fair value of the same to the Plaintiff.

33. The Plaintiff has made demand to the Good Neighbor Center for payment of the amount owed to Plaintiff for its labor, material, and services provided to the Project, but the Good Neighbor Center has failed and refused to pay the Plaintiff the amount owed.

34. As a direct and proximate result of the Good Neighbor Center's failure and refusal to pay Plaintiff for the value of Plaintiff's labor, material, and services provided to the Project, Plaintiff has suffered and continues to suffer actual, incidental, consequential, and special damages.

35. The Good Neighbor Center is liable to Plaintiff for the damages set forth herein along with costs and interest in an amount to be determined by the trier of fact.

For a Fourth Cause of Action
against North Charleston Community Interfaith Shelter and The Good Neighbor Center
(Recovery Pursuant to S.C. Code Ann. § 27-1-15)

36. Plaintiff repeats and realleges the preceding paragraphs as if restated herein verbatim.

37. S.C. Code Ann. § 27-1-15 (as amended) provides, among other things, that an Owner has forty-five (45) days from the date it receives a claim relating to the improvement of real property by its Contractor within which to make a reasonable investigation of the claim, and the Owner's failure to pay the amount claimed, or whatever portion of it is owed, within that forty-five (45) day period, subjects the Owner to liability for the amount owed along with interest and attorney's fees from the date on which the demand was received.

38. Demand for the balance owed to Plaintiff is being sent contemporaneously herewith to the Good Neighbor Center by certified letter dated May 1, 2012 (see attached Exhibit "B").

39. If the Good Neighbor Center fails to pay the balance due within forty-five (45) days, the Good Neighbor Center will be liable to Plaintiff for the damages set forth herein along with interest at the prevailing judgment rate on the unpaid balance and attorney's fees, all in an amount to be determined by the trier of fact, as well as other actual, consequential, incidental, and special damages as determined by the trier of fact.

For a Fifth Cause of Action
against Bobby Knight, in his capacity as Chairman and President of the Board
of the Board of Directors for the North Charleston Community Interfaith Shelter and/or
The Good Neighbor Center

40. Plaintiff repeats and realleges the preceding paragraphs as if restated herein verbatim.

41. Bobby Knight ("Knight"), in his capacity as Chairman and President of the Board Good Neighbor Center, entered the Contract with Plaintiff on December 10, 2010 to design and construct the Project.

42. Upon information and belief, at the time of entering the Contract, Knight knew or should have known that any actions taken by the Good Neighbor Center's Board to increase the cost

of the Project for which the Good Neighbor Center did not have funds to pay for said changes and/or provide matching funds to the VA and/or SCSHFDA for said changes would violate the terms and conditions of the grants provided, and result in the grants being suspended and/or terminated to the direct detriment of the Plaintiff.

43. Upon information and belief, Knight's changes to the Project which increased the Project's cost without prior-approval from the VA and/or SCSHFDA or the ability to procure matching funds was wrongful and caused the VA to suspend further funding under the grants.

44. Upon information and belief, Knight's wrongful actions directly caused the Good Neighbor Center to lose funding under its grants which directly prevented the Good Neighbor Center from complying with its contractual duties to Plaintiff.

45. As a direct and proximate result of Knight's wrongful acts, the Plaintiff has suffered and continues to suffer actual, incidental, consequential, and special damages.

46. Knight and the Good Neighbor Center are therefore liable to Plaintiff for the damages set forth herein along with costs and interest in an amount to be determined by the trier of fact.

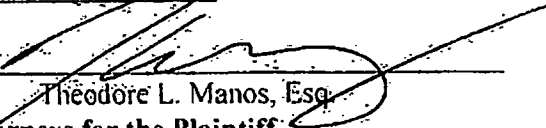
WHEREFORE, Plaintiff prays that this Court:

a. Inquire into the matters set forth herein and that the rights of Plaintiff in and to the Property which is the subject of these proceedings be protected;

b. Award Plaintiff a Judgment against the Good Neighbor Center, its Board and Knight in the amount of One Hundred Ninety-Six Thousand Four Hundred Twelve and 00/100ths (\$196,412.00) Dollars, plus attorney's fees, prejudgment interest, and costs.

- c. Foreclose Plaintiff's Mechanic's Lien against the Property owned by the Good Neighbor Center, ordering said property to be sold, and satisfying the debt due to Plaintiff from the proceeds of such sale including costs, contract interest and attorney's fees; and
- d. For such other and further relief as this Court may deem just and proper.

ROBERTSON HOLLINGSWORTH & FLYNN
Wells Fargo Center
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Fax: 843-893-9045
Email: tlm@roblaw.net

BY: 

Theodore L. Manos, Esq.
Attorneys for the Plaintiff

May 1, 2012
Charleston, South Carolina

REC'D. PAYMENT 2/6/12
PER CLERK 20W
RMC OFFICE 0232-031
CHARLESTON COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE RMC OFFICE

Emory J. Infinger and Associates Construction)
Company, Inc.)

Petitioner,)

**NOTICE AND CERTIFICATE
OF MECHANIC'S LIEN**

vs.)

North Charleston Community Interfaith)
Shelter and Bank of America, N.A.,)

Respondents.)

TO: THE RESPONDENTS ABOVE-NAMED AND ALL OTHER CONCERNED.

YOU WILL PLEASE TAKE NOTICE that Emory J. Infinger and Associates Construction Company, Inc. ("EJI"), by virtue of the attached Verified Statement of Account and pursuant to the provisions of South Carolina law, does hereby claim a Lien on the real property hereinafter described (the "Property"); said Lien being in the amount of One Hundred Ninety-Six Thousand Four Hundred Twelve and 00/100ths (\$196,412.00) Dollars for labor, materials, and equipment furnished and actually used in the improvement of the Property; said labor, materials, and equipment having been furnished by EJI to the owner, the Respondent, North Charleston Community Interfaith Shelter, with its notice and consent.

That Bank of America, N.A. is named as Respondent herein by virtue of its mortgage on the subject property.

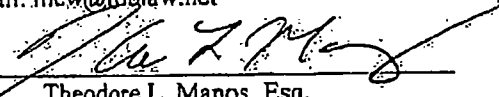
EJI is a corporation organized and existing pursuant to the laws of the State of South Carolina and it has a general contractors license issued by the South Carolina Department of Labor, Licensing and Registration. EJI's license number is G10857.

The Property upon which the Lien is attached is more particularly described in Exhibit "A" attached hereto.

[Signature block is on the following page.]



ROBERTSON & HOLLINGSWORTH
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Fax: 843-893-9045
Email: mew@robilaw.net

BY: 

Theodore L. Manos, Esq.

Attorneys for the Petitioner

February 3, 2012
Charleston, South Carolina

EXHIBIT A

All those certain pieces, parcel or lots of land, together with the buildings and improvements thereon, situate, lying and being on the West side of South Carolina Highway No. 525 (Spruill Avenue) near Five Mile in St. Phillip and St. Michael's Parish, County and State aforesaid, and being shown on Plat thereof made by Joseph Needle, C.E., dated March 27, 1951, and recorded in the RMC Office for Charleston County in Book T, Page 43 and Book W at Page 37 and being designated thereon as "Portion of "Lot V" and "Lot U".

TMS No. 466-03-00-097

Being the same property, conveyed to the Grantor, Nancy Cook, by Deed of David Wellings Baickmon dated January 2, 1998 and recorded in the RMC office for Charleston County in Deed Book J-295, at page 342.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

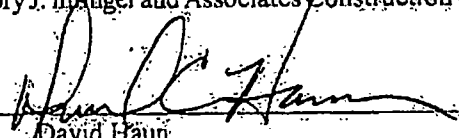
Verified Statement of Account

PERSONALLY appeared before me, David Haun, who being first duly sworn, deposes and says that he is the Project Manager of Emory J. Infinger and Associates Construction Company, Inc. ("EJI"), the Petitioner herein; that EJI is properly licensed in South Carolina as a general contractor by the South Carolina Department of Labor, Licensing and Regulation and has been issued license number: G10857; and that he is informed and believes that EJI furnished labor, services and materials for the improvement of the property (the "Property") described in the attached Notice and Certificate of Mechanic's Lien, said labor, services and material having been furnished by EJI to the owner of the Property North Charleston Community Interfaith Shelter ("Owner") with its notice and consent.

Ninety (90) days have not elapsed since the last labor, services and material was furnished; although demand has been made for the sum due, it has not been paid and there is now past due and owing from the Owner the sum of One Hundred Ninety-Six Thousand Four Hundred Twelve and 00/100ths (\$196,412.00) Dollars, as evidenced by the following statement of account, together with reasonable attorney's fees and costs:

CURRENT AMOUNT DUE: \$196,412.00

Emory J. Infinger and Associates Construction Company, Inc.

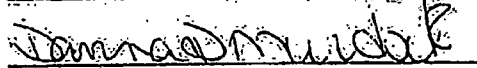
By: 

David Haun

Its: Project Manager

SWORN to and subscribed before me this

3rd day of Feb, 2012



Notary Public for SC

My Commission Expires: 3-12-2017

APPENDIX 0077 CERTIORARI

033

ROBERTSON HOLLINGSWORTH & FLYNN

ATTORNEYS AT LAW

WELLS FARGO CENTER
177 MEETING STREET, SUITE 300
CHARLESTON, SOUTH CAROLINA 29401
(843) 723-6470 • Fax (843) 853-9045

Dunn D. Hollingsworth
R. Patrick Flynn
Theodore L. Manos
Paul R. Rahn
Robert J. Cardillo (SC, IL, MI)
Michael E. Wright
Christopher M. Ramsey (SC, GA)

Claron A. Robertson
Of Counsel

May 1, 2012

VIA CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Gordon Garrett, Esq.
Garrett Law Offices
1075 East Montague Avenue
North Charleston, SC 29405

RE: *Emory J. Infinger and Associates Construction Company, Inc. v North Charleston
Community Interfaith Shelter and Bank of America, N A*

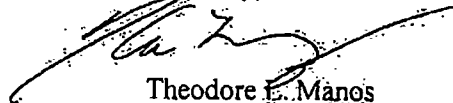
Dear Mr. Garrett:

Enclosed for service upon North Charleston Community Interfaith Shelter, The Good Neighbor Center, and Bobby Knight in his official capacity as President and Chairman of The Good Neighbor Center, please find a filed copy of the Summons, Lis Pendens and Complaint regarding the above-referenced matter. Thank you for signing the enclosed Acceptance of Service on behalf of your clients and return it to our office in the enclosed envelope. If you are unable to accept service on behalf of one or more of the noted Defendants please notify me immediately so that I can make arrangements to have them served in another manner.

Please also be advised that there is a S.C. Code Section 27-1-15 Claim included in the Complaint which requires your client to make a reasonable investigation of Infinger's claim, and pay whatever portion of it is owed, within forty-five days. Failure to do so, subjects your client to liability for the amount due along with interest and attorney's fees from the date on which the demand was received.

Please do not hesitate to contact our office if you have any questions. With kind regards, I remain

Sincerely,

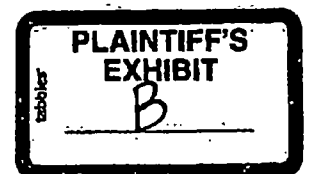


Theodore L. Manos

TLM/sw
Enclosures

APPENDIX 0078 CERTIORARI

034



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Emory J. Infinger and Associates
Construction Company, Inc.,

Plaintiff,

vs.

North Charleston Community Interfaith
Shelter, Bobby Knight, in his official
capacity as Chairman and President
of Board for the Good Neighbor Center,
The Good Neighbor Center,
Bank of America, N.A., S.C. State
Housing Finance and Development
Authority, Atlantic Construction
Services, Inc., L&W Supply
Corporation d/b/a CK Supply, Now
Mechanical, Inc., and Wilson & Associates
Electrical Contractors, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action Number 2012-CP-10-2872

**DEFENDANTS BOBBY KNIGHT,
THE GOOD NEIGHBOR CENTER,
AND NORTH CHARLESTON
COMMUNITY INTERFAITH
SHELTER'S ANSWER**

FILED
2012 JUL 18 AM 11:41
JULIE J. ARISTARONG
CLERK OF COURT
BY

TO: THEODORE L. MANOS, ESQUIRE, ATTORNEY FOR PLAINTIFF

Defendants Bobby Knight and North Charleston Community Interfaith Shelter ("NCCIS" or "Shelter"), formerly known as and/or doing business as The Good Neighbor Center, (collectively "these Defendants"), by and through their undersigned counsel, timely respond to the allegations of the Complaint as follows:

FOR A FIRST DEFENSE

1. Unless otherwise expressly and specifically admitted herein, these Defendants deny each and every allegation of the Complaint and demand strict proof thereof.

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035

2. These Defendants lack sufficient information to admit or deny the allegations of Paragraph 1 of the Complaint and thus deny those allegations.

3. These Defendants admit the allegations of Paragraph 2 of the Complaint alleging that NCCIS owns the real property at issue in this case, but these Defendants lack sufficient information to admit or deny the remaining allegations of Paragraph 2 of the Complaint and thus deny those allegations.

4. These Defendants admit the allegations of Paragraph 3 of the Complaint alleging that Mr. Knight serves as the Chair of the NCCIS Board of Directors, but these Defendants deny the remaining allegations of Paragraph 3 of the Complaint.

5. These Defendants lack sufficient information to admit or deny the allegations of Paragraphs 4, 5, 6, 7, 8, 9, and 10 of the Complaint and thus deny those allegations.

6. These Defendants deny the allegations of Paragraph 11 of the Complaint as those allegations state and/or seek a legal conclusion.

7. These Defendants admit the allegations of Paragraph 12 of the Complaint alleging that the Department of Veteran Affairs ("VA") promised and/or guaranteed grant monies to NCCIS, but these Defendants deny the remaining allegations of Paragraph 12 of the Complaint as those allegations state and/or seek a legal conclusion.

8. These Defendants deny the allegations of Paragraphs 13 and 14 of the Complaint as those allegations state and/or seek a legal conclusion.

9. These Defendants lack sufficient information to admit or deny the allegations of Paragraph 15 of the Complaint and thus deny those allegations.

10. These Defendants deny the allegations of Paragraph 16 of the Complaint as those allegations state and/or seek a legal conclusion.

11. These Defendants do not believe that Paragraph 17 of the Complaint requires a response, but they nevertheless deny the allegations of Paragraph 17 of the Complaint.
12. These Defendants deny the allegations of Paragraph 18 of the Complaint as those allegations state and/or seek a legal conclusion.
13. These Defendants deny the allegations of Paragraph 19 of the Complaint.
14. These Defendants lack sufficient information to admit or deny the allegations of Paragraphs 20, 21, 22, and 23 of the Complaint and thus deny those allegations.
15. These Defendants deny the allegations of Paragraph 24 of the Complaint.
16. These Defendants do not believe that Paragraph 25 of the Complaint requires a response, but they nevertheless deny the allegations of Paragraph 25 of the Complaint.
17. These Defendants deny the allegations of Paragraphs 26, 27, 28, and 29 of the Complaint.
18. These Defendants do not believe that Paragraph 30 of the Complaint requires a response, but they nevertheless deny the allegations of Paragraph 30 of the Complaint.
19. These Defendants deny the allegations of Paragraphs 31, 32, 33, 34, and 35 of the Complaint.
20. These Defendants do not believe that Paragraph 36 of the Complaint requires a response, but they nevertheless deny the allegations of Paragraph 36 of the Complaint.
21. These Defendants deny the allegations of Paragraph 37 of the Complaint as those allegations state and/or seek a legal conclusion.
22. These Defendants deny the allegations of Paragraphs 38 and 39 of the Complaint.
23. These Defendants do not believe that Paragraph 40 of the Complaint requires a response, but they nevertheless deny the allegations of Paragraph 40 of the Complaint.

24. These Defendants deny the allegations of Paragraphs 41, 42, 43, 44, 45, and 46 of the Complaint.

25. Plaintiff is not entitled to any of the relief that it requested in the Complaint and/or its prayer for relief.

FOR A SECOND DEFENSE

26. These Defendants expressly seek to preserve and not waive any and all affirmative defenses available to them via federal and/or state statutes, regulations, common law, rules of procedure, rules of evidence, and/or any other binding authority that these Defendants might rely upon in defending this lawsuit.

FOR A THIRD DEFENSE

27. Throughout these Defendants' relationship and/or association with Plaintiff, these Defendants acted according to legitimate, reasonable, prudent, and lawful business purposes.

FOR A FOURTH DEFENSE

28. Plaintiff is not entitled to a jury trial in this case.

FOR A FIFTH DEFENSE

29. These Defendants owed no fiduciary and/or other duties to Plaintiff.

FOR A SIXTH DEFENSE

30. The after-acquired evidence doctrine limits or completely bars Plaintiff's claims, to the extent that these Defendants discover evidence, during this lawsuit, that would have caused them to refrain from conducting business with Plaintiff.

FOR A SEVENTH DEFENSE

31. To the extent that NCCIS entered into a valid or binding express or implied contract with Plaintiff, the contract is null, void, and invalid because of the fraudulent and

unauthorized acts of one or more former employees of NCCIS. Mr. Knight never entered into any valid or binding contract with Plaintiff in Mr. Knight's personal or individual capacity.

FOR AN EIGHTH DEFENSE

32. These Defendants plead the statute of frauds.

FOR A NINTH DEFENSE

33. The Court should reduce or quash Plaintiff's alleged damages, if any, to the extent that it failed or refused to mitigate its damages, if any, and/or to the extent that it has suffered no damages.

FOR A TENTH DEFENSE

34. These Defendants are not liable to Plaintiff or any party because of the unauthorized misrepresentation and/or fraud committed by one or more former NCCIS employees, who acted outside the scope of their employment and/or authority for their own self-interests and to the detriment of the Shelter.

FOR AN ELEVENTH DEFENSE

35. These Defendants are not liable to Plaintiff or any party because of intervening and/or superseding events, including but not limited to the federal and/or state governments cutting, delaying, and/or eliminating funding to the Shelter.

FOR A TWELFTH DEFENSE

36. These Defendants are not liable to Plaintiff or any party because NCCIS failed to timely receive adequate federal and/or state government funding, which was an express and/or implied condition precedent to any contract and/or agreement that the Shelter might have entered into with and/or among Plaintiff or any other party.

FOR A THIRTEENTH DEFENSE

37. Plaintiff is barred from relief to the extent that it has unclean hands and/or engaged in any improper, unlawful, illegal, fraudulent, and/or prohibited act.

FOR A FOURTEENTH DEFENSE

38. Plaintiff waived and/or released these Defendants from any liability to the extent that Plaintiff performed services on the Shelter's behalf after it became aware that NCCIS did not receive its federal and/or state funding or otherwise had no ability to pay.

FOR A FIFTEENTH DEFENSE

39. These Defendants' lawful, reasonable, prudent, and consistent actions negate any possible inference of liability and/or wrongdoing in their treatment of Plaintiff.

FOR A SIXTEENTH DEFENSE

40. These Defendants plead the statute of limitations and/or laches to the extent that Plaintiff untimely filed this lawsuit.

FOR A SEVENTEENTH DEFENSE

41. These Defendants plead for arbitration to the extent that any valid and binding contract that the parties might have entered required arbitration of this dispute.

FOR AN EIGHTEENTH DEFENSE

42. Plaintiff knowingly and voluntarily assumed the risks of loss and/or damage by purportedly entering into the alleged transaction(s) of which it now complains.

FOR A NINETEENTH DEFENSE

43. To the extent that Plaintiff suffered any injuries or damages, which these Defendants deny, the proximate cause of said injuries and/or damages was the intervening/superseding negligence, recklessness, willfulness, and wantonness of persons or

entities other than these Defendants, over whom these Defendants had no control, and therefore, these Defendants are not liable.

FOR A TWENTIETH DEFENSE

44. Doctrines of waiver and/or estoppel bar Plaintiff's claims against these Defendants.

FOR A TWENTY-FIRST DEFENSE

45. Any recovery by Plaintiff against NCCIS must be apportioned, pro-rated, reduced, or offset by amounts Plaintiff has received, will receive, or might become entitled to receive from others, whether by settlement or judgment or other payment, for the same injuries and damages claimed in this lawsuit. NCCIS expressly reserves the right to seek recovery, whether by cross-claim or otherwise, against any person and/or entity who might be found liable and/or responsible for the acts upon which Plaintiff complains.

FOR A TWENTY-SECOND DEFENSE

46. NCCIS craves application of the South Carolina Contribution Among Tortfeasors Act, South Carolina Code. § 15-38-15, *et seq.*, and submits that the damages for which Plaintiff seeks recovery against NCCIS must be limited to the percentage of fault, if any, attributable to the conduct of NCCIS.

FOR A TWENTY-THIRD DEFENSE

47. Plaintiff's recovery in this matter, if any, is or may be barred or limited by the Economic Loss Doctrine as it exists under South Carolina law.

FOR A TWENTY-FOURTH DEFENSE

48. These Defendants crave reference to and hereby incorporate by reference the terms, limitations, disclaimers, conditions precedent and/or subsequent, and exclusions contained

in brochures, literature, labels, policies, contracts, agreements, or other written materials exchanged and/or entered into among or between the parties.

FOR A TWENTY-FIFTH DEFENSE

49. Plaintiff's claims are barred to the extent that it lacks standing.

FOR A TWENTY-SIXTH DEFENSE

50. NCCIS pleads applicability of The Economic Development, Citizens and Small Business Protection Act of 2005, which amended South Carolina Code §§ 15-38-15 [joint and several liability], 15-7-30 [venue], 15-7-100 [venue], 36-2-803(B) [jurisdiction], and other pertinent statutory sections, and invokes the remedies and procedures provided therein.

FOR A TWENTY-SEVENTH DEFENSE

51. These Defendants acted in good faith after reasonable inquiry and without malice, corruption, or improper motive, all of which they plead as an absolute bar to this action.

FOR A TWENTY-EIGHTH DEFENSE

52. NCCIS is a charitable organization as defined by Chapter 56 of Title 33 of the South Carolina Code of Laws, and, pursuant to this statutory scheme, recovery, if any, against the Shelter for any tortious act or omission is specifically limited to actual damages in a specified amount.

FOR A TWENTY-NINTH DEFENSE

53. No privity existed between Mr. Knight and Plaintiff related to the allegations of which Plaintiff complains.

FOR A THIRTIETH DEFENSE

54. These Defendants are not vicariously and/or otherwise liable for the alleged actions of any employee who acted fraudulently and/or outside the course and scope of his/her employment and/or authority.

FOR A THIRTY-FIRST DEFENSE

55. These Defendants are not liable to the extent that Plaintiff or any other party materially breached any agreement with NCCIS or otherwise failed to perform any obligations owed to the Shelter.

FOR A THIRTY-SECOND DEFENSE

56. NCCIS' alleged mortgage with Bank of America is invalid, void, and/or voidable because of fraud committed by one or more former Shelter employees who lacked authority to enter into that alleged mortgage and/or misappropriated the Shelter's funds, all which were outside the course and scope of their employment and/or authority with NCCIS.

FOR A THIRTY-THIRD DEFENSE

57. NCCIS' alleged mortgage with Bank of America is invalid, void, and/or voidable to the extent that Bank of America waived and/or released NCCIS from the alleged mortgage or if Bank of America acted fraudulently, illegally, with unclean hands, or materially breached any of the provisions of the alleged mortgage.

FOR A THIRTY-FOURTH DEFENSE

58. These Defendants reserve the right to assert all other defenses available to them under law or equity at the time of trial and reserve the right to amend this Answer to include additional defenses that discovery may reveal to be appropriate.

WHEREFORE, these Defendants respectfully pray that the Court dismiss this case with prejudice and enter judgment in their favor, including costs, attorney's fees, and such other relief as the Court deems just and proper.

TURNER PADGET GRAHAM & LANEY, P.A.



Reginald W. Belcher

e-mail: rbelcher@turnerpadget.com

Post Office Box 1473

Columbia, South Carolina 29202

(803) 227-4314 direct dial

(8003) 400-1515 facsimile

**ATTORNEYS FOR DEFENDANTS NCCIS,
THE GOOD NEIGHBOR CENTER, AND
BOBBY KNIGHT**

July 16, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Emory J. Infinger and Associates
Construction Company, Inc.,

Plaintiff,

vs.

North Charleston Community Interfaith
Shelter, Bobby Knight, in his official
capacity as Chairman and President
of Board for the Good Neighbor Center,
The Good Neighbor Center,
Bank of America, N.A., S.C. State
Housing Finance and Development
Authority, Atlantic Construction
Services, Inc., L&W Supply
Corporation d/b/a CK Supply, Now
Mechanical, Inc., and Wilson & Associates
Electrical Contractors, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action Number 2012-CP-10-2872

CERTIFICATE OF SERVICE

BY

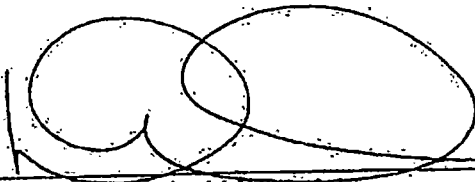
JULIE J. ARMSTRONG
CLERK OF COURT

2012 JUL 18 AM 11:41

FILED

I hereby certify that I have this 16th day of July, 2012, served a copy of the foregoing
**ANSWER OF BOBBY KNIGHT AND NORTH CHARLESTON COMMUNITY
INTERFAITH SHELTER, FORMERLY KNOWN AS AND/OR DOING BUSINESS AS
THE GOOD NEIGHBOR CENTER**, by mailing a copy of the same, postage prepaid, to the
following:

Theodore L. Manos, Esquire
Robertson Hollingsworth & Flynn
Wells Fargo Center
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Attorney for the Plaintiff



Legal Assistant to Reginald W. Belcher

TURNER PADGET

TURNER PADGET GRAHAM & LANEY P.A.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

REPLY TO:

Reginald W. Belcher
Certified Specialist in Labor and Employment Law

RBelcher@Turnerpadget.com
Writer's Direct Dial: (803) 227-4314
Direct Fax: (803) 400-1515

July 16, 2012

Honorable Julie J. Armstrong
Charleston County Clerk of Court
106 Judicial Center
100 Broad Street
Charleston, South Carolina 29401

Re: Emory J. Infinger and Associates Construction Company, Inc., v.
North Charleston Community Interfaith Shelter, Bobby Knight, et al.
Civil Action Number 2012-CP-10-2872
TPG&L File No. 10728.131

Dear Ms. Armstrong:

Enclosed please find an original and one copy of an Answer in reference to the above-captioned matter. Please file and return a stamped copy to me in the enclosed self-addressed envelope. By copy of this letter and enclosure, I hereby serve opposing counsel.

Sincerely,

TURNER, PADGET, GRAHAM & LANEY, P.A.



Reginald W. Belcher

RWB/dwm
Enclosure

cc: Theodore L. Manos, Esquire (w/enclosure)

BUSINESS • LITIGATION • SOLUTIONS

Bank of America Plaza • 17th Floor • 1901 Main Street (29201) • PO Box 1473 • Columbia, SC 29202
Phone (803) 254-2200 • Fax (803) 799-3957 • turnerpadget.com

APPENDIX 0091 CERTIORARI

047

1 name and address for the record, please?

2 THE WITNESS: David Caine (phonetic) Haun,
3 1113 John Rutledge Avenue, Hanahan, 29410.

4 THE COURT: Thank you, Mr. Haun. Mr. Manos?

5 MR. MANOS: Judge, procedurally, may I
6 approach for a second?

7 THE COURT: You may.

8 MR. MANOS: Just to try to be organized -- I
9 will see if that works or not. I got you a copy of
10 the exhibits, and the clerk a copy of the exhibits.

11 THE COURT: Thank you. Very good.

12 MR. MANOS: I am going -- I premarked for the
13 witness with a little table of contents up here
14 (indicating).

15 THE COURT: Thank you. Very good.
16 Mr. Whipper, you have a copy as well?

17 MR. WHIPPER: I do.

18 EXAMINATION

19 BY MR. MANOS:

20 Q. Mr. Haun, what do you do for a living?

21 A. I'm a construction project manager currently
22 employed with Simmons Contracting Group.

23 Q. And what does Simmons Contracting do? What
24 kind of contractor are you?

25 A. Oh, commercial. Mostly tin upfits, metal

1 buildings.

2 Q. How long have you been with Simmons?

3 A. About two and a half years.

4 Q. Prior to Simmons, who did you work for?

5 A. Emory J. Infinger and Associates.

6 Q. And approximately how many years did you work
7 for Infinger Construction Company?

8 A. 24.

9 Q. What was your position with Emory J. Infinger
10 & Associates?

11 A. Estimator, project manager, and vice
12 president.

13 Q. Vice president of the company?

14 A. Yes.

15 Q. And generally what were your duties as a
16 project manager and vice president of the company?

17 A. To do quality takeoffs of surveys from the
18 plans, solicit quotes from subcontractors and
19 material suppliers. We were successful in the bid,
20 putting the bid together, and we were successful in
21 purchasing materials and writing subcontracts.

22 Q. Okay.

23 A. The day-to-day organization of the job.

24 Q. Okay. As a project manager for Infinger what
25 was your involvement with the pay application process

1 on jobs?

2 A. I would receive invoices from material
3 suppliers and subcontractors through our accounting
4 department and prepare our pay estimate to the owner
5 based on that and whatever we had done with our own
6 forces.

7 Q. And what was your involvement as a project
8 manager in the change order process?

9 A. Preparing the cost of the change order, and I
10 think in this case we even prepared the paperwork for
11 the change order to be signed by the various parties.

12 Q. All right. Let's talk about what we're here
13 for today. What was your first involvement with --
14 I'm going to call it The Shelter for today. What was
15 your first involvement with The Shelter project?

16 MR. WHIPPER: That's fine.

17 THE WITNESS: Part-time previous employee,
18 Guerry Johnson, had brought this project to Emory and
19 talked to him about it.

20 Q. (BY MR. MANOS) And who is Emory?

21 A. Emory Infinger is the president of the company
22 and the owner of the company.

23 Q. He set up a meeting with the Board members on
24 West Montague Avenue. I forgot the name of the
25 business that was there. Anyway, we met with the

1 Page 1, what did that number represent?

2 A. The cost of the written description of work
3 here.

4 Q. Prior to there actually being a design drafted
5 and performed?

6 A. Right. Part of the cost of representing what
7 it would take to design the job.

8 MR. MANOS: All right. And I would move
9 Plaintiff's Exhibit 1 into evidence.

10 THE COURT: All right. Any objection,
11 Mr. Whipper?

12 MR. WHIPPER: No objection, Your Honor.

13 THE COURT: Without objection. 1 is in
14 evidence.

15 Q. (BY MR. MANOS) At some point did the parties
16 reach a contract?

17 A. Yes.

18 Q. Let me direct your attention to Plaintiff's
19 Exhibit 2. Please take a look at that document.

20 A. Okay.

21 Q. Do you recognize that document?

22 A. Yes.

23 Q. What is it?

24 A. It's an AIA contract between the owner and the
25 design builder.

1 Q. Was that a document that you reviewed on
2 behalf of Infinger prior to it being entered and
3 signed by Emory?

4 A. Yes.

5 Q. And when was that agreement entered between
6 the parties? Let me direct your attention to Page 1.

7 A. The date is the 10th of December, 2010.

8 Q. Okay. And was this the initial contract that
9 the parties for the construction of The Shelter were
10 working under?

11 A. Yes.

12 Q. Is this the contract that you as the project
13 manager followed during construction subject to later
14 changes?

15 A. Yes.

16 Q. Let me direct your attention to Page 10 of
17 Exhibit 2. Do you recognize Mr. Infinger's signature
18 on behalf of Infinger and Associates?

19 A. Yes.

20 MR. WHIPPER: Excuse me. Your said Page 10 of
21 Exhibit 2?

22 MR. MANOS: Yes.

23 MR. WHIPPER: I'm not showing a Page 10.

24 MR. MANOS: Here's my copy. I seek to enter
25 Plaintiff's Exhibit 2 as the Contract for

1 Construction.

2 THE COURT: Any objection?

3 MR. WHIPPER: No objection.

4 THE COURT: Without objection. In evidence.

5 Q. (BY MR. MANOS) At the time of the contract in
6 December of 2010, what generally was going on between
7 December of 2010 when the contract was signed and
8 before the actual design and construction began?

9 A. It was just administrative work and design
10 work. There was no physical work done on the job
11 site.

12 Q. Did Infinger begin work on December 11th, the
13 day after the contract was signed or was there some
14 delay?

15 A. There was some delay.

16 Q. When approximately did the work begin?

17 A. March maybe.

18 Q. And what was your general understanding, if
19 you had one, of why Infinger couldn't begin work
20 immediately?

21 A. The State grant was not fully available.

22 Q. And when you are talking about a State grant
23 what are you referring to?

24 A. Well, the grants were 65 percent V.A. and
25 35 percent State Housing Authority or something like

1 that.

2 Q. And these grants you're referring to, were
3 these grants that were to Infinger or grants to The
4 Shelter?

5 A. Grants to The Shelter.

6 Q. Go ahead.

7 A. And the V.A. was okay with their part of the
8 funding but the State needed some additional
9 assurances or whatever. They wanted a title search
10 and assurances that their lien would be enforceable I
11 suppose.

12 Q. At some point were you made aware that the
13 State had been satisfied in order to provide their
14 funds?

15 A. Yes.

16 Q. And then at some point did somebody from the
17 owner notify Infinger that it was okay to proceed and
18 issue a notice to proceed?

19 A. Yes.

20 Q. Your recollection was that was around March of
21 2011?

22 A. Yes. I want to say that.

23 Q. Let me direct your attention to Plaintiff's
24 Exhibit 3.

25 A. These are the minutes of a pre-construction

1 issue a set of plans?

2 A. Yes.

3 Q. And did Infinger use those plans to actually
4 price out the job?

5 A. Yes.

6 Q. All right. At some point construction gets
7 started and Infinger submits a first application for
8 payment; is that accurate?

9 A. That's right.

10 Q. All right. Let me direct your attention to
11 Plaintiff's Exhibit 4, and tell the Court what that
12 is.

13 A. That's our Pay Application No. 1 dated
14 April 15th.

15 Q. And on the first page did you sign the
16 transmittal letter for the pay application sending it
17 to The Shelter?

18 A. Yes.

19 Q. Is that your signature?

20 A. It is.

21 Q. Did you actually prepare the supporting pay
22 application, pay application information, in
23 Exhibit 4?

24 A. Yes.

25 Q. Tell the Judge generally what goes into the

1 pay application process and what Pay Application 1 is
2 showing us, the highlights of it?

3 A. Well, we receive invoices from material
4 suppliers and subcontractors. I take those along
5 with whatever work we've done with their own forces
6 and prepare progress payments based on the values.
7 In this one, No. 1, we had engineering and plans
8 which included work done by Rick Stephens and
9 L.C. Evans. Builder's Risk insurance is a premium
10 payment that we had provided the certificate of
11 insurance for so we had obviously paid the premium.

12 Q. Right.

13 A. And the general conditions was just our -- at
14 least part of it is our overhead.

15 Q. Our being Infinger?

16 A. Our being Infinger, right, what it cost. My
17 services are not directly listed in a --

18 Q. In a piece of --

19 A. -- in a schedule value here. It's part of the
20 general conditions.

21 Q. So directing your attention to the second page
22 of Exhibit 4, do you see a line, Original Contract
23 Sum?

24 A. Correct.

25 Q. What is that telling us?

1 A. That is based on our original proposal and our
2 written description of the work we were going to do.
3 The change order for 10,834 there was --

4 Q. Which was at Line 2?

5 A. Line 2, right. Net change by change orders.

6 Q. Yes, sir.

7 A. I believe that represents some insurances that
8 weren't included in our original proposal.

9 Q. Let me refresh your recollection if I may.
10 Going back to Exhibit 1, and specifically Page 7, do
11 you recall when Infinger originally prepared its
12 estimate that they did not include a performance and
13 payment bond?

14 A. That's correct.

15 Q. And we see in Line 6 of Exhibit 1 that
16 performance and payment bonds were excluded?

17 A. Correct.

18 Q. And let me direct your attention to what is
19 proposed Exhibit 13.

20 A. Right.

21 Q. Is that a document that you prepared?

22 A. It is.

23 Q. And what is that document?

24 A. It is Change Order No. 1, which added a
25 performance and payment bond, which was required by,

1 I believe, the State of South Carolina.

2 Q. As part of the funding for the Housing
3 Authority?

4 A. Right.

5 Q. And Change Order No. 1 also made a couple of
6 other changes; is that correct?

7 A. Yes. We changed the legal name of the owner
8 and --

9 Q. It changed from?

10 A. From the Good Neighbor Center to the North
11 Charleston Community Interfaith Shelter.

12 Q. And what other changes were made in Change
13 Order No. 1?

14 A. Retainage was changed from 0 percent to
15 10 percent for the State of South Carolina, and the
16 V.A. required that we -- that any retainage be
17 withheld from their part, so it was still 0 percent
18 for that portion. The contract time was extended to
19 82 days because of the delays in getting started.

20 Q. Okay. And Change Order No. 1 had -- I think
21 we all know in the room, but what is a change order?
22 What's the purpose of a change order?

23 A. To change the terms of the contract.

24 Q. And you prepared Plaintiff's Proposed
25 Exhibit 13 and submitted it to Mr. Infinger as the

1 owner for signature?

2 A. Correct.

3 Q. And that is his signature on Exhibit 13?

4 A. It is.

5 Q. And you recognize two other gentlemen's
6 signatures on Exhibit 13?

7 A. Right. Our design professional, Rick
8 Stephens, and the President of The Shelter, Bobby
9 Knight.

10 Q. All right.

11 THE COURT: Do you want to move that admission
12 now?

13 MR. MANOS: I would like to move into evidence
14 Pay Application 1, which was Exhibit 4 and Change
15 Order No. 1 which is Exhibit 13.

16 THE COURT: Any objection there, Mr. Whipper?

17 MR. WHIPPER: No objection.

18 THE COURT: Very good.

19 Q. (BY MR. MANOS) All right. The construction
20 gets under or the design and construction starts
21 getting under way in the March, 2011 time frame?

22 A. Right.

23 Q. Let me direct your attention to Plaintiff's
24 Exhibit 5. What is that document?

25 A. Payment Application No. 2.

1 Q. Did you prepare this document?

2 A. I did.

3 Q. And you submitted the information to
4 Mr. Infinger as owner of the company for signature?

5 A. Correct.

6 Q. What is this Payment Application No. 2 showing
7 us generally?

8 A. That we incurred some more expenses for
9 engineering and plans, and we have -- we moved our
10 office trailer on site and started to do a little
11 site work.

12 Q. Okay. And the date of Payment Application 2
13 was submitted when?

14 A. April -- excuse me -- June 10th.

15 Q. Prior to Payment Application 2 being
16 submitted, let me direct your attention to
17 Plaintiff's Exhibit 14, and if you could tell the
18 Court what that document is?

19 A. Change Order No. 2.

20 Q. And is that a document you prepared?

21 A. Yes.

22 Q. What is Change Order No. 2 showing us?

23 A. The existing flag pole was to be removed in
24 the original contract, but we deleted the removal of
25 that and credited the amount of money, the scheduled

1 extra cost we're going to incur?

2 A. Right.

3 Q. And Mr. Stephens and Mr. Knight, on behalf the
4 owner, sent it back and signed it?

5 A. Correct.

6 Q. And then Emory signed it to finalize it?

7 A. Yes.

8 MR. MANOS: I seek to move Plaintiff's
9 Exhibit 15 into evidence.

10 THE COURT: Any objection?

11 MR. WHIPPER: No objection.

12 THE COURT: Mr. Manos, I'm just keeping up
13 with the exhibits. Did you move 5 in yet or not?

14 MR. MANOS: I was getting ready to now. I was
15 trying to keep the dates straight.

16 THE COURT: That's all right.

17 Q. (BY MR. MANOS) Directing your attention back
18 to Plaintiff's 5, Mr. Haun, that was Pay
19 Application 2 that we already talked about. I think
20 you previously testified that you prepared that
21 document?

22 A. Yes.

23 Q. That was dated June 7th of '11; is that
24 correct?

25 A. Correct.

1 Q. Tell us, does that payout include any of the
2 change order information that we just looked at in
3 Exhibit 14 at this point?

4 MR. WHIPPER: I'm sorry. I've lost track.
5 That's Plaintiff's Exhibit 5?

6 MR. MANOS: He is looking at Plaintiff's
7 Exhibit 5.

8 THE COURT: We went back to 5.

9 THE WITNESS: I'm sorry. Repeat the question.

10 Q. (BY MR. MANOS) Sure. It wasn't the most
11 wonderfully phrased. Does Pay Application 2, dated
12 June 7 of '11, does that include any of the change
13 order new costs that we see in Plaintiff's Exhibit 15
14 at this point?

15 A. No. Change Order No. 3 is not a scheduled
16 value yet.

17 Q. Okay. So again, you prepared Pay
18 Application 2 and submitted it to the owner for
19 signature?

20 A. Correct.

21 Q. And then it was submitted to the owner for
22 payment?

23 A. Yes.

24 MR. MANOS: I seek to move Plaintiff's Exhibit
25 No. 5 into evidence.

1 MR. WHIPPER: I'm looking at 5 and the Letter
2 of Transmittal was signed by Mr. Haun?

3 MR. MANOS: Yes.

4 MR. WHIPPER: And you mentioned the date on
5 this. Let me make sure I'm on the right document.

6 MR. MANOS: This is where I messed you up.
7 I'm sorry. It was submitted on 6/10, dated 6/7.

8 MR. WHIPPER: No objection, Your Honor.

9 THE COURT: Okay. No. 5 is in evidence.

10 Q. (BY MR. MANOS) Mr. Haun, let me direct your
11 attention to Plaintiff's Exhibit No. 6. What is
12 that?

13 A. Application for Payment No. 3.

14 Q. And on the second page of Pay App No. 3, that
15 was for work performed in what period?

16 A. June 30, 2011.

17 Q. And at this point this was a document that you
18 prepared?

19 A. Yes.

20 Q. And you submitted it to Mr. Infinger as owner
21 for signature?

22 A. Correct.

23 Q. And what is Payment Application 3 generally
24 showing us about the contract and any additions or
25 subtractions to it and stored materials to date?

1 A. Change Orders No. 1, 2, and 3 are included in
2 this total contract amount.

3 Q. Increasing the contract sum to?

4 A. \$828,442.

5 Q. This pay application was then transmitted
6 under your signature to the owner?

7 A. Correct.

8 Q. For payment?

9 A. Yes.

10 MR. MANOS: I move to enter Plaintiff's
11 Exhibit No. 6 into evidence.

12 MR. WHIPPER: No objection.

13 THE COURT: 6 is in evidence. All right.

14 Q. (BY MR. MANOS) Let me direct your attention
15 to Plaintiff's 16.

16 THE COURT: 16?

17 MR. MANOS: Yes, Your Honor.

18 Q. (BY MR. MANOS) What is that document,
19 Mr. Haun?

20 A. Change Order No. 4.

21 Q. Is that a document that you prepared?

22 A. It is.

23 Q. What is Change Order No. 4 showing us?

24 A. It shows us that the structural steel erection
25 was --

1 MR. WHIPPER: No objection.

2 THE COURT: All right.

3 MR. WHIPPER: None, Your Honor.

4 THE COURT: Without objection.

5 Q. (BY MR. MANOS) And let me direct your
6 attention, Mr. Haun, to Plaintiff's Exhibit 7.

7 A. Okay.

8 Q. What is that document?

9 A. Application for Payment No. 4.

10 Q. And that is for work performed by Infinger,
11 and it's subs and designers through what application
12 period?

13 A. Through July 31, 2011.

14 Q. And what is going on at this point in the
15 contract as far as the contract sum and what's been
16 submitted for payment, et cetera?

17 A. Well, there's a new form attached to this one.
18 It was a V.A. form which we had -- somebody had to
19 fill out and turn in with the pay application to
20 satisfy some V.A. requirements.

21 Q. So some additional procedures were added?

22 A. Correct.

23 Q. And at this point did Infinger enter into any
24 contract with the V.A.?

25 A. No.

1 Q. Did Infinger enter into a contract with The
2 Shelter -- I'm sorry -- with the South Carolina
3 Housing Authority?

4 A. No.

5 Q. So the form that we see in Plaintiff's
6 Exhibit 7 was -- that was a form that the owner
7 provided to you-all to fill out to submit to the V.A.
8 with payment?

9 A. Well, they didn't necessarily provide the
10 form. We found it on the Internet.

11 Q. That's part of the process?

12 A. It was part of the process that had to be
13 done, and we had the staff to do it so we did it.

14 Q. Okay. Again, you prepared the pay application
15 for Mr. Infinger's signature?

16 A. Correct.

17 Q. And then it was submitted to the owner for
18 payment?

19 A. Right.

20 MR. MANOS: I would like to move to enter
21 Plaintiff's Exhibit 7 into evidence.

22 MR. WHIPPER: One second.

23 (Brief pause.)

24 No objection, Your Honor.

25 THE COURT: Without objection, No. 7.

1 THE COURT: Without objection.

2 Q. (BY MR. MANOS) Let me direct your attention
3 to Plaintiff's No. 8.

4 A. Okay.

5 Q. What is that document?

6 A. This is an application for Payment No. 5.

7 Q. And that was for labor, service and materials
8 provided by Infinger and its subs and designers
9 through what period?

10 A. Through August 31, 2011.

11 Q. What is the status of the contract at that
12 point as far as contracts, change orders, et cetera?

13 A. Well, we have another change order adding
14 \$90,000 to the project and increasing the total
15 contract amount to \$889,976.

16 Q. And actually what are you asking be paid in
17 that application?

18 A. The current payment due?

19 Q. Yes, sir.

20 A. \$99,997.

21 Q. And again, this is a document that you
22 prepared for Mr. Infinger's signature?

23 A. Yes.

24 Q. And this is a document that you've had
25 transmitted to the owner for payment?

1 A. Correct.

2 MR. MANOS: I move to enter Plaintiff's
3 Exhibit 8 into evidence.

4 MR. WHIPPER: Your Honor, some bookkeeping
5 issues.

6 THE COURT: Yes.

7 MR. WHIPPER: This is Application No. 5.

8 THE COURT: Pay Application No. 5, yes, sir.

9 MR. WHIPPER: And it seems that Application
10 No. 5 is different from Change Order No. 5.

11 THE COURT: Correct.

12 MR. WHIPPER: Okay. Without objection.

13 THE COURT: Without objection. That's
14 Exhibit 8.

15 Q. (BY MR. MANOS) All right. Let me direct your
16 attention to Plaintiff's 18.

17 A. This is Change Order No. 6.

18 Q. And what was the owner asking Infinger to
19 price for Change Order No. 6?

20 A. In the tinted rooms the baths had wall hung
21 sinks and we changed from wall hung sinks to drop in
22 sinks which also required a piece of millwork. We
23 had a delay. We had a 30-ton crane on the job site.
24 I forgot what the delay was, but there was some
25 delay.

1 Exhibit 18 into evidence.

2 MR. WHIPPER: No objection.

3 THE COURT: Without objection. Exhibit 18.

4 Q. (BY MR. MANOS) Let me direct your attention
5 to Plaintiff's Exhibit 9.

6 A. This is application for Payment No. 6.

7 Q. That is through what application period?

8 A. Through the period of September 30th, 2011.

9 Q. Okay. Was this a document that you prepared?

10 A. Yes.

11 Q. And you prepared it for Mr. Infinger's
12 signature?

13 A. Yes.

14 Q. And what is Pay Application No. 6 showing us?

15 A. The total completed and to date is \$515,592
16 and current payment due is \$110,331.

17 MR. MANOS: I move to enter Plaintiff's
18 Exhibit 9 into evidence.

19 MR. WHIPPER: Without objection.

20 THE COURT: 9 is in without objection.

21 Q. (BY MR. MANOS) Let me direct your attention
22 to Plaintiff's 9A.

23 A. Okay. We revised Payment Application No. 6.

24 Q. Why was that, if you can recall?

25 A. It was in response to this e-mail we received

1 from Rick Stephens.

2 Q. Who was Rick Stephens again?

3 A. Rick Stephens was a design professional
4 engineer.

5 Q. And generally what had Mr. Stephens in --

6 A. Michelle Lewis was the project development
7 specialist for the V.A. grant and she revised what
8 our application for Payment No. 6 would need to be
9 changed to in order for her to approve it.

10 Q. Okay. And was the application -- did Infinger
11 change its application?

12 A. It did.

13 Q. Okay.

14 A. Well, actually --

15 Q. Go ahead.

16 A. -- it appears that we didn't change our
17 application form, but we changed the V.A. form.

18 Q. The V.A. form was altered, and that's Page 2
19 of Exhibit 9?

20 A. Correct.

21 Q. And that was done per the instructions from
22 the engineer and Ms. Lewis?

23 A. Correct.

24 MR. MANOS: One second, Your Honor.

25 Q. (BY MR. MANOS) On the third page of

1 Exhibit 9A there is an e-mail chain. At the very top
2 left-hand section of the third page it shows an
3 e-mail from Mr. Stephens to you; is that correct?

4 A. Yes.

5 Q. Do you recall receiving that e-mail?

6 A. Yes.

7 Q. And although you were not -- you did not
8 receive the e-mail below, that was not directed to
9 you as a recipient, the one from Ms. Lewis that came
10 being forwarded from Mr. Stephens?

11 A. That is correct.

12 Q. And Ms. Lewis' e-mail actually went to Bobby
13 Knight and some of the others from the V.A. and the
14 engineer?

15 A. Right.

16 Q. And then the engineer sent it on to you?

17 A. Right.

18 Q. You don't have any personal specific knowledge
19 of the contents contained in the e-mail from
20 Ms. Lewis to Mr. Knight, but that e-mail was
21 forwarded to you by Mr. Stephens and then Infinger
22 accordingly changed the form to the V.A. form
23 pursuant to that e-mail?

24 A. Right. And then there's the -- at the end of
25 the e-mail chain there, there is a response from

1 Bobby to Michelle stating that he's going to meet
2 with the County and State representatives about the
3 gap.

4 MR. MANOS: Okay. I seek to move into
5 evidence the first two pages of Plaintiff's 9A.

6 THE COURT: That's the Letter of Transmittal
7 and the 271 Form?

8 MR. MANOS: Yes, sir. And then --

9 MR. WHIPPER: I don't have -- I think it
10 should be complete.

11 MR. MANOS: If you will have it without
12 objection, I'll seek to move the whole document in.

13 MR. WHIPPER: Without objection.

14 MR. MANOS: The whole document is 9A, Your
15 Honor.

16 THE COURT: 9A, very good.

17 Q. (BY MR. MANOS) Let me direct your attention,
18 Mr. Haun, to Plaintiff's 10.

19 A. Okay.

20 Q. What is that?

21 A. Application for Payment No. 7.

22 Q. And that's --

23 A. For the period to October 31st, 2011.

24 Q. Okay. That was a document that you prepared?

25 A. Yes.

1 Q. For the labor, services, and materials
2 provided by Infinger and its subs, and it's the
3 designers through that period?

4 A. Yes.

5 Q. And you have submitted it to Mr. Infinger for
6 signature on behalf of the company?

7 A. Yes.

8 Q. And then submitted it to the owner for
9 payment?

10 A. Correct.

11 MR. MANOS: I move to enter Plaintiff's
12 Exhibit 10 into evidence.

13 MR. WHIPPER: No objection.

14 THE COURT: Without objection.

15 Q. (BY MR. MANOS) Mr. Haun, let me direct your
16 attention to Plaintiff's 11.

17 A. Application for Payment for Payment No. 8.

18 Q. That's a document you prepared?

19 A. Yes.

20 Q. And it's for the services and materials that
21 Infinger's subs and designers supplied to the
22 project?

23 A. Through November 30, 2011.

24 Q. And you submitted it to Mr. Infinger as owner
25 of the company for signature?

1 A. Correct.

2 Q. And then submitted it to the owner for
3 payment?

4 A. Correct.

5 MR. MANOS: I move to enter Plaintiff's
6 Exhibit 11 into evidence..

7 MR. WHIPPER: No objection.

8 THE COURT: 11 in without objection.

9 Q. (BY MR. MANOS) Lastly, let me direct your
10 attention to Plaintiff's Exhibit 12. What is that
11 document?

12 A. Application for Payment No. 9 for the period
13 through 12/31/2011.

14 Q. Okay. And you prepared this document to show
15 the labor services and materials provided by
16 Infinger, its subs and designer?

17 A. Yes.

18 Q. And you prepared it for Mr. Infinger's, as
19 owner of the company, signature?

20 A. Correct.

21 Q. And it was submitted to the owner for payment?

22 A. Correct.

23 Q. And let me direct your attention to Page 3 of
24 Exhibit 12?

25 A. Okay.

1 Q. What is that showing us? Generally what is
2 that for the Judge, and then I'll ask you some
3 specific questions.

4 A. Well, in the first column is the scheduled
5 value for the various work items here.

6 Q. What do the schedule values represent?

7 A. The cost, the proportional cost of the
8 different items of work as it relates to the total
9 contract value.

10 Q. And then what are we seeing in Column No. D?

11 A. D, those are costs from previous applications
12 for payment.

13 Q. And just going across so the Court
14 understands.

15 A. E is this period, the period between the last
16 pay app -- well, the first of the month and the end
17 of the month.

18 Q. And F?

19 A. F is materials that are presently stored.

20 Q. Okay. G?

21 A. G is the total completed and stored to date.
22 You have the total work completed for Columns D, E,
23 and F. You end up with Column G, and then divide the
24 total complete and stored to date by the scheduled
25 value, and then you get a percentage complete. H is

1 the balance to finish.

2 Q. Okay. And just by way of example running
3 across Item 1, there was a scheduled value of some
4 \$80,446 for the engineering and plans; is that
5 correct?

6 A. Correct.

7 Q. By the time Infinger submitted Pay
8 Application 9, it's well into construction, the
9 engineering and plans have already been completed?

10 A. Right.

11 Q. Except to the extent there's a change
12 possibly?

13 A. Right.

14 Q. So if you move over to G it shows the
15 engineering and plans as being totally complete and
16 stored for the full amount?

17 A. Right.

18 Q. And then it shows the percentage being
19 100 percent?

20 A. Right.

21 Q. And there's no balance to finish because it's
22 already been done?

23 A. Right.

24 Q. So without going through each one of these,
25 that is the general process. You start with the

1 total scheduled value, and then it shows what you've
2 applied for, it shows for that period -- it shows
3 completed and stored to date, and then if it's not
4 100 percent complete there's a projected percentage
5 based on the amount?

6 A. Yes. The percentage is the dollar amount.

7 Q. Sure.

8 A. And then H is the balance to finish. So if
9 it's not 100 percent it will show you what's left to
10 finish.

11 Q. Move to the second page. Once you get through
12 the main line items -- you've got the change orders
13 designated as well?

14 A. Yes.

15 Q. And the reason the change orders are separate
16 from the original scheduled values?

17 A. They increased the value of the contract
18 amount.

19 Q. And weren't part of the contract originally?

20 A. Right.

21 Q. All right. We went through 9 different
22 multi-page pay applications and six different change
23 orders with multiple pages as well. Let me direct
24 your attention to Plaintiff's Exhibit 21.

25 A. Okay.

1 Q. What is that document?

2 A. This is a summary of Pay Applications 1
3 through 9, the amount we applied for, the amount that
4 was paid by either the V.A. or -- well, the amount
5 that was paid to us by them.

6 Q. And then there are two other columns in there
7 as well which include -- you were getting ready to
8 mention the V.A. and the State. What are those
9 showing?

10 A. What the V.A. had paid out of their part of
11 the grant, and what the State had paid out of its
12 part of the grant.

13 Q. This is -- Plaintiff's Exhibit 1 (sic) is a
14 document that you prepared?

15 A. Yes.

16 Q. And you prepared it based on the nine pay
17 applications that we've looked at and entered into
18 evidence today?

19 A. Right. And what accounting told me we had
20 been paid.

21 Q. Accounting with Infinger?

22 A. Right.

23 Q. And at the end of -- strike that.

24 Did Infinger ever have an opportunity to
25 finish the building?

1 Q. Okay.

2 A. So we prepared an estimate to secure it,
3 meaning we were going to put some temporary roofing
4 on the roof, close in the windows and the door
5 openings to keep people in, weather out, and just
6 kind of secure it so it would stay there until things
7 could get worked out and we could go back to work and
8 finish it.

9 Q. And I know you lived this and the rest of us
10 didn't, so let's back up a step. At what point was
11 Infinger notified that there was an issue with
12 payment and to actually stop the construction?

13 A. I think I sent out a letter in early November.

14 Q. A letter to whom?

15 A. A letter to the subcontractors and suppliers
16 telling them that we're suspending work until funding
17 can be resolved.

18 Q. So did there come a point in the contract when
19 payment stopped from the owner?

20 A. Yes. I think it was -- it looks like around
21 the end of November or maybe even the end of October.

22 Q. Okay. So if I understood your testimony
23 correctly, Infinger got its Notice to Proceed in
24 March of 2011?

25 A. (Witness nods head.)

1 Q. Thereabouts?

2 A. Thereabouts.

3 Q. You started the design and construction
4 started in or about June of '11?

5 A. Right.

6 Q. And you went through the pay application
7 process, construction got in the way, and you went to
8 a point into about October of '11?

9 A. Right.

10 Q. And then at some point the owner notified
11 you-all that payment funding for them had been cut
12 off?

13 A. Right.

14 Q. And then Infinger notified its subs to stop?

15 A. Well, I'm not sure if funding had been cut
16 off, but the State sent an inspector out. If I said
17 the job was 80 percent complete he would come out and
18 say the job is 60 percent complete and pay us 60
19 percent.

20 Q. Okay.

21 A. There wasn't a whole lot you could do about
22 that except move it up to the next pay application.
23 It got to the point that my percentage complete and
24 what I needed to continue with the job as far as
25 money goes exceeded what he was going to approve. So

1 if we couldn't get paid then we had to stop work.

2 Q. And at some point the work stopped?

3 A. Yes.

4 Q. And you described for us a letter you sent to
5 the subs telling them the work had been suspended?

6 A. Right.

7 Q. Okay. You got a little ahead of me earlier.
8 At some point following when the work stopped
9 Infinger went back to the owner with a plan to
10 protect the building?

11 A. Right.

12 Q. And tell us generally by memory, or I can show
13 you a letter to refresh your memory if you need it,
14 what that process was?

15 A. Well, as -- again, to -- there's a product
16 called Ice and Water Shield. It goes under shingle
17 roofs. It's not UV resistant so you can't leave it
18 out for a long time, but it will seal the roof until
19 you can get the shingles on.

20 Q. Okay.

21 A. So we were going to do that on the roof, we
22 were going to plywood up the openings, all the
23 exterior wall openings to secure from weather and
24 people.

25 Q. Right.

1 A. That pretty much describes what we were going
2 to do.

3 Q. So you-all made that recommendation, and let
4 me direct your attention to Plaintiff's 22.

5 A. Okay.

6 Q. Plaintiff's 22 was a letter that you wrote to
7 Mr. Knight?

8 A. Yes.

9 Q. And that generally describes -- contains the
10 details of what you were just describing for us at
11 the time?

12 A. Right.

13 Q. The project had been inactive due to lack of
14 payment for some two months, which puts us back in
15 the October time frame?

16 A. Right.

17 Q. Did you ever receive a letter or direction
18 with payment back from the owner to come back and
19 follow through with this recommended protection?

20 A. No.

21 Q. All right. So to date -- strike that.

22 Moving back -- let me direct your attention
23 back to -- strike that also.

24 MR. MANOS: I seek to move Plaintiff's 22 into
25 evidence.

1 MR. WHIPPER: No objection.

2 THE COURT: Without objection. Did you want
3 12 and 21 in, or are you still working on those?

4 MR. MANOS: Did I not seek to move 12?

5 MR. WHIPPER: No.

6 MR. MANOS: My apologies. Yes, Your Honor. I
7 seek to move Plaintiff's 12 into evidence, which is
8 Pay Application 9.

9 THE COURT: Pay No. 9.

10 MR. WHIPPER: Without objection.

11 THE COURT: 12 is in, 22 is in, and I think
12 21. That was the table of pay requests that I think
13 Mr. Haun testified he prepared?

14 Q. (BY MR. MANOS) Yes. So the summary contained
15 in Plaintiff's Exhibit 21, was a document that you
16 prepared that you described for us?

17 A. Yes.

18 Q. Based on all the nine pay applications?

19 A. Yes.

20 Q. Based on your discussions and looking at that
21 with the accounting for Infinger?

22 A. Right.

23 Q. That document shows what was billed and what
24 was paid?

25 A. Right.

1 Q. And what was actually held?

2 A. Right.

3 Q. And when you total up all the numbers as of
4 December 31, 2011, current payment due is what
5 amount?

6 A. Total?

7 Q. Yes, sir.

8 A. \$664,215.

9 Q. And total payments on that \$664,215 was how
10 much?

11 A. \$467,803.

12 Q. And that left unpaid owed to Infinger how
13 much?

14 A. \$196,412.

15 Q. And that \$196,412 represented labor, services,
16 and materials of unpaid subcontractors and Infinger's
17 overhead and costs?

18 A. Correct.

19 Q. A proportional percentage?

20 A. Yes.

21 MR. MANOS: Your Honor, I seek to move
22 Plaintiff's Exhibit 21 into evidence under Rule 1006?

23 MR. WHIPPER: I don't remember Rule 1006.
24 What is Rule 1006?

25 MR. MANOS: Rule 1006 is the contents of

1 voluminous writings, recordings, or photographs which
2 cannot conveniently be examined in Court may be
3 presented in the form of a chart, summary, or
4 calculation provided the underlying data are
5 admissible into evidence. The originals or
6 duplicates shall be made available for examination or
7 copying or both by other parties at a reasonable time
8 and place. The Court may order that they be produced
9 in Court.

10 THE COURT: A compilation of data that the
11 witness has testified he took -- basically he has
12 taken all of these pay applications and put them
13 together with the payments?

14 MR. MANOS: Yes, sir. And we can take an
15 hour, if Mr. Whipper needs it, to go through each of
16 the pay applications and recreate the summary?

17 THE COURT: I don't know if we need that.

18 MR. WHIPPER: We don't need that. He's
19 testified he did it.

20 THE COURT: So without objection?

21 MR. WHIPPER: Without objection.

22 THE COURT: Very good. So that's 21.

23 Q. (BY MR. MANOS) And thereafter, Mr. Haun, did
24 you issue a verified statement of account of this
25 \$196,412 that was included in Infinger's lien,

1 lawsuit?

2 A. Yes.

3 MR. WHIPPER: What is that?

4 MR. MANOS: This is the Complaint.

5 Q. (BY MR. MANOS) I don't have that one
6 premarked, but I'll give it to you.

7 A. Yes.

8 Q. That's your signature on the verified --

9 A. Yes, it is.

10 MR. MANOS: Okay. Your Honor, I think that's
11 all the questions I have for Mr. Haun at this point.
12 I'm not sure how you would like me to do it. I can
13 either Cross-Examine Mr. Knight or call him as my
14 witness.

15 THE COURT: Okay. Let me just verify with you
16 as to the Plaintiff's Exhibits. I have got 1-18,
17 which are all contained on the first page of your
18 Table of Contents, and then I have 21 and 22 on
19 Page 2, all in evidence and without objection.

20 MR. MANOS: So you don't have 19, 23, or 24,
21 being entered. Let me check one other thing just to
22 make sure. I think those are all exhibits for
23 Mr. Knight.

24 THE COURT: I just wanted to verify that.

25 Q. (BY MR. MANOS) Just a couple of general

1 about five minutes. Let's give Mr. Haun a break, and
2 then we'll come right back. Okay?

3 (A recess transpired.)

4 THE COURT: Mr. Whipper, you may proceed.

5 MR. WHIPPER: Thank you, Your Honor. May it
6 please the Court?

7 EXAMINATION

8 BY MR. WHIPPER:

9 Q. Mr. Haun, I am Seth Whipper. Everybody knows
10 me as Seth Whipper. I like to say Jackson because
11 that's easier on the court reporter. I'm Jackson
12 Seth Whipper. Most people call me Seth.

13 One of the things that we did today with you
14 on this particular Exhibit 21, which was this summary
15 here, and I understand you've testified that you did
16 the work and put this together as it is.

17 A. That's correct.

18 Q. So what we're doing here is not really a
19 matter of being -- we're just trying to get to this
20 number -- okay -- that's been proposed, this
21 \$196,412. Again, totals completed and stored to
22 date, that is a category on this Exhibit; is that
23 correct?

24 A. Yes.

25 Q. Now, that figure -- and you're saying stored

1 to date. That's -- what does that mean, completed
2 and stored to date? What does that mean?

3 A. Well, completed means that it is in place on
4 the building. Stored means that it is either on the
5 job site or in a warehouse or a storage area being
6 held by one of the subcontractors.

7 Q. Okay. Now, when we look at these figures and
8 just to left of that, there's a category that says,
9 Pay Request Period to Date. It looks like -- we just
10 went through the payment applications. We went
11 through, I think, nine of them?

12 A. Right.

13 Q. And there was one on April 15th, May 31st was
14 the second, June 30th was the third, June 4th was the
15 fourth -- I'm sorry -- July 31st was the fourth, and
16 the fifth was on August 31st, and the sixth was
17 September 30th. The 7th was October 31st, and the
18 eighth was November 30th, and the ninth
19 December 31st. If I'm not mistaken these particular
20 dates represent the ending of a period?

21 A. That's correct.

22 Q. That's correct?

23 A. Right. A calendar month.

24 Q. Now, it's my understanding also that this item
25 we have here that says, Percentage complete, those

1 are your -- that's your figures; is that correct?

2 A. Yes. They represent the total completed and
3 stored to date divided by the current contract
4 amount.

5 Q. So at the time of the ninth payment, your
6 figures say that the building was 72 percent
7 completed, or that 72 percent of the money was spent?

8 A. 72 percent of the money.

9 Q. And that figure is the figure that you have --
10 is that figure the same as what the State Housing
11 Authority had?

12 A. No.

13 Q. So that is your figure; is that correct?

14 A. Yes, sir. Well, again, it's the total
15 completed stored amount value divided by the current
16 contract amount.

17 Q. Sure. But in fact, you got paid a figure less
18 than 72 percent?

19 A. Correct.

20 Q. You testified that you could have had this
21 figure of 72 percent, but the State may have had it
22 at 60, and that's the way it would be. They would
23 pay at 60 percent?

24 A. Correct.

25 Q. So then you would have some difference, of

1. course, because you would have applied for more but
2 would have been paid less?

3 A. Correct.

4 Q. Correct?

5 A. That's correct.

6 Q. Now, in the documents that you've submitted,
7 your payment application, these payment applications,
8 do they show what you requested and what the State,
9 in fact, paid?

10 A. No. The payment applications only represent
11 what I'm asking for, but I'm asking for payment from
12 the owner.

13 Q. But your payment applications are always
14 prepared by you and prepared on the forms that are
15 issued by the funders; is that correct? Say yes --

16 A. No. I prepared it on the document. What we
17 submitted on the government forms was a courtesy.

18 Q. So then there are some documents that you have
19 somewhere that are not in evidence; is that correct?

20 A. Not that I'm aware of.

21 Q. There has to be because your pay
22 application -- so at some point -- I know we talked
23 about how you were going to be paid was a part of
24 that conference you had back in March of 2011.
25 What's the payment process?

1 A. Correct.

2 Q. And that particular discussion talked about --
3 and the reason you had that was because you needed to
4 know what process, what documents, who you were going
5 to contact, who was going to do what, regarding being
6 paid, how you were going to receive money; isn't that
7 correct?

8 A. Correct.

9 Q. And at that point you found out about these
10 forms that were necessary or had to be completed?

11 A. I don't know that it was at that point. It
12 was somewhere in that period, yes.

13 Q. So we know that at some point and I think in
14 my Exhibit 4 -- there was an application for payment
15 that was on an AIA document -- I think that was with
16 Application for Payment No. 1, and then there was a
17 document that was prepared by the Department of
18 Veterans Affairs that you were supposed to use.

19 A. The form is from the V.A., yes.

20 Q. Okay.

21 A. But it is, at least my understanding, that
22 the -- what would you call the person who is
23 receiving the grant, the grantee?

24 Q. Yes.

25 A. It's my understanding that the grantee was

1 supposed to fill out this form, and we did it as a
2 courtesy.

3 Q. Sure. I mean you're working with a nonprofit?

4 A. Right.

5 Q. And you're working to keep Veterans in a home?

6 A. Yes.

7 Q. You're not building for the Beach Company. In
8 other words, it's not a for-profit deal that you're
9 working for, so part of what you did for them was you
10 worked in a community service role in terms of
11 helping them out and getting paid for the project; is
12 that not true?

13 A. Well --

14 Q. In other words, where they did not have the
15 capacity to do certain administrative duties you-all
16 fundamentally filled that in?

17 A. If we could.

18 Q. That's what I'm asking.

19 A. Yes.

20 Q. Because I mean it was -- Mr. Knight is known
21 in the construction area world, isn't he?

22 A. I understand he's a licensed general
23 contractor, yes.

24 Q. And he's known by Mr. Infinger, Mr. Stephens,
25 Mr. Johnson. I mean --

1 A. I don't know.

2 Q. -- these guys are not strangers.

3 A. I don't know that either one of them had ever
4 heard of him before this contract.

5 Q. At any rate what we're talking about is the
6 fact that oftentimes when you submitted for a certain
7 level of payment the State pays less because they
8 felt like that's what was due?

9 MR. MANOS: Objection to the extent it seeks
10 to qualify the intent of the State. Mr. Haun has no
11 idea what the intention of the State was.

12 MR. WHIPPER: I didn't ask that.

13 Q. (BY MR. WHIPPER) My question was: The State
14 paid you --

15 A. The State never paid us anything.

16 Q. The State sent money to you different from
17 your request?

18 A. The State never sent us a check for anything.

19 Q. I'll help you with that. We don't need to do
20 that. Part of how I handle myself today is because
21 we don't need to quibble. Okay? Here's what I mean.
22 I'll give it to you so you can answer it. Okay?

23 You made Application for Payments at a certain
24 percentage, correct? And the payment that you
25 received, even if you've got it on their check, was

1 less than what you asked for?

2 A. Correct.

3 Q. And you knew the reason for that? You just
4 said it earlier when you testified -- you testified
5 just before we went on break.

6 A. Yes. I knew that the inspector for the State
7 came out there and said that he felt like it was only
8 62 percent complete instead of 65 percent complete.

9 Q. We don't need to quibble with that, Mr. Haun.

10 A. Okay.

11 Q. Okay? I'm not doing that. Don't do that.

12 A. So what's your point?

13 Q. So my point is that you knew that more -- that
14 in each situation where these applications were made
15 that the State often paid less than what you
16 requested based on their assessment because they
17 would have to inspect before they issued a payment?

18 A. After the fact I did know that, yes.

19 Q. So how long have you been -- you have never
20 worked with the State Housing Fund Source at all
21 before?

22 A. No, sir.

23 Q. But you found out that that's the way they
24 played the game a lot of times?

25 A. Right.

1 Q. So now, this figure then, this unpaid figure
2 here, that you have on Exhibit 21 -- see the figure
3 right here (indicating)?

4 A. Right.

5 Q. These figures represent what you would say
6 is -- what you call work that had been done but that
7 had not been paid for?

8 A. Right.

9 Q. Now, can you tell us on these particular
10 figures -- that's represented by unpaid -- can you
11 tell us which ones of these were underpaid by the
12 State?

13 A. No.

14 Q. And in March of 2011, your -- it was
15 Exhibit 3, I think -- did that summarize how you-all
16 were going to approach and accept payments that were
17 going to be done?

18 (Brief pause.)

19 Are you reading it?

20 A. Yes, I am. I'm sorry. And what is your
21 question?

22 THE COURT: You're talking about Exhibit 3,
23 correct?

24 MR. WHIPPER: Yes, sir.

25 THE COURT: On Exhibit 3.

1 THE WITNESS: Exhibit 3.

2 Q. (BY MR. WHIPPER) That tells what we
3 understand to be the way we were going to proceed on
4 these payments?

5 A. Payment procedures were discussed. The exact
6 procedure is not known and Guerry, David, and Renee
7 researched the V.A. requirements and submitted an
8 invoice for the performance of payment bonds as soon
9 as possible to begin to work out the bugs.

10 Q. Again, I think you've said this once before:
11 Payment was based in the industry on what was
12 performed, what was either -- in this situation what
13 was what you call bricks and mortars in place; is
14 that correct?

15 A. Yes.

16 Q. And so bricks and mortars in place doesn't
17 include what's -- one second. So it's my
18 understanding, and it's your understanding that
19 bricks and mortars in place does not include what
20 might be stored because that can be stuff out in the
21 yard, in the garage, in a storage area some place
22 like that; is that right?

23 A. That's correct.

24 Q. So what we're looking at, in terms of what you
25 have unpaid, represents figures that actually are not

1 a part of the contract's requirements?

2 MR. MANOS: Objection. Completely
3 mischaracterizes the evidence on direct --

4 MR. WHIPPER: That's --

5 THE COURT: Just one second.

6 MR. MANOS: -- completely mischaracterizes the
7 contract.

8 THE COURT: Can you be more specific,
9 Mr. Whipper, on what you're asking? I'm not sure I
10 understood that one.

11 MR. WHIPPER: Yes.

12 Q. (BY MR. WHIPPER) The unpaid figures on this
13 Exhibit 21, are based on -- it's based on a
14 comparison of what is completed and stored; isn't
15 that correct?

16 A. Not in comparison, but it's based on what's
17 completed and stored. If I may try to get to the
18 bottom line here?

19 Q. Sure.

20 A. Our contract provides for payment for work in
21 place and materials stored. That's what was invoiced
22 for. We didn't know what the V.A. and State
23 requirements were as evidenced by this pre
24 construction conference minutes here. That wasn't
25 our job. That's the owner's job to figure out how

1 all these forms and stuff have got to be filled out.
2 When he signs a contract we're -- he is telling us
3 that he has the funds to pay the bill.

4 Q. And so --

5 A. That's also in the contract.

6 Q. So what you're saying is that in Change Order
7 No. 1, are you saying you-all -- you didn't strike
8 through it, but you understood in Change Order No. 1
9 that 65 percent would come from the V.A. and 35 from
10 the State. I mean that's part of Change Order No. 1.
11 When you say you didn't understand it, you knew from
12 Change Order No. 1 which is Exhibit --

13 A. -- 13?

14 Q. Change Order No. 1, Exhibit 13?

15 A. I'm looking at it.

16 Q. You then knew at the time, and you knew that
17 you started helping out with the forms, that the V.A.
18 and the State had certain specific requirements and
19 were going to handle things in a certain way; isn't
20 that correct?

21 A. No.

22 Q. Okay.

23 A. We were kind of feeling our way through this
24 whole thing. You'll notice we didn't turn in the
25 V.A. form until Pay Application No. 3 or 4. We

1 didn't know about the form. The V.A. didn't send us
2 an e-mail. They sent Bobby an e-mail.

3 Q. So he then communicated with you-all?

4 A. Correct.

5 Q. But there on -- it's Item No. 3?

6 A. Right. All that says is that our original
7 contract had a provision for no retainers to be
8 withheld but the State required that 10 percent
9 retainage be held. At the time we felt it -- we
10 thought that it was 10 percent of whatever we billed
11 for, but that wasn't the case. It was 10 percent of
12 300,000, period, so the first \$30,000 we invoiced for
13 were not paid because it was retained. We didn't
14 know that until we just kind of muddled our way
15 through it.

16 Q. That was a change order. Okay. That was a
17 change order, and that was when you gained some
18 understanding. Now, when you had -- did you ever
19 approach Mr. Knight in any way about changing the way
20 the State issued its payments?

21 A. Not that I remember, no.

22 Q. So based on what the State did, based on what
23 you did and based on what the State did, you knew
24 that when you received a check from Mr. Knight that
25 you had to accept it? You had to accept it because

1 you had to get paid somehow, correct?

2 A. Right.

3 Q. So you accepted it, and you knew that it could
4 come in lower than what you applied for?

5 A. Okay.

6 Q. Say, Yes.

7 A. Yes. We didn't know that in the first three
8 or four pay requests, no, but later on in the project
9 we found out all of these things, yes.

10 Q. So now you have an understanding because at
11 the time you were on the project you knew that --
12 when things started to slow down in October or
13 November or somewhere in there, you started talking
14 about -- well, how are we going to handle this thing?
15 And you were aware that the V.A. felt that you were
16 at 48 percent; isn't that correct?

17 A. I was probably made aware of that from one of
18 the pieces of paper, yes.

19 Q. And you knew that the Housing Trust Fund was
20 at 64 percent; am I correct?

21 A. Yes.

22 Q. Now, if we took a look at Exhibit 15 -- now
23 Exhibit 15 and a lot of the changes that occurred
24 they resulted from -- by the way, this is what you
25 would call a Design/Build contract; am I correct?

1 A. Correct.

2 Q. So when you do Design/Build you know that
3 certain things might change? You understand that?
4 You're doing things as you go along, and you come up
5 with certain conditions resulting from what you're
6 trying to do and that requires some adjustment for
7 how you're putting things together.

8 A. Well that's one reason for a change order.

9 Q. And that's a part of --

10 A. That's a part of any contract.

11 Q. Yes. That's a part of Design/Build. I mean,
12 you expect that with Design/Build because you're
13 designing and building at the same time.

14 A. Now, wait a minute. Let's clarify that. If I
15 tell you I'm going to put in a seven-ton heat pump
16 split system and you decided that no, I don't want to
17 do that. I want to do a different kind of thing
18 that's going to cost \$30,000 more that's not a
19 Design/Build change. That's an owner requested
20 change.

21 Q. So what I was talking about when you guys got
22 in, especially with Exhibit No. 15, there were a lot
23 of changes that occurred. Take a look at Exhibit 15.

24 A. Okay.

25 Q. Are you looking at it?

1 A. I'm looking at it. What about it?

2 Q. It seems like there were some requirements
3 that had to be done as a result of --

4 A. None of these were requirements. These were
5 all requested by the owner. They were not required
6 to build the building.

7 Q. So the issue of whatever the condition of the
8 soil --

9 A. The foundation didn't have anything to do with
10 it.

11 Q. You mentioned something about the FEMA
12 standard.

13 A. He requested it.

14 Q. So in other words, you could do that without
15 satisfying the FEMA standard?

16 A. Absolutely.

17 Q. So that added how much?

18 A. In this case all of these things, pluses and
19 minuses added up together, resulted in an increase of
20 \$18,152.

21 Q. In your recollection of the change orders -- I
22 think there were a total of what, six, of them?

23 A. Yes. There are six of them.

24 Q. Those six change orders, do they represent
25 only requests by -- they represent only requests by

1 the owner?

2 A. Yes.

3 Q. Let's talk about that. No. 1, what's
4 requested on Change Order No. 1? That wasn't
5 requested. That was something you had to do. No. 1
6 had to do with the -- you changed the name of the
7 real owner to get the correct name because the Good
8 Shelter name was not proper.

9 A. We didn't know that.

10 Q. That's what I was saying. Nobody knew that.
11 That had to be done.

12 MR. MANOS: Judge, I just have an objection to
13 the extent of Change Order No. 1 actually includes
14 additional items.

15 THE COURT: The first one was just for that
16 performance bond, wasn't it?

17 MR. MANOS: Yes, sir, and the name change.

18 Q. (BY MR. WHIPPER) It made a difference in the
19 percentage. I'm just saying that one -- we
20 knew that -- we knew that was not at the request of
21 the owner. That was something that had to be done.
22 And then there was -- Change Order No. 2, in that
23 situation there was actually a deduction from your
24 projections.

25 A. Okay.

1 Q. Because of leaving the flag pole, not taking
2 it out, \$1,250, that was -- ENO insurance -- look at
3 Change Order No. 2?

4 A. I'm looking at it.

5 Q. The ENO insurance for under Mr. Stephens, that
6 wasn't requested by the owner, was it?

7 A. I don't remember.

8 Q. Okay.

9 A. But it wasn't requested by us either.

10 Q. Look at Change Order No. 3.

11 A. Okay.

12 Q. It seems to say this is in accordance with
13 something that was done by W.R. Stephens &
14 Associates?

15 A. Right.

16 Q. Who is W.R. Stephens?

17 A. He was the design engineer.

18 Q. That wouldn't be something that was requested
19 by the owner, and I think that changed significantly
20 some of the costs; is that correct?

21 A. It's my understand that Mr. Knight did ask
22 Mr. Stephens to beef up the design of this project.

23 Q. You're just thinking that that's what
24 happened? You weren't present at any of these
25 meetings?

1 A. No.

2 Q. Someone else might have been but not you?

3 A. Right.

4 Q. And then there's Change Order No. 4, which has
5 a small deduction. Change Order No. 4 -- is that
6 related to Change Order No. 3, Mr. Haun?

7 A. Related it in what --

8 Q. I didn't think it was. I know that that's a
9 separate change?

10 A. They're separate changes, yes.

11 Q. So in other words those changes were made
12 pursuant to, I think, some City requirements?
13 Handrails, stairwells, and all that kind of stuff; is
14 that right?

15 A. I can't answer that question. I don't
16 remember that -- it is a City requirement though, and
17 I can tell you that for a fact.

18 Q. Okay. Now, in Change Order No. 5, what is
19 your recollection about that?

20 A. That's possible.

21 Q. And then in Change Order No. 6 I see another
22 small deduction of \$225 in Item No. 4? I see here a
23 change -- a drop-in sink as opposed to hanging on the
24 wall, that's an addition designating for the crane,
25 and I guess that's caused by some materials needed?

1 Do you -- can you talk about that crane issue?

2 A. Not specifically, no.

3 Q. How about the attic fan issue? Is that just
4 something that was just added? Aren't those things
5 required?

6 A. Again, I have no specific response to that
7 question.

8 Q. So then what we have is we have some figures
9 that really reflect transactions, but don't
10 necessarily reflect -- strike that.

11 In other words when we look at what you've
12 shown as being a figure for what wasn't paid, it
13 represents a figure that was not approved as well as
14 a figure that may not have been paid.

15 MR. MANOS: Objection to the characterization
16 of the evidence.

17 THE COURT: I'm sorry. I missed all of that.
18 Objection to the characterization of the evidence was
19 the objection I understood.

20 MR. MANOS: And he said it reflects a change
21 that wasn't approved, and the evidence clearly shows
22 that the owner signed off and approved it. I don't
23 even begin to understand the characterization of the
24 evidence.

25 MR. WHIPPER: Your Honor, my question had to

1 walls for firewalls.

2 Q. And isn't it also under certain circumstances
3 that the change in the air conditioning system --

4 A. What about it?

5 Q. -- that that's a matter of health and safety
6 as well?

7 A. No. How could that be a matter of health and
8 safety?

9 THE COURT: Mr. Haun, you have to answer the
10 questions and not ask them today.

11 THE WITNESS: Oh, I'm sorry. No.

12 Q. (BY MR. WHIPPER) Take a look at the last
13 check that you received from the order on behalf of
14 the -- I'm sorry, the last payment.

15 A. You're asking me to look at Pay Application
16 No. --

17 Q. -- No. 9?

18 A. That's correct.

19 Q. Okay. Exhibit 21. Did you --

20 MR. MANOS: Are you directing him to the
21 chart?

22 MR. WHIPPER: The chart, yes. Exhibit 21.

23 THE WITNESS: I'm sorry. 21 what?

24 Q. (BY MR. WHIPPER) Oh, Exhibit 21. Now, when
25 did this lawsuit -- when was this thing filed?

1 A. I think I prepared this to file with the --
2 when we filed the lien.

3 Q. So the lien had been filed and the lawsuit had
4 been filed? You don't file mechanic's liens unless
5 you filed an action. You have to file an action,
6 isn't that right? You don't know that part?

7 A. I don't know that part.

8 Q. All right. But you have a payment here
9 received sometime in that month of December 31st
10 ending in December 31st, 2011? There was a payment
11 received of \$10,800; isn't that correct?

12 A. \$800, that's correct.

13 Q. And that payment, based on your pay
14 application, was \$29,633 short?

15 A. Correct..

16 Q. And there's a request for payment of \$38,092
17 that was not paid at all?

18 A. Correct.

19 Q. So that reflects when the State and the V.A.,
20 as you've testified to, had not released any funds?
21 That was your testimony in October or November -- the
22 last part of those -- that's when the Agency stopped
23 paying. That was your testimony.

24 A. I don't know anything about that, but I know
25 that we didn't receive a check from the owner.

1 Q. So then what we're looking at here is a figure
2 that represents around \$57,000 -- 29 and 38 -- and we
3 definitely know that those two figures received no
4 action by the State and/or the V.A., and we actually
5 know that. There's no question about it. We may
6 have submitted a request for certain payments. It
7 was \$40,433. They paid \$10,080 (sic) on it. That
8 left about 29,633 short?

9 A. Right.

10 Q. So we know that that particular figure of
11 \$57,000 -- we know that that's when payments are
12 halted by both funding sources?

13 MR. MANOS: Objection to the characterization
14 of the evidence and testimony by Counsel.

15 MR. WHIPPER: He's already answered it.

16 MR. MANOS: He didn't answer what you
17 testified as what we know and what we don't know.

18 MR. WHIPPER: Cross-Examination is done in a
19 certain way, Mr. Manos. You can lead.

20 MR. MANOS: You can lead all you want but you
21 can't testify.

22 MR. WHIPPER: You can lead.

23 THE COURT: Gentlemen, just one second.

24 EXAMINATION

25 BY THE COURT:

1 Q. In looking at this let me ask this so I can
2 clarify this in my own mind. Mr. Haun, looking at
3 Exhibit 21, and this is the document that you put
4 together, you compiled, correct?

5 A. Yes.

6 Q. It shows in the V.A. Paid column which is the
7 fourth column from the right, the last entry there is
8 the 57,357, and that's from the August 31, 2011
9 payment request. That would be the last time the
10 funds from the V.A. were received on this account to
11 the best you know?

12 A. To the best of my knowledge, yes.

13 Q. You were getting all your funds from the
14 owner, correct?

15 A. Right.

16 Q. And then likewise, in the next column, the
17 State Paid column, there's a blank in the November of
18 2011 column that there's a 10,800 figure that's paid
19 for December 31. That's the last payment you
20 received from the State?

21 A. No, from the owners.

22 Q. And your information is that that came from
23 the State?

24 A. Correct.

25 Q. And then the running balance of unpaid over in

1 the far right column is the difference between what
2 was billed for in that time period and what was
3 received in the appropriate time period and left a
4 running balance and that's totalled at the bottom
5 right of the Document; is that right?

6 A. Right.

7 Q. And that's where you came up with the \$196,412
8 figure?

9 A. Right.

10 Q. I think I at least know how to read it.

11 A. And to clarify one more thing here, I don't
12 know that the V.A. paid these numbers, and I don't
13 know that the State paid these numbers. I was told
14 that the V.A. and the State paid these numbers.

15 Q. Who provided you that information?

16 A. I can't tell you.

17 Q. But that was based on information that you had
18 in the compilation of this report; is that right?

19 A. Correct.

20 THE COURT: Mr. Whipper, go ahead.

21 EXAMINATION

22 BY MR. WHIPPER:

23 Q. Now, let's take a look at Exhibit 22. This
24 was a letter that you prepared?

25 A. Yes.

1 Q. I have to admit this is the first time I've
2 seen this letter.. This letter does what? It talks
3 about, "Please respond with your plans to continue
4 with this project or abandon it. We and our
5 subcontractors and suppliers cannot finance this
6 project and stored materials need to be paid or
7 returned.

8 There's no figure at that time that was
9 mentioned by you as being old; is that correct? In
10 this letter? You didn't put any figures in this
11 letter?

12 A. No.

13 Q. Okay. Their rescue option, could you explain
14 that again for me, please?

15 A. This letter may also give some insight into
16 what we expected to happen. In the second paragraph
17 here, we note that he's still got \$280,000 left in
18 his bank, but apparently they're not going to give
19 him the money, but we don't know that. This letter
20 was prepared after talking with Bobby a couple of
21 times about the condition of the building that it's
22 in that you're sitting there -- you're wasting money
23 that you have paid to get this building in the
24 condition it's in if you're just going to let it sit
25 there and rot away. So we proposed to secure it as

1 MR. WHIPPER: Objection. Leading.

2 Q. (BY MR. MANOS) Who was your contract with?

3 A. Our contract was with the owner, and we have
4 no knowledge about how these grants are given to the
5 owner.

6 Q. And the grant was with whom? Who was the
7 grant issued to?

8 A. The owner.

9 Q. It wasn't issued to Infinger?

10 A. No.

11 Q. The loan from the State wasn't a loan to
12 Infinger?

13 A. No. Neither the State nor the V.A. would even
14 talk to us on the telephone.

15 Q. Earlier you testified about a letter that you
16 had sent to the subcontractors. I had neglected to
17 make a copy of it.

18 MR. MANOS: Your Honor, I apologize. I had
19 neglected to make an extra copy of that one. I just
20 need to show that to the witness.

21 THE COURT: Okay.

22 MR. MANOS: This is a letter that Mr. Haun
23 authored.

24 Q. (BY MR. MANOS) What is that?

25 A. It was a stop work order to my subs and

1 suppliers to stop the bleeding.

2 Q. And it was dated when?

3 A. November 7, 2011.

4 Q. And you authored that?

5 A. I did.

6 Q. And that day or shortly thereafter is that
7 when the subs stopped working?

8 A. Yes.

9 MR. MANOS: Okay. I'll move in this letter as
10 Plaintiff's 25.

11 MR. WHIPPER: No objection.

12 MR. MANOS: I think that's all, Your Honor.

13 Thank you.

14 MR. WHIPPER: I have some Recross.

15 THE COURT: Something on what he just covered?

16 MR. WHIPPER: Yes.

17 THE COURT: All right.

18 MR. WHIPPER: I think it's the last Exhibit?

19 THE COURT: Do you want to take a look at
20 that?

21 MR. WHIPPER: Yes, sir.

22 EXAMINATION

23 BY MR. WHIPPER:

24 Q. So this letter went out and at the time it
25 went out you owed subcontractors -- as a result of

1 that you owed subcontractors payments; isn't that
2 right?

3 A. That's correct.

4 Q. All total how many subcontractors did you
5 think you had out there?

6 A. I'm going to say probably eight to ten.

7 Q. And this figure -- did you have a figure
8 anywhere in this form that represents what the
9 contractors or subs were owed, or what they were
10 claiming in Exhibit 21?

11 A. No.

12 Q. So you never used that figure at all as a part
13 of putting together Exhibit 21?

14 A. No. Because all of their numbers are in the
15 schedule. So the plumbing contract would be in the
16 plumbing schedule.

17 Q. But you don't have --

18 A. -- a breakout of what was owed to the various
19 subs and suppliers? No.

20 Q. But I think this schedule only deals with
21 payments received and billed; is that correct? 21?

22 A. Yes.

23 Q. And again this Schedule, 21, is sort of
24 different in a way in that it represents -- it
25 doesn't represent how payments are made in the

1 industry; is that correct?

2 A. I would agree with that.

3 Q. Bricks and mortar in place means -- bricks and
4 mortar in place means you get paid for what's on the
5 building? What's assembled in the project unit of
6 the building that you're doing?

7 A. That's not what our contract says.

8 Q. Are you sure?

9 A. I'm sure. Read it.

10 Q. All right.

11 A. Do you want me to read it?

12 Q. Yes, I do.

13 MR. MANOS: Your Honor, is there a specific
14 question he's being directed to answer?

15 MR. WHIPPER: Yes. He's being directed to go
16 to a spot in the contract where it does not say
17 bricks and mortar in place.

18 THE WITNESS: The contract does not say bricks
19 and mortar --

20 Q. (BY MR. WHIPPER) Show me what it says.

21 A. The contract says work completed and stored to
22 date.

23 THE COURT: Can you state the specific
24 section? If you can find it, state the section and
25 the actual verbatim language.

1 THE WITNESS: Article 5, Payments.

2 THE COURT: Article 5. All right.

3 THE WITNESS: It says, 5.2.2.

4 THE COURT: 5.2.2. Thank you, sir.

5 THE WITNESS: .1.2 -- .1 says, Work completed,
6 and .2, That portion of the materials and equipment
7 delivered and suitably stored.

8 Q. (BY MR. WHIPPER) Work completed. Now, this
9 particular project was not the first time that
10 you-all had worked a government funded project; is
11 that correct?

12 A. That's correct.

13 Q. And it's not the first time -- when I say
14 government, State and/or Federal?

15 A. Okay.

16 Q. Is that correct?

17 A. That's correct.

18 MR. WHIPPER: Okay. I think I have no other
19 questions.

20 MR. MANOS: Nothing further, Your Honor.

21 THE COURT: Mr. Haun, I don't think I have
22 anything further. Thank you, sir. You may step
23 down.

24 (Witness excused.)

25 THE COURT: It's 1:15. Let's take a break for

1 A. Reasonably familiar.

2 Q. When Change Order No. 1 was submitted to you
3 by Infinger, you understood that you had an
4 opportunity as the owner to agree to it or not agree
5 to it, correct?

6 A. Yes, sir.

7 Q. Okay. By signing that document you agreed
8 that it was valid and would be a change to the
9 contract, correct?

10 A. That's true.

11 Q. Let me direct your attention to Exhibit 14.
12 That's Change Order 2, correct?

13 A. Yes, sir.

14 Q. And again, is that your signature?

15 A. Yes, sir.

16 Q. And again, you had an opportunity when it was
17 submitted to you to either agree that was the proper
18 change or disagree with the contractor; is that
19 correct?

20 A. I think everybody did, but that's correct. I
21 was the last one to sign.

22 Q. On behalf of the owner when a proposed change
23 order was submitted to you, you could have said, I
24 don't agree that this is a change to the contract
25 that should have been in your original bid. I'm not

1 signing it. I'm not increasing the contract. So you
2 had that opportunity, correct?

3 A. I think everybody had that opportunity. I was
4 the last one to sign it.

5 Q. I understand. At least you had -- I'm asking
6 you -- you had that opportunity, correct?

7 A. Yes.

8 Q. And by signing it you agree that it was a
9 change to the contract, correct?

10 A. Yes.

11 Q. Let me direct your attention to Exhibit 15.
12 This is Change Order No. 3; is that your signature?

13 A. Just one minute. Yes, sir.

14 Q. And when Infinger submitted this proposed
15 change order with these various items you had an
16 opportunity on behalf of The Shelter, on behalf of
17 the owner, to say, no, this wasn't -- this should
18 have been included in your original estimate. This
19 isn't a change, correct?

20 A. I had an opportunity to say, no, but it was a
21 Design/Build so things were changing. It wouldn't
22 have been in the original, I guess. Is it okay if I
23 say that?

24 Q. I'll let you answer how you see fit.

25 A. It couldn't have been in the original because

1 none of us knew that that condition was going to come
2 up.

3 Q. I understand. But if you thought that the
4 contractor was not entitled to additional money for
5 it, you could have said I'm not signing this change
6 order, I'm not agreeing to that change, correct?

7 A. That's right.

8 Q. But you didn't. You signed it and agreed to
9 increase the contract?

10 A. Yes, sir.

11 Q. Let me direct your attention to Exhibit 16.
12 That's Change Order No. 4. Is that your signature?

13 A. Yes, sir.

14 Q. Again, did you have an opportunity to either
15 agree or disagree with the proposed amount of the
16 change by Infinger?

17 A. Yes, sir.

18 Q. By signing it you agreed that it was a change
19 to the contract and a change to the contract zone,
20 correct?

21 A. Yes.

22 Q. Let me direct your attention to Change Order
23 No. 5, which is Plaintiff's Exhibit No. 17; is that
24 your signature?

25 A. Yes, sir.

1 Q. When Infinger proposed these various changes
2 to the contract you had an opportunity to say -- to
3 not proffer changes. I'm not going to agree to all
4 of them or some of them, correct?

5 A. Yes, I had that opportunity.

6 Q. And instead you accepted it as written, which
7 made it a change to the contract, correct?

8 A. Yes.

9 Q. Let me direct your attention to Change Order
10 No. 6; is that your signature?

11 A. Yes.

12 Q. And when Infinger proposed these various 1
13 through 7 items you had an opportunity to either
14 agree to some or all of them or disagree and not sign
15 the change order, correct?

16 A. Yes.

17 Q. You signed it and agreed that it was a change
18 to the contract, correct?

19 A. It was a necessary change, yes, sir.

20 Q. Staying with Plaintiff's Exhibit 18, the
21 original contract sum was \$799,456; do you see that?

22 A. Yes, sir.

23 Q. Through the six change orders that we went
24 through, you agreed by signing on behalf of the
25 owner, that the new contract sum had increased to

1 \$920,333, correct? That's what your signature on
2 that document signifies, correct?

3 A. Yes, sir.

4 Q. Infinger submitted pay applications to The
5 Shelter, correct?

6 A. Yes, sir.

7 Q. And there were nine of them that we went
8 through earlier, correct?

9 A. Yes, sir.

10 Q. And those pay applications were then forwarded
11 by either you or someone else at The Shelter to the
12 V.A. and the State for funds pursuant to the loan and
13 the grant?

14 A. Can I explain that?

15 Q. Sure.

16 A. After Mr. Infinger would prepare the
17 documents -- I say Mr. Infinger. Everybody is
18 Mr. Infinger.

19 Q. The company.

20 A. Yes. They prepared the documents, and then we
21 had to send them to the State, and then after the
22 State did their inspection thing then we could take
23 that and send all of it -- everything that
24 Mr. Infinger gave us we gave to the V.A. Everything
25 that he gave us for the V.A. we gave to the State.

1 Q. Okay.

2 A. In the end the State wrote a check for
3 everything. They paid us by check and the V.A. paid
4 by punching a button in the computer. The Federal
5 money got there lots quicker than the State money
6 did.

7 Q. And the Federal money got wired into an
8 account at The Shelter?

9 A. We changed the name on the contract to the
10 North Charleston Community Interfaith Shelter because
11 that's what it really was.

12 Q. That was the corporate entity?

13 A. That was the tax ID number and what the grants
14 were actually for.

15 Q. And the funds went from the V.A. and
16 transferred into the North Charleston Shelter's
17 account?

18 A. Yes.

19 Q. And the State Housing Authority issued paper
20 checks in the name of The Shelter?

21 A. Yes.

22 Q. And then The Shelter deposited those checks
23 into its account?

24 A. Yes.

25 Q. And then The Shelter paid whatever portion out

1 of their accounts to Infinger?

2 A. The exact amounts -- on the day it transferred
3 in I gave Mr. Infinger a check, presented it to him
4 or either -- the exact day that the paper check
5 showed up, Sherry at the bank deposited it, it's
6 okay, and I could give Mr. Infinger his check.

7 Q. I've got you. Okay. We went over in some
8 detail with Mr. Haun about the process of the
9 project, and you would agree would you not, that the
10 design portion of the project was in the March to May
11 or June 2011 time frame?

12 A. Mostly, yeah. The way those drawings were set
13 up, yes.

14 Q. And then construction for the most part
15 started going from the ground up in around June-ish?

16 A. Yes or maybe a little sooner.

17 Q. Sometime thereafter in July or August the V.A.
18 raised an issue about The Shelter needing matching
19 funds, correct?

20 A. Yes, sir.

21 Q. There were extra costs incurred on the
22 contract that we went through on the payouts and the
23 change orders and the V.A. notified The Shelter that
24 unless The Shelter could come up with \$99,000 of its
25 own money that it was going to freeze the

1 Q. Correct. Let me direct your attention to
2 Exhibit 24 if I may?

3 A. I have a Tab 24 but there's --

4 Q. There's not one behind it?

5 A. There's nothing behind it. Is it this dated
6 letter of June 13th?

7 Q. Yes, sir.

8 A. It was under the tab instead of in front of
9 the tab.

10 THE COURT: Yes.

11 Q. (BY MR. MANOS) Yes, sir. That's it. I
12 apologize. First of all, is that a letter that you
13 received from the V.A.?

14 A. Yes, sir. It looks familiar.

15 Q. That letter was written by the V.A. to you in
16 response to your requests regarding the grants for
17 the project on May 27, 2012?

18 A. Yes. It was written to us by Jeffrey Quarles.
19 He's the --

20 Q. And if I may -- you can take a moment to read
21 the whole letter if you like, but I want to direct
22 your attention particularly to the second page.

23 A. Yes, sir.

24 Q. Mr. Quarles, who was the head of the V.A. in
25 regard to the grant for the construction of The

1 Shelter, referred to you a letter dated November 16th
2 of '11 where The Shelter was informed that the
3 Capital Grant Payments for the project will be held
4 until such time that the Agency had demonstrated and
5 had in place all matching funds needed to complete
6 the project?

7 A. That's true.

8 Q. So back in November of 2011 the V.A. notified
9 The Shelter that they were withholding payments until
10 matching funds were shown to be in possession by The
11 Shelter, correct?

12 A. Correct.

13 Q. And that was the same time frame when The
14 Shelter told Infinger that the money wasn't there,
15 and Infinger told its subs to stop working, correct?

16 A. Yes, sir. And any money we got, any letters
17 we got, anything we had we shared with Mr. Infinger.

18 Q. So whether you questioned why the V.A. cut the
19 money off -- if there were other reasons we may never
20 know, but at least they told you back in November of
21 2011 it had to do with the matching funds, and then
22 they told you that again in this letter of June 13,
23 2012, correct?

24 A. Yes, sir.

25 MR. MANOS: I move to enter Plaintiff's

1 last name. He was the person at the Housing Trust
2 Fund. He had a little meeting with us and said,
3 Fellows I've got to hold \$30,000. There's no way out
4 of it. Fellows, I have to inspect it before I can
5 make a payment. That's how that all got set and
6 placed in the motion.

7 Q. Now, that was all through meetings?

8 A. Yes.

9 Q. There were no other documents signed by
10 Infinger saying that they would --

11 A. Well, other than when Mr. Infinger had to make
12 his first -- Mr. Infinger's in everything.
13 Mr. Infinger's first thing -- he had to -- the
14 confusing part about it -- I guess what makes it --
15 if you think it's confusing it's because it is. The
16 State wanted to withhold 10 percent and the V.A.
17 didn't. So that made it difficult for Mr. Infinger's
18 expertise to make sure the numbers came out like they
19 were supposed to for what was done.

20 The only monkey wrench in the gears was nobody
21 knows what the State inspector's going to say when he
22 comes on the job, and that sets bricks and mortar in
23 place.

24 Q. So that's when we started talking about an AIA
25 contract. It talks about the work --

1 A. Being complete, yes, sir.

2 Q. Now, from what you know then, it wasn't
3 unusual to sign a pay application and then have it
4 come in an amount that's reduced by the State's
5 inspector?

6 A. Yes.

7 Q. Would they let you know at the time they did
8 the inspection?

9 A. Sometimes Guerry Johnson would tell me.
10 Mr. Infinger works kind of fast. I don't know if
11 anybody ever noticed that or not. He's pretty fast.
12 So if you turn in the payment request -- the minute I
13 got my hands on it I'd send it where it had to go.
14 The State inspector always showed up within two or
15 three days, sometimes the next day, but they always
16 showed up in like two or three days because they knew
17 everybody wanted to get paid.

18 Then they would go back, and it might take a
19 week or two for the check to come or ten days or
20 seven days or sometimes two or three days. If Matt
21 Rivers approved it the check would come out the next
22 day.

23 Q. What was your understanding about the V.A.'s
24 reaction to what the State did?

25 A. After the State inspection was done then I

1 could send the documents from them to the V.A., and
2 whether the V.A. withheld any of that percentage or
3 not I don't know.

4 Q. After you sign it -- like you see how many
5 ones are in the exhibits?

6 A. Yes. Unfortunately, Mr. Infinger wouldn't
7 really have one with -- he might not have these pay
8 applications with my name on them because if he gave
9 them to me I'd sign them. There might be some to
10 scan and then we'd send them off by e-mail. Then
11 somebody else will sign them, and the State inspector
12 will sign them. So it's pretty common to not have
13 the final signed off document if you aren't the
14 person sending the money out or you're not the V.A.
15 or you're not the bank or the Housing Trust Fund.

16 Q. Your feeling about this is that in fact --
17 everybody understood what NCCIS was, in fact, an
18 agent for -- at least for the V.A.?

19 A. When the V.A. talks to us, we're one of their
20 agencies, so that's what makes us -- in other words,
21 if the liaison for Mr. Quarrels, the discretionary
22 officer, basically gives you direction then you have
23 to do what he says do because you're taking Federal
24 money. So when they give us direction that there's
25 two tiles missing in Room 203 then I better get them

1 fixed right now. If somebody had some kind of mental
2 disturbance or something and they broke all the
3 ceramic things in the bathroom and broke the mirror,
4 we would need to find the money and get it fixed
5 right away.

6 When they order you to do something like that
7 that's life saving things. They order you to -- they
8 will come and inspect to make sure you don't have
9 things growing around the baseboards like in a
10 hospital. It's not that clean, but it's hospital
11 clean.

12 Q. Now, you just read from the document that they
13 gave you. That's the actual document, isn't it?

14 A. Yes. He just put the Complaint in there.
15 This is kind of what I gave the V.A. to try to --
16 this is my version of the rescue option letter.

17 Q. Okay.

18 A. I knew when I did it -- I know you've got to
19 have a lawyer with it. We tried and we tried and we
20 tried. We got close. This is renewable. All you
21 have to do is get a lawyer and write No. 2 right
22 there and file it again. It's still a viable option
23 to get paid expenditures.

24 Q. And would those expenditures catch up some of
25 this debt?

1 applications? Let's see. Let's look at Plaintiff's
2 Exhibit 10. Are you there yet?

3 A. Yes, sir, Exhibit 10.

4 Q. Do you see anything having to do with costs --
5 materials or storage or anything like that?

6 A. I wouldn't think it would be. If it was it
7 would be in Column D, and I don't see anything that
8 says, Storage.

9 Q. You're looking at Column D, and I'm looking at
10 this document which is a part of the Exhibit. I'm
11 looking at this document here, the payment
12 application.

13 A. That's just a continuation sheet. There's no
14 words like that on the cover page.

15 Q. So --

16 A. This is Page 1 of 3.

17 Q. There's nothing that talks about anything that
18 has anything to do with storage or anything else?

19 A. No, sir.

20 Q. That's the Exhibit -- is that Exhibit 10?

21 A. Yes, sir.

22 Q. Let's go to Exhibit 11. Take a look at what
23 is the second page of that Exhibit?

24 A. Did you say Exhibit 9?

25 Q. Exhibit 11.

1 A. Yes, sir.

2 Q. What is the second page? You have the first
3 page of the Letter of Transmittal, and then on the
4 next page is the actual Application and Certification
5 of Payment.

6 A. Yes, sir. It's a Contractor's Application for
7 Payment.

8 Q. If you look under Retainage there's a
9 percentage there for stored materials. Do you see
10 that location there? Look under Retainage by B?

11 A. Yes.

12 Q. Do you see anything there?

13 A. No, sir. It's blank.

14 Q. Let's look at Exhibit 12. Are you looking at
15 the second page there?

16 A. Yes.

17 Q. I need you to look where it says 5(b).
18 Anything there?

19 A. No, nothing.

20 Q. I will submit that if you look at any of these
21 payment applications you won't see anything there?

22 MR. MANOS: Objection. Counsel testifying.

23 MR. WHIPPER: I can lead.

24 MR. MANOS: You can lead your own witness?

25 Really? Objection to leading. Objection to the

1 A. Yes, sir. The V.A. paid what was on the
2 payment application and the State paid what they said
3 was the percentage. This is the second part of what
4 I didn't get to tell you before, and after the V.A.
5 decided they were going to halt the payments --
6 before they retracted and said in May of so and so of
7 2013, the five years is up which confused everybody
8 because we thought the five years should have started
9 when we started getting the money not when the first
10 application -- not with 2008. Of course in 2008 is
11 when the housing market flopped. Prices soared and
12 people got confused. There was a lot going on.

13 The V.A., in January of 2012, ordered an audit
14 from the firm in Pennsylvania, Daniel Eke. That's in
15 my paperwork somewhere, my exhibit. Daniel Eke did
16 an audit, and they said the project was 48 percent
17 complete and that the V.A. had expended \$275,661.
18 That was their determination. The last page of their
19 audit has a chart like what Mr. Haun did.

20 MR. WHIPPER: Your Honor, I'm referring to
21 Defendant's Exhibit 1, and it starts at Page 127.

22 MR. MANOS: Which exhibit?

23 MR. WHIPPER: Exhibit 1, No. I.1.

24 MR. MANOS: What page are we looking at?

25 MR. WHIPPER: Defendant's Exhibit 1, Page 127.

1 THE COURT: 127, and it says Exhibit I.1.
2 It's a letter of November 30, 2012.

3 MR. WHIPPER: Yes, sir. I think it's all
4 inclusive there.

5 MR. MANOS: I just -- I simply object to any
6 of the substantive observations, findings, or
7 whatever that is included in that letter that was not
8 authored by Mr. Knight to the extent it comes in that
9 Mr. Knight received that, okay, but otherwise I
10 object to it under hearsay.

11 THE COURT: Sustained.

12 Q. (BY MR. WHIPPER) All right. Proceed.

13 A. That takes us to Page 130, which is the
14 verification of reimbursement for the Capital Grant
15 Payments, the vouchers. It's crazy. He still types,
16 Good Neighbor Center. They just told me I couldn't
17 use that name. I don't know why they could do it.

18 But they came down and they said, List of
19 payments, \$275,661 and paid -- and that made the
20 project 48 percent complete. That doesn't include
21 the last 18,000 that they withheld in Exhibit 24 or
22 my Exhibit, whatever that was.

23 MR. MANOS: I'm trying to follow that, Your
24 Honor, but I just move to strike all of that as
25 hearsay.

1 MR. WHIPPER: Your Honor, what it is is a
2 report on an audit that was sent to him by the
3 governmental agency that we are dealing with.

4 THE COURT: Gentlemen, let me just cut to the
5 chase. If you look at Plaintiff's Exhibit 21,
6 Line 5, as of August 31, 2011, Plaintiff contends
7 it's 48 percent complete, and you look at the
8 document that Mr. Knight's testifying to you will see
9 that as of August 31, 2011, the Government agrees
10 that it's 48 percent complete.

11 MR. MANOS: You're much quicker than I am,
12 sir.

13 THE COURT: All right, gentlemen. So noted.
14 There's the agreement at that point in time, but I.
15 think there were no further payments forthcoming from
16 the Government after the 1st of September.

17 MR. WHIPPER: Thank you.

18 THE COURT: All right.

19 MR. WHIPPER: Your Honor, I'm just trying to
20 save time, or I can call him again on Direct.

21 THE COURT: No, that's fine.

22 MR. WHIPPER: So we know that the lawsuit
23 against The Shelter was filed. I think it was
24 filed -- May 1st, 2012 is when it was filed against
25 The Shelter and a lot of other people. Okay. Just

1 one second.

2 Your Honor, I have no other questions at this
3 point.

4 MR. MANOS: Just a few more, Your Honor.

5 THE COURT: All right.

6 EXAMINATION

7 BY MR. MANOS:

8 Q. Mr. Knight, you would agree that Infinger
9 performed the work that it was asked to perform?

10 A. I think Mr. Infinger did everything that was
11 on the drawings that he could, whatever the
12 inspection said is done I have no reason to pick one
13 over the other.

14 Q. And at the time that the payments were no
15 longer forthcoming to Mr. Infinger and Infinger was
16 still ready, willing, and able to continue performing
17 under the contract as far as you know, correct?

18 A. The Shelter?

19 Q. Yes, sir.

20 A. We couldn't perform at that particular spot in
21 time, you know.

22 Q. I'm not sure that you understood my question.
23 At the time when the payments stopped to Infinger
24 they were still in business. They still had all
25 their subs. They were out there ready, willing, and

1 able but no more payments were forthcoming, correct?

2 A. Mr. Infinger was ready to work. Like I said,
3 we worked on it together to try to get the funds
4 released.

5 Q. Let me ask you another quick question.
6 Mrs. Cook was the one who actually sent the grant
7 into the V.A., correct? The application for the
8 grant?

9 A. Yes. Originally that was -- there were two
10 applications for two grants.

11 Q. The one for the construction grant?

12 A. Yes. The construction grant came also with a
13 piece attached for a van.

14 Q. Have you ever actually read the grant
15 application?

16 A. I read it after I got my hands on it.

17 Q. Are you aware today or were you aware that the
18 V.A. noted in the application that after the V.A.
19 initially obligates funds for new construction
20 acquisition and remodeling or renovation the V.A.
21 will not make revisions to increase the amount
22 obligated. Were you aware that that was a
23 requirement as part of the grant that The Shelter
24 took?

25 A. I couldn't say. I know I got a bunch of

1 papers. There was a lot going on. When I read those
2 whole documents it probably wasn't the time he did
3 it.

4 Q. But we do know in late August when you went
5 back and asked for additional money they said, No,
6 you have to show us matching funds and they dried up?

7 A. Yeah. They said we needed to show them how we
8 would pay for the change orders. That's when they
9 said we had to have \$391,000 in matching funds and
10 they changed their 65 percent to 57 percent or
11 something.

12 Q. Okay. Mr. Infinger or Infinger Construction
13 never agreed to do this project as a charitable
14 donation?

15 A. We never asked him to.

16 Q. You understood that they were doing it per a
17 contract for a certain amount, correct?

18 A. Well, it wasn't a fixed-fixed price because it
19 was design/build. We didn't expect the changes like
20 they happened to happened. They happened just the
21 same.

22 MR. MANOS: That's all I have, Your Honor.

23 THE COURT: Okay.

24 MR. WHIPPER: One question. One last thing,
25 Your Honor. It's part of that question he just

1 asked.

2 EXAMINATION

3 BY MR. WHIPPER:

4 Q. Following that question he just asked, this is
5 the AIA contract. 5.22, says -- read that. You're
6 reading from the AIA contract signed by --

7 A. Us.

8 Q. -- everybody and you're reading from one part?

9 A. Article 5 or Section 5.212. Subject to other
10 provision of the design/build documents, the amount
11 of each progress payment shall be computed as
12 follows. Somehow they have N/A typed there. They
13 have number one and --

14 Q. I want you to read it. So you read that and
15 then it says, .1?

16 A. Yes. Take that portion of the contract sum by
17 allocating to completed work as determined by
18 multiplying the percentage of completion of each
19 portion of the work by the share of the contract sum
20 allocated to that portion of the work and schedule of
21 values less retainage -- this time we said 0 percent.
22 This was in December of 2010, right?

23 Q. So what I'm getting to is that the contract
24 talks about work completed, and you understand that
25 to be the same as --

1 A. -- bricks and mortar in place to me is the
2 same thing.

3 MR. WHIPPER: Thank you, sir. Thank you, sir.
4 That's it, Your Honor.

5 MR. MANOS: Your Honor, the Plaintiff rests,
6 and we would like to make a Rule 50 Motion.

7 THE COURT: Very good. Mr. Knight, thank you,
8 sir. You may step down.

9 (Witness excused.)

10 THE COURT: I do know have Plaintiff's 19, 20,
11 or 23 showing as in evidence. Do you want those in
12 evidence as well?

13 MR. WHIPPER: I need to look at them, Judge.

14 THE COURT: 19 is an e-mail from Guerry
15 Johnson. 20 is a request for additional funding,
16 dated 9/30/11.

17 MR. MANOS: I thought 23 was the one that was
18 the Complaint?

19 THE COURT: I'm sorry. I think that one is
20 in.

21 MR. MANOS: 19 was not introduced and --

22 THE COURT: 20 is a request for additional
23 V.A. funding from September 30, 2011. I don't
24 remember seeing that one.

25 MR. MANOS: I didn't.

1 THE COURT: So we have 1 through 25 excluding
2 19 and 20 on those listed for ID; is that correct?

3 MR. MANOS: Yes, sir.

4 THE COURT: And Defendant's 1 was that
5 Complaint with the Federal claims court with all the
6 attachments.

7 MR. WHIPPER: That's right.

8 THE COURT: Okay. So the Plaintiff is
9 resting. Let me turn first to Mr. Whipper and see.
10 Mr. Whipper, the Plaintiff's have rested. Have you
11 got any case you want to present up?

12 MR. WHIPPER: I do, Your Honor. In rebuttal,
13 Your Honor.

14 THE COURT: Okay. You have a Motion for -- at
15 this time the Plaintiff is making a Motion for a
16 Nonsuit?

17 MR. MANOS: Directed verdict.

18 THE COURT: I'm going to deny the motion at
19 this time. Let's move forward with the case. All
20 right?

21 MR. WHIPPER: Your Honor, I would like to call
22 Mr. David LaRow (phonetic).

23 THE COURT: All right. Let's go ahead and
24 move on.

25

THE COURT: Your full name and address for the record, please?

THE COURT: Thank you, sir. All right.

Mr. Whipper?

BY MR. WHIPPER:

A. Principal of D.R. Development Now, a consulting company that does economic finance and development particularly for affordable housing and nonprofit organizations.

MR. WHIPPER: Your Honor, I apologize. May we approach outside of the witness if necessary or not?

THE COURT: You-all come on back here for a second.

(A recess transpired.)

THE COURT: Go ahead, Mr. Whipper.

MR. WHIPPER: We were offering Mr. LaRow -- essentially he validated the understanding of work

1 completed and bricks and mortar in place. In fact,
2 the work that had been visibly done in furtherance of
3 the project does not include storage and materials.
4 That was a limited basis.

5 THE COURT: And Mr. Manos, your objection?

6 MR. MANOS: My objection was, Your Honor, that
7 this witness had not been previously discussed
8 through discovery, and I have not had a chance to
9 Cross-Examine him, and I think that his testimony
10 is -- any conclusions that he would give would be the
11 province of the Court as a matter of law. It's not
12 proper expert testimony. I have a problem with
13 questioning the foundation based on what materials
14 that he looked at within these project documents to
15 even be able to provide an opinion.

16 THE COURT: Very good. So doing this for the
17 record -- we talked about this at some length in the
18 hallway there. Mr. LaRow, I'm going to find that
19 your testimony is not going to be needed today. As I
20 described it with Mr. Whipper, it seems to be that
21 the purpose of your testimony is to testify as an
22 expert in a particular area of construction and what
23 constitutes -- I think the term was bricks and
24 mortar. What does that mean? It's a term of art
25 maybe, but it's also something within the province of

1 the Court, so expert testimony is not going to be
2 necessary today.

3 What I have allowed Mr. Whipper to do is to
4 proffer your testimony as to what you would say. So
5 rather than going through a discussion -- Mr. Whipper
6 you can summarize it, or you can have Mr. LaRow
7 summarize it, but I'm going to put it in the record
8 not as evidence but for the record to be protected.

9 MR. WHIPPER: I understand. I offer it for
10 proof essentially. Well, again, another point, I'll
11 get to it since it's for the record.

12 Q. (BY MR. WHIPPER) Mr. LaRow, you have been
13 involved in construction in what way?

14 A. Originally I was a licensed general contractor
15 in Massachusetts. I have been a certified and
16 licensed REAC inspector and a mortgage inspector.
17 I've been a consultant that puts together financing
18 packages. Particularly I came to South Carolina in
19 2001 to help the North Charleston Housing Authority
20 write a Hope VI Grant.

21 Q. How much money was involved with that grant?

22 A. The grant itself was \$35 million. Upon my
23 company receiving the grant from the government, I
24 came down as the project manager and the construction
25 manager for the entire project, so my expertise --

1 and I have a certificate as an economic development
2 finance professional -- is putting together financial
3 packaging, hiring any architects, hiring the general
4 contractors, overseeing the draws, doing construction
5 inspection, and as I said, currently I have retired
6 from the North Charleston Housing Authority a year
7 and a half ago, and now I have a consulting business
8 that does the same thing.

9 THE COURT: Have you testified previously in
10 this area.

11 THE WITNESS: Yes, sir.

12 THE COURT: And been qualified as an expert
13 witness?

14 THE WITNESS: Yes, sir.

15 THE COURT: Go ahead and ask him what you want
16 to ask him.

17 Q. (BY MR. WHIPPER) So in your understanding of
18 work completed and bricks and mortar in place, what
19 does that mean in the industry?

20 A. Bricks and mortar in place is the specific
21 percentage of the work that has been completed as
22 defined by the scope of work. It's just -- in most
23 contracts and whatever there's a specified inspector
24 or inspectors that will come to a monthly draw. I
25 believe I have not seen these documents. AIA

1 documents have been used, that at those draw meetings
2 the percentage of completion of work with bricks and
3 mortar on the ground is ascertained and agreed to.

4 Sometimes there is a funding source or
5 multiple funding sources that will also do a
6 determination on the percentage of work that is
7 completed.

8 Q. And it's your understanding, too, that in
9 these situations, damages are based on what has been
10 completed or not completed in construction phases?

11 A. I'm not sure on the term damages.

12 Q. In other words, people are demanding to be
13 paid for work that has been done or maybe for work
14 that has not been done. Can you speak in response to
15 that question?

16 A. Well, again, generally, the terms are pretty
17 well laid out in most of my cases. As a matter of
18 fact, I can't think of where an AIA general
19 contractor contract was not used, a 101 or in
20 specifications a 201 which pretty much lays out any
21 problems as far as either with the contractor not
22 performing, contractor not paying subcontractors, and
23 then the other side is for owners not complying with
24 the pay period. The pay period is usually spelled
25 out very, very succinctly. When there are government

1 agencies involved and funding is dependent upon the
2 government agency, usually there's an exclusion to
3 the normal 15-day payment period which the AIA
4 document generically uses because it's very difficult
5 to get the government to get you the money in 15
6 days. That's usually all agreed upon in the contract
7 prior to the commencement of work.

8 MR. WHIPPER: Thank you. That's it.

9 THE COURT: Mr. Manos, any inquiry?

10 MR. MANOS: No, Your Honor.

11 THE COURT: Thank you Mr. LaRow. We'll excuse
12 him unless you need him for another reason?

13 MR. WHIPPER: No, he can be excused.

14 (Witness excused.)

15 THE COURT: Mr. Whipper?

16 MR. WHIPPER: Your Honor, again, I think that
17 along with the fact that the disclosure was sought
18 last minute, I'm still thinking that there needs to
19 be some prejudice demonstrated. Again, it was a
20 limited basis of why he was here. I don't think any
21 prejudice was mentioned at all.

22 THE COURT: I acknowledge that. I understand.
23 I just think that he's -- what he was here to opine
24 on is a matter of language in the contract, and I
25 think that's for the Court's determination. Thank

1 you. It's in the record. All right?

2 MR. WHIPPER: Thank you, Your Honor.

3 THE COURT: Anything further, Mr. Whipper?

4 MR. WHIPPER: Just one second, Your Honor.

5 THE COURT: Okay.

6 MR. WHIPPER: Your Honor, I would like to get
7 one more point from Mr. Knight, and I'll call him on
8 Direct.

9 THE COURT: Mr. Knight, come on back up. You
10 have been previously sworn. Let's go ahead and move
11 through this.

12 NORMAN ROBERT KNIGHT,
13 being previously duly sworn, testified as follows:

14 THE COURT: Mr. Whipper, you may proceed.

15 MR. WHIPPER: Thank you, Your Honor.

16 EXAMINATION

17 BY MR. WHIPPER:

18 Q. Mr. Knight, you've been sworn, and we're back
19 on Direct. What discussions did you have with the
20 Plaintiff concerning being able to get them paid?

21 A. In the part of October or November of 2011?

22 Q. Well, whenever it happened, what discussions
23 did you have? You can tell us when it happened.

24 A. Well, we had to get a grasp on what was
25 happening as far as the V.A., Capital Grant was

1 going. That's why we wrote that letter.

2 Q. The rescue letter?

3 A. The rescue letter telling the V.A., look, we
4 can finish this job, but we need you to release the
5 money. We were trying to work at it, and then I
6 think while we were still talking with Mr. Infinger
7 one of the subs, maybe his offices in Greenville or
8 somewhere like that, they showed up with a lawsuit
9 and mechanic's lien, and then that started the
10 lawsuit thing.

11 By the time we got Mr. Infinger's lawsuit and
12 we went through the insurance company and got
13 Mr. Belcher involved and Mr. Belcher wrote a letter
14 to Mr. Quarles, the discretionary office, and he
15 said, Hey, look. We have these lawsuits on us and we
16 can make them go away if you release the money.

17 Q. At the time though was there any talk between
18 you or maybe you and Mr. Belcher with Infinger
19 operations?

20 A. There was a mediation thing, but before
21 that --

22 Q. It was a what?

23 A. A mediation thing like in November.

24 Q. Now, how is that done?

25 MR. MANOS: Your Honor, I object to any

1 testimony regarding a confidential settlement
2 negotiation and mediation. I'm not sure where he's
3 going with this.

4 MR. WHIPPER: I'm not either, Your Honor.

5 THE COURT: I assume we were talking back in
6 the context of 2011.

7 MR. WHIPPER: Yes. And I'm trying to get to
8 informal discussions with the parties and not
9 necessarily mediation, but informal discussion
10 between the parties.

11 THE WITNESS: We were talking with Guerry
12 Johnson, and there were e-mails, and then I guess we
13 met on a few occasions. I can't remember exactly
14 when, but we did go to Mr. Infinger's office. We did
15 talk to him a little bit about the expenditures
16 clause and the V.A. would have to pay for what we
17 could verify was actually there that the government
18 got.

19 Then we discussed the possibility and it may
20 still be out there that -- well, the State is not
21 here, but the V.A. can still show up and say I want
22 my \$275,000.

23 Q. (BY MR. WHIPPER) Which is what they've got.
24 now?

25 A. Yes. They wrote us a letter and we wrote them

1 back, but they haven't answered.

2 Q. So when did the issue of the liens going away,
3 when was that discussed?

4 A. I just -- we probably discussed that with
5 Guerry Johnson. We said, These have got to go away.
6 What hurts us is with the liens there we can't fill
7 out any Federal applications or any State
8 applications for grants for more money, and there's
9 millions of dollars available for Veterans, but if
10 you've got to check that box that there's
11 litigation -- it says, Do not fill out beyond this
12 point. You just can't do it. It's something that
13 blocks you. If it wasn't there, we could move
14 forward, you know.

15 Q. So all --

16 A. You still have an asset there.

17 Q. All through this discussion, you have been
18 serving Veterans, right?

19 A. Yes, sir. We never stopped. We just started
20 doing it without the V.A.'s money.

21 Q. So what did you --

22 A. A couple of churches bring food by. Some of
23 the Veterans have a little bit of disability money,
24 not enough to live by themselves. One church comes
25 on Friday night with meals. The ministry on Rivers

1 Avenue, they feed on Mondays, Wednesdays, and
2 Fridays. Ain't nobody hungry, but we don't have any
3 employees. We scratch up enough money for the light
4 bill and the water bill every month.

5 Q. And what would the employees do if you had
6 them?

7 A. Well, if we had them we could go to the V.A.
8 and say, We want to wake up our per diem grant
9 program. Aside from all of this they're not our
10 enemies. I guess just a few months ago we got
11 invited to one of their meetings where they bring the
12 community in and tell them what's available with
13 grant funds and what you can do, and they were all
14 pretty friendly about what we could do.

15 Q. What could you do if you had -- other than get
16 more funds what services would you offer?

17 A. Well, we would try to put our director back in
18 place because she is a licensed counselor, and we
19 would be able to -- the V.A. -- you don't pick the
20 Veterans. They send them to you. You don't pick who
21 they are. The people at the hospital pick them.

22 They send them over and give them a room and a
23 place to stay, clean sheets, find some food to cook
24 and eat. If you get all set back up -- once you show
25 them that you can provide these services without too

1 State in light of the State's use of them as
2 overseers, as merely conduits of the money that is
3 used to pay the contractor. Now, you know, it seems
4 like a stretch, but in fact it's not, not with all of
5 the understanding about what it all took and how
6 these people worked together, and certainly this is
7 about fairness.

8 They've got a structure that's not serving
9 them, so I don't know that they're unjustly enriched.
10 They don't have to do anything. They just have to
11 look at it, so it's not like they're unjustly
12 enriched.

13 THE COURT: I'm assuming nothing's happened
14 with that building since the letter was written in
15 December of '11?

16 MR. WHIPPER: Nothing is happening with it.
17 The other thing is, of course, there's some other
18 conventional standards that apply. In other words,
19 you know, it's not their job to complete per se.
20 They're not in a position to just hire anybody unless
21 they have some money and the money that they have is
22 dedicated to EJI (sic). They're locked into EJI
23 (sic) by their attitude as well as the fact that --
24 who is the object of the payment by the grantings of
25 sources. So looking at that, Judge, I have to argue,

1 THE COURT: Let me hear from you on that,
2 Mr. Manos.

3 MR. MANOS: I have a couple of things, Your
4 Honor. First of all, the general conditions which
5 were part of Exhibit 2, which the parties contracted
6 to, both agreed to, both Mr. Haun and Mr. Knight, at
7 A-932 in general conditions specifically says that
8 payment shall be made on materials and equipment
9 delivered and suitably stored at the site for
10 subsequent incorporation into the work.

11 So actually the written agreement between the
12 parties was that stored materials would be paid for,
13 so that's one. Secondly, if you look on the pay
14 applications that we went through they actually note
15 the material was presently stored.

16 Third, and we've already talked about this in
17 length, Mr. Whipper continues to talk about the State
18 as if the State was the problem. The State wasn't
19 the problem. The V.A. stopped paying in
20 August/September when they notified The Shelter that
21 it had added all of these things to the project, it
22 wasn't going to increase their grant, and unless they
23 could get \$99,000 of matching they weren't going to
24 pay anymore. If you look at the pay applications
25 that Mr. Haun testified to very clearly, Infinger for

1 the work that they did, for the work that their subs
2 did with labor, service, and materials, was billing
3 in September of 2011, \$91,000 and the State paid
4 \$26,000 and \$65,000 of it did not get paid by the
5 V.A.

6 If you go to the next one, \$44,000 didn't get
7 paid except no one --

8 THE COURT: I didn't do the math. Does that
9 take care of your 65/45 pretty much?

10 MR. MANOS: If the Defendants wanted to make
11 the argument that somehow the project wasn't complete
12 per the percentage Infinger said it was, that they
13 weren't due that, they could have made that argument
14 during the project. They could have not signed
15 change orders. They could have brought witnesses in
16 to testify that I could have cross-examined.

17 Mr. Haun says that he followed the contract.
18 This was for work that was put into the building.
19 He's testified to it, and there's nothing to the
20 contrary other than that the Defendant's don't seem
21 to like it. They know they owe, and if we're going
22 to talk about fairness the idea that fairness comes
23 into play, that Infinger should come in and do all
24 this work and not get paid for it and then have all
25 their subs -- lien them, have lawsuits from their

1 bonding company, and they should be left holding the
2 bag for hundreds of thousands of dollars, how that's
3 fair is beyond me, Your Honor.

4 MR. WHIPPER: There's testimony of lawsuits,
5 but there's no testimony as to what amounts or
6 anything about that. So you can make that argument,
7 but one of the things -- he makes reference again to
8 this stored figure. Your Honor, if you look at that
9 continuation sheet -- if you look at it it's not
10 broken up.

11 It says, Work, total completed and stored to
12 date -- total completed and stored to date, and it's
13 not broken out, so we don't know what this is. If
14 they break it out, and -- no one's testified at all,
15 and that's what I'm saying about this completed and
16 stored. There's been no testimony about -- we didn't
17 go for the whole hour about how you need to come up
18 with this, but the fact of the matter is is that if
19 you put this in front of the Court, there's nothing
20 that says, Well, we've got 40 reams of something over
21 here at a cost of -- one of the things we would have
22 to say then is okay. If you've got that then you
23 have to somehow mitigate your damages, or you're
24 going to have to give him a credit because it still
25 belongs to them. They haven't done that. They just

1 haven't done it. They've kept it. They've used it.
2 It's gone. It's probably nowhere to be seen. It may
3 have been used for another project.

4 That's why -- you just can't slush fund the
5 thing. That's all I'm saying, Judge. I want you to
6 know, Your Honor, that why we're here -- we're here
7 because we have to be here. Everybody has to protect
8 their interest. In fact, I know that the Defendants
9 have every confidence, and I'm just talking --
10 Mr. Manos, I'm just talking -- they have every
11 confidence in being able to complete this project
12 with EJI (sic).

13 If we could get some points in this things --
14 they're not opposed to completing this project, or
15 EJI (sic) being the general contractor.

16 THE COURT: I'll be glad to hear again from
17 you, Mr. Manos, but it seems to me that the whole
18 purpose of that 5.22 in the paragraph we have been
19 over today, Paragraph 1 talks about the work -- the
20 sum of the completed work, and Paragraph .2 talked
21 about -- add that portion of the sum allocable to
22 materials and equipment.

23 So you have two ways to get there, and I think
24 that seems to be how the compilation is put together
25 on Exhibit 21, total completed and stored to date,

1 right?

2 MR. MANOS: Right.

3 MR. WHIPPER: We don't have that figure.

4 MR. MANOS: .And you'll see the non applicable
5 on that. It was because of the retainage -- it was
6 going to be 0 percentage and then it changed.

7 THE COURT: It changed under that first change
8 order as I recall.

9 MR. WHIPPER: Your Honor, again, there's
10 nothing on the site that -- we don't know anything
11 about stuff and where it is or what it's been used
12 for or what figures should we attribute to them using
13 it on other jobs?

14 THE COURT: Well, there's no evidence of that.
15 Mr. Whipper, I think under the circumstances -- I
16 think the Plaintiff has established their right to
17 the mechanic's lien. I think that they have timely
18 filed their lien. It appears that they have timely
19 perfected that lien by the filing of the lis pendens
20 and the Summons and Complaint.

21 The testimony in the record for today would
22 indicate that the amount due is the compilation --
23 frankly, I was surprised and I believe I may have
24 indicated to you-all earlier when the amount -- I
25 guess whoever it was had gone out there and done the

1 audit and found that they were consistent with the
2 same 48 percent completion rate at the end of August
3 as what Mr. Haun has prepared in that compilation.

4 Mr. Haun, I appreciate your effort on that
5 because that was extremely helpful, otherwise we were
6 looking at a lot of documents.

7 So what I'm indicating to you certainly is
8 that I'm going to find on behalf of the Plaintiff's.
9 I think they're entitled to their lien. I understand
10 you're contesting the amount of the lien and whether
11 or not there is any amount due.

12 MR. WHIPPER: That is our position, Your
13 Honor.

14 THE COURT: Mr. Whipper, I'm certainly going
15 to allow you the opportunity, but it's my practice,
16 just so you-all know, to give you-all some time to
17 prepare an order, but I'm going to ask that both
18 sides do that, prepare an order as to what that
19 amount should be if anything.

20 Mr. Manos, that will give you time to prepare
21 your Affidavit of Attorney's Fees as well and submit
22 that with your proposed order, and then for those of
23 you who are here awaiting the Answer to this case,
24 it's my practice to give you-all an answer within
25 30 days of receipt of those orders.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EMORY J. INFINGER and Associates
Construction Company

☐ Plaintiff

v.

North Charleston Community
Interfaith Shelter

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-10-2872

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: J. Seth Whipper, Bar No. 6061 Address: Post Office Box 70070 North Charleston, South Carolina 29415 phone: 843/740-7777 fax: 843/740-9108 e-mail: jsw@whipperlaw.com other:		Defendant's Attorney: Theodore L. Manos, Bar No. Address: Charleston, South Carolina 29401 phone: 843-723-6470 fax: 843-853-9045 e-mail: tlm@roblaw.net other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: New Trial, Alter or Amend Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. April 7, 2016 Signature of Attorney for ☒ Plaintiff / ☒ Defendant Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____			

SCCA/233 (11-03)

APPENDIX 0204 CERTIORARI

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Emory J. Infinger and Associates
Construction Company, Inc.,

Plaintiff,

vs.

North Charleston Community
Interfaith Shelter, et.al.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2012-CP-10-2872

NOTICE OF MOTION AND MOTION
FOR NEW TRIAL AND TO ALTER OR
AMEND JUDGMENT[SCRPC 59 (a) (e)]

2016 APR 11 PM 2:46
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

TO: PRESIDING JUDGE: CLERK: THEODORE L. MANOS, ATTORNEY FOR
EMORY J. INFINGER & ASSOC. CONSTR. CO., INC.; TRACEY EASTON,
GENERAL COUNSEL FOR SOUTH CAROLINA STATE HOUSING FINANCE AND
DEVELOPMENT AUTHORITY:

PLEASE TAKE NOTICE that at a time and place most convenient for the
parties, the Defendant, NCCIS, shall move before the honorable Court for an order
granting a new trial or to alter the judgment in the above-captioned matter.

Defendant bases this motion on the following items:

1. The law of contracts and rules of equity require the denial of the claim.
See Bradley v. Brentwood Homes, Inc., 398 S.C. 447, 455, 730 S.E. 2d. 312, 316
(2012); EllisDon Construction, Inc. v. Clemson University, 707 S.E.2d 399, 391 S.C.
552 (2011).

2. Defendant did not and could not approve any form of offsite storage of
materials.

3. Approval of storage must be in writing and Defendant absolutely gave
no written approval of storage.

4. Defendant, in questioning of Plaintiff's management witness and
argument to court, raised the issue of proof of existence and value of stored
materials.

5. Rules of Evidence require a determination of the value of storage when it becomes an issue. SCRE 1006.

6. Plaintiff is required to comply with AIA Contract. See Sec. A.9.3.2. and Article A. 4.

7. Plaintiff dismissed their complaint and lien, and failed to properly refile and reopen in October and November 2014; and therefore this court lacks jurisdiction to try this matter.

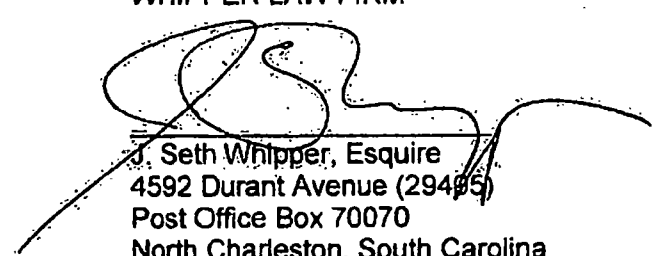
This motion is supported by the South Carolina Rules of Civil Procedure, statutes, common law, and jurisprudence. Defendant does not waive any arguments raised at trial.

PLEASE BE PRESENT TO ARGUE, If you are so minded.

Respectfully Submitted,

WHIPPER LAW FIRM

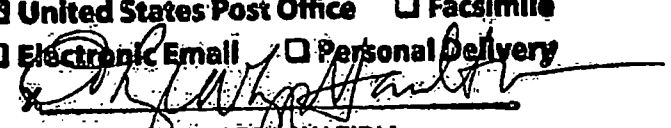
April 7, 2016


Seth Whipper, Esquire
4592 Durant Avenue (29405)
Post Office Box 70070
North Charleston, South Carolina
843/740-7777
843/740-9108

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the true copy of the foregoing pleading(s) has been served upon opposing counsel on the 7th day of April, 2016 via:

☒ United States Post Office ☐ Facsimile
☒ Electronic Email ☐ Personal Delivery


WHIPPER LAW FIRM

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

April 7, 2016

Clerk of Court
Charleston County Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: **Emory J. Infinger & Assoc. C. C., Inc. vs. North Charleston Community I.
S., et. al.**
Case No.: 2012-CP-10-2872
Notice of Motion and Motion for New Trial and to Alter or Amend Judgment
[SCR 59 (a) (e)]

Dear Madam or Sir:

Find enclosed one original and one copy of the above-referenced document for filing and conforming and a check in the amount of \$25.00 for the filing fee. Please return the conformed copy to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy, I am also serving the same on, the Honorable Mikell R. Scarborough, Theodore L. Manos, Attorney for Plaintiff, and Tracey Easton, General Counsel for South Carolina State Housing Finance and Development Authority.

Thank you for your anticipated assistance and cooperation.

Sincerely,

WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/cdwh

Enclosures

xc: The Hon. Mikell R. Scarborough
Theodore L. Manos
Tracey Easton
Norman R. (Bobby) Knight, Jr.

APPENDIX 0207 CERTIORARI

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EMORY J. INFINGER and Associates
Construction Company

☐ Plaintiff

v.

North Charleston Community
Interfaith Shelter

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-10-2872

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: J. Seth Whipper, Bar No. 6061 Address: Post Office Box 70070 North Charleston, South Carolina 29415 phone: 843/740-7777 fax: 843/740-9108 e-mail: js@whipperlaw.com other:		Defendant's Attorney: Theodore L. Manos, Bar No. Address: Charleston, South Carolina 29401 phone: 843-723-6470 fax: 843-853-9045 e-mail: tlm@roblaw.net other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Second Motion To Amend Answer Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. November 25, 2015 Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____			

SCCA/233 (11-03)

APPENDIX 0208 CERTIORARI

Exhibit B

FOR A THIRTY-FIFTH DEFENSE

69. Defendant realleges each and every allegation of its foregoing Defenses (One through Thirty-Four) and Counterclaim as if fully alleged herein and incorporates the same by reference.
70. The parties, at a date certain, and in a manner consistent with the general principles of the law of contracts in the state of South Carolina, did modify and recast their original agreements for building the veteran's dormitory on Defendant's property.
71. The parties agreed that the standard for satisfying the Plaintiff's pay requests would be "bricks and mortar in place".
72. Defendant has consistently, timely, and cooperatively, filed Plaintiff's requests for payment with the appropriate funding sources and is informed and understands that any failure to pay is not the direct or legal affect of any actions or omissions of the Defendant.
73. Plaintiff was aware of the payment arrangements and aware of the vicissitudes influencing the availability of payments, and the responsible parties, not including Defendant.

WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

November 25, 2015

Clerk of Court
Charleston County Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401

U. S. MAIL ONLY

Re: Emory J. Infinger and Associates Construction Company, v. North Charleston
Community Interfaith Shelter
Case Number: 2012-CP-10-2872
Second Motion to Amend Answer-For Filing

Dear Madam or Sir:

Find enclosed one original and one copy each of the above-referenced documents for filing and conforming and a check in the amount of \$25.00 for the filing fee. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter, I am serving a copy of the same on Theodore L. Manos, attorney for Plaintiff.

Thank you for your anticipated assistance and cooperation.

Sincerely,
WHIPPER LAW FIRM

J. Seth Whipper, Esquire

JSW/lbs

Enclosures

xc: Theodore L. Manos
Norman Knight, Jr.

APPENDIX 0210 CERTIORARI

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EMORY J. INFINGER and Associates
Construction Company

☐ Plaintiff

v.

North Charleston Community
Interfaith Shelter

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-10-2872

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
J. Seth Whipper, Bar No. 6061

Address:

Post Office Box 70070

North Charleston, South Carolina 29415

phone: 843/740-7777 fax: 843/740-9108

e-mail: jsw@whipperlaw.com other:

Defendant's Attorney:

Theodore L. Manos, Bar No.

Address:

Charleston, South Carolina 29401

phone: 843-723-6470 fax: 843-853-9045

e-mail: tlm@roblaw.net other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: For Summary Judgment

Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 20, 2015

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status:

☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act

☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication

☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Emory J. Infinger and Associates
Construction Company, Inc.,

Plaintiff,

vs.

North Charleston Community
Interfaith Shelter,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2012-CP-10-2872

MOTION FOR SUMMARY
JUDGMENT

TO: PRESIDING JUDGE: CLERK: THEODORE L. MANOS, ATTORNEY FOR
EMORY J. INFINGER & ASSOC. CONSTR. CO., INC.:

Defendant NCCIS hereby timely moves for summary judgment, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, as no genuine issue exists as to any material fact, and they are entitled to summary judgment as matter of law.

NCCIS so moves because (1): NCCIS never owed a legal duty to Plaintiff; (2): NCCIS never breached any legal duty to Plaintiff; (3): Plaintiff cannot, as a matter of law, transform an alleged breach of contract into a tort; (4): Plaintiff assumed the risk of loss; and (5): other legal reasons that NCCIS might bring to the Court's attention.

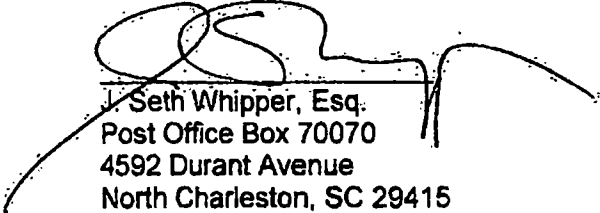
Plaintiff failed to prove that a material issue of fact exists sufficient to evade summary judgment on its claim against NCCIS. NCCIS moves for summary judgment and respectfully requests that the Court dismiss this case against them with prejudice, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

NCCIS had no duty consult with opposing counsel prior to so moving, pursuant to the applicable rules of procedure.

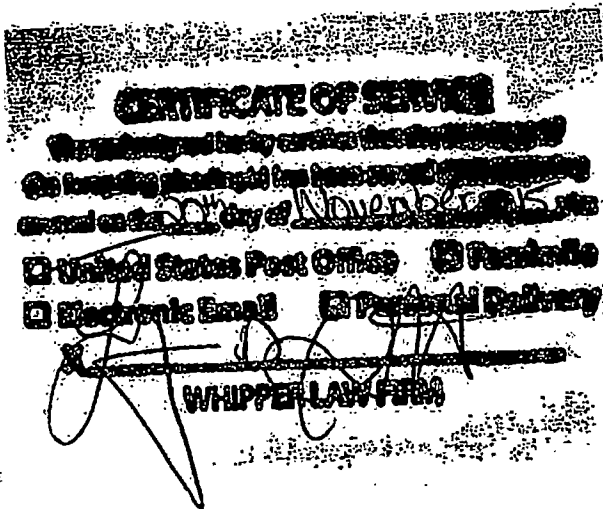
FILED
2015 NOV 23 PM 1:40
JULIE J. ANASTASIO
CLERK OF COURT

WHIPPER LAW FIRM
Attorney for N.C.C.I.S

November 20, 2015


J. Seth Whipper, Esq.
Post Office Box 70070
4592 Durant Avenue
North Charleston, SC 29415
(843) 740-7777
(843) 740-9108 Fax
ATTORNEY FOR DEFENDANT
NCCIS aka The Good Neighbor Center

Although NCCIS properly asserted these affirmative defenses in their Answer, they herein moves to amend that Answer to conform to the evidence and include the defenses set forth herein, pursuant to Rule 15(b) of the South Carolina Rule of Civil Procedure- to the extent that Plaintiff asserts that NCCIS failed to properly plead any of the defenses set forth herein.



WHIPPER LAW FIRM

Attorneys and Counselors at Law

4592 Durant Avenue
North Charleston, SC 29405
(843) 740-7777
FAX (843) 740-9108

CHERYL WHIPPER HAMILTON
J. SETH WHIPPER

MAILING ADDRESS
POST OFFICE BOX 70070
NORTH CHARLESTON, SC 29415

November 20, 2015

Clerk of Court
Charleston County Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401

U. S. MAIL ONLY

Re: Emory J. Infinger and Associates Construction Company, v. North Charleston
Community Interfaith Shelter
Case Number: 2012-CP-10-2872
Motion for Summary Judgment- **For Filing**
Motion to Amend Answer-**For Filing**

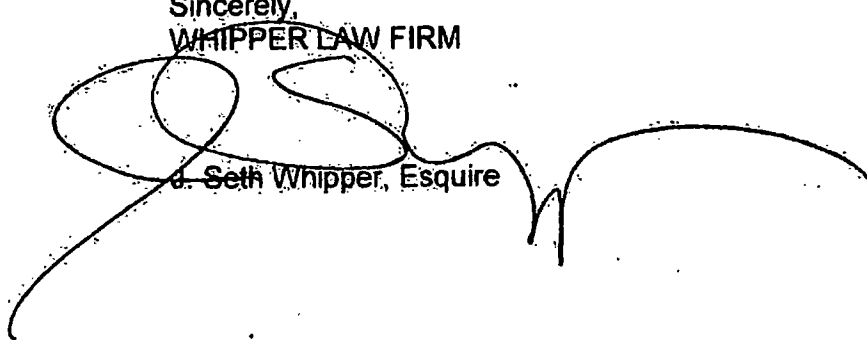
Dear Madam or Sir:

Find enclosed one original and one copy each of the above-referenced documents for filing and conforming and a check in the amount of \$50.00 for the filing fee. Please return the conformed copies to me in the self-addressed, stamped envelope enclosed for your use in this regard.

By copy of this letter, I am serving a copy of the same on Theodore L. Manos, attorney for Plaintiff.

Thank you for your anticipated assistance and cooperation.

Sincerely,
WHIPPER LAW FIRM


J. Seth Whipper, Esquire

JSW/lfs

Enclosures

xc: Theodore L. Manos
Norman Knight, Jr.

APPENDIX 0214 CERTIORARI

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

EMORY J. INFINGER and Associates
Construction Company

☐ Plaintiff

v.

North Charleston Community
Interfaith Shelter

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-10-2872

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

J. Seth Whipper, Bar No. 6061

Address:

Post Office Box 70070

North Charleston, South Carolina 29415

phone: 843/740-7777 fax: 843/740-9108

e-mail: jsw@whipperlaw.com other:

Defendant's Attorney:

Theodore L. Manos, Bar No.

Address:

Charleston, South Carolina 29401

phone: 843-723-6470 fax: 843-853-9045

e-mail: tlm@roblaw.net other:

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: To Amend Answer

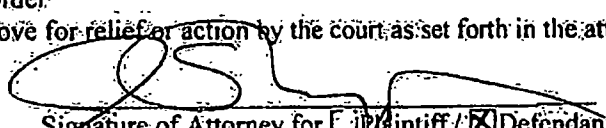
Estimated Time Needed: 20 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached:

☐ Form Motion/Order:

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

November 20, 2015

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$25.00**

☐ **EXEMPT:**

(check reason) ☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Emory J. Infinger and Associates
Construction Company, Inc.,

Plaintiff,

vs.

North Charleston Community
Interfaith Shelter,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2012-CP-10-2872

MOTION TO AMEND ANSWER

FILED
2015 NOV 23 PM 1:40
JULIE J. ARISTIDE
CLERK OF COURT

TO: PRESIDING JUDGE: CLERK: THEODORE L. MANOS, ATTORNEY FOR
EMORY J. INFINGER & ASSOC. CONSTR. CO., INC.:

COMES NOW Defendant, North Charleston Community Interfaith Shelter
(herein" NCCIS): to move this honorable Court as soon as practicable to amend its
Answer to add a Counterclaim. NCCIS makes this motion to certify that all issues
existing in this matter are brought before the Court for its consideration. NCCIS
moves to amend its Answer as set-out in Exhibit A attached hereon.

This motion is based on the South Carolina Rules of Civil Procedure, South
Carolina Jurisprudence, and Common Law.

PLEASE BE PRESENT to argue if you are so minded.

WHIPPER LAW FIRM
Attorney for N.C.C.I.S

November 20, 2015

J. Seth Whipper, Esq.
Post Office Box 70070
4592 Durant Avenue
North Charleston, SC 29415
(843) 740-7777
(843) 740-9108 Fax
ATTORNEY FOR DEFENDANT
NCCIS aka The Good Neighbor Center

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the true copy of
the foregoing pleading(s) has been served upon opposing
counsel on the 20th day of November, 2015 via:

☒ United States Post Office ☐ Facsimile
☒ Electronic Email ☐ Personal Delivery

WHIPPER LAW FIRM

APPENDIX 0216 CERTIORARI

Exhibit A

59. NCCIS realleges each and every allegation of its Defenses (First through Thirty-fourth) as if fully alleged herein and incorporates the same by reference.
60. Plaintiff, by and through its agent, Guerry Johnson, has acknowledged that the obligation to pay came from funding sources not under NCCIS's control.
61. NCCIS has always assisted and cooperated with Plaintiff's demand for payment.
62. NCCIS did nothing to initiate, instigate, or disrupt the timely compensation of Plaintiff for work and services performed.
63. Plaintiff failed to repair the bathroom floor plans as a result of incorrect placement of the commode locations in the six second-floor bathrooms, expected to cost approximately \$4,000.00 to correct.
64. Plaintiff was aware and informed of the bathroom deficiencies as described above.
65. Plaintiff left equipment on the site positioned at a location prepared by his workers and this location comprised a drainage ditch and pipe placed by the Plaintiff.
66. In the time since Plaintiff withdrew from the worksite, his trailer sunk through the surface ground above the drainage ditch and pipe, rupturing the drainage pipe and requiring \$3,400.00 in labor and material to repair the drainage line.
67. NCCIS is informed and believes that Plaintiff's actions and omissions are the direct and proximate cause of the harm and damage to NCCIS as alleged herein, and desires to be compensated therefor.
68. Plaintiff had a duty to perform in a workmanlike manner and a duty to act reasonably and with due care as a contractor in these circumstances.

WHEREFORE, NCCIS requests this Honorable Court to issue its Order in the following particulars:

- A. Dismissing Plaintiff's Complaint;**
- B. Awarding NCCIS just and reasonable compensation for harm and damage accrued;**
- C. Awarding such other relief as the Court deems just and fair.**

EMORY J. INFINGER & ASSOCIATES

LETTER OF TRANSMITTAL

CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

TO:
IA-316 Contract File

DATE	1/5/2011	JOB NO.	IA-316
ATTENTION:			
RE:			
The Good Neighbor Center 1905 Burton Lane North Charleston, SC 29405			

WE ARE SENDING YOU:

☒ Attached	☐ Mailed	☐ Faxed	☐ Hand Carried
☐ Shop Drawings	☐ Prints	☐ Plans	☐ Samples
☐ Copy of letter	☐ Change order	☐ See Below	☐ Specifications

COPIES	DATE	NO.	DESCRIPTION
1	12/10/10	1	Fully Executed Contract between Owner & Design-Builder

THESE ARE TRANSMITTED as checked below:

☐ For Approval	☐ Approved as submitted	☐ Resubmit copies for approval
☒ For your use	☐ Approved as noted	☐ Submit copies for distribution
☐ As requested	☐ Returned for corrections	☐ Return corrected prints
☐ For review and comment	☐	
☐ FOR BIDS DUE	☐	☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-19 w/a, Supt. (GH) w/a
Acct. w/a, Guerry Johnson w/a

SIGNED: Emory J. Infinger
Emory J. Infinger, President

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0218 CERTIORARI

174



AIA Document A141™ - 2004

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the Tenth (10th)
in the year of Two Thousand and Ten (2010)
(In words, indicate day, month and year)

day of December

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

The Good Neighbor Center
(A Non-Profit Corporation)
1905 Burton Lane
North Charleston, SC 29405

Attn: Mr. Bobby Knight
Chairman and President

and the Design-Builder:
(Name, address and other information)

Emory J. Infinger & Associates
Construction Company, Inc.
4748 Franchise Street
PO Box 41348
Charleston, SC 29423

Attn: Mr. Emory J. Infinger
President

For the following project:
(Name, location and detailed description)

New two (2) story, 14 bed, transitional housing project for Veterans to include, but not limited to, an environmentally controlled floor space containing approximately 3,631 gross sq. ft. Two (2) open metal stairwells provided with first and second floor walkways to access each living space and office and common areas. Common areas include additional restrooms, kitchen, manager's office, reception area and dining area. Exterior facade and fenestration to include split-face masonry block, hardi-plank siding, standing seam metal roofing, metal insulated glass windows and hollow metal doors and frames. Interior finishes to include vinyl tile and base, painted drywall and sheetrock ceilings and water-resistant FRP wall panels in restrooms. Existing parking lot to be re-furnished with landscaping and handi-cap amenities.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Owner and Design-Builder agree as follows.

AIA Document A141™ - 2004. Copyright © 2004 by The American Institute of Architects. All rights reserved. WARNING: This AIA Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. Purchasers are permitted to reproduce ten (10) copies of this document when completed. To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects' legal counsel, copyright@aia.org.

APPENDIX 0219 CERTIORARI

TABLE OF ARTICLES

1	THE DESIGN-BUILD DOCUMENTS
2	WORK OF THIS AGREEMENT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	MISCELLANEOUS PROVISIONS
8	ENUMERATION OF THE DESIGN-BUILD DOCUMENTS
TABLE OF EXHIBITS	
A	TERMS AND CONDITIONS
B	DETERMINATION OF THE COST OF THE WORK
C	INSURANCE AND BONDS

ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Exhibits; Supplementary and other Conditions; Addenda issued prior to execution of the Agreement; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; the Design-Builder's Proposal and written modifications to the Proposal accepted by the Owner, if any; other documents listed in this Agreement and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Owner, (2) between the Owner and a Contractor or Subcontractor, or (3) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provisions are made for the date to be fixed in a notice issued by the Owner.

(Insert the 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.) Project Design Work will commence upon formal approval of Contract and on-site construction upon permit approval. Formal Notice-To-Proceed from Owner is required by this Contract.

If, prior to the commencement of Work, the Owner requires time to file mortgages, documents related to mechanic's liens and other security interests, the Owner's time requirement shall be as follows:
(Insert Owner's time requirements.)

As required by Owner and funding Institutions, but not to exceed Proposal Acceptance Period (sixty calendar days).

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build 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.)

Liquidated Damages are not applicable to this Contract.

§ 3.3 The Design-Builder shall achieve Substantial Completion of the Work not later than 315 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 not stated elsewhere in the Design-Build Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

Subject to permit approval within four (4) calendar months, as this is beyond Design-Builder's direct control.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

☒ Stipulated Sum in accordance with Section 4.2 below;

☐ Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

☐ Cost of the Work Plus Design-Builder's Fee with a Guaranteed Maximum Price in accordance with Section 4.4 below.

(Based on the election above, complete either Section 4.2, 4.3 or 4.4 below.)

§ 4.2 STIPULATED SUM Seven Hundred Ninety Nine Thousand Four Hundred Fifty Six Dollars (\$ 799,456.00), subject to addition and deductions as provided in the Design-Build Documents.

§ 4.2.1 The Stipulated Sum shall be:

§ 4.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

Not Applicable (N/A)

§ 4.2.3 Unit prices, if any, are as follows:

N/A

§ 4.2.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

N/A

§ 4.2.5 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

Refer to Contractor's Proposal dated 8 December, 2010 which by reference here to is a part of this Contract Agreement. Assumed soil bearing capacity (1,500PSF minimum) will support all foundations. Property (project site) is not located in a flood zone.

§ 4.3 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE N/A

§ 4.3.1 The Cost of the Work is as defined in Exhibit B.

§ 4.3.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

N/A

§ 4.4 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE WITH A GUARANTEED MAXIMUM PRICE

§ 4.4.1 The Cost of the Work is as defined in Exhibit B, plus the Design-Builder's Fee.

§ 4.4.2 The Design-Builder's Fee is:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method of adjustment to the Fee for changes in the Work.)

N/A

§ 4.5 GUARANTEED MAXIMUM PRICE

§ 4.5.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed Dollars (\$) subject to additions and deductions by changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provision if the Design-Builder is to participate in any savings.)

N/A

§ 4.5.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

N/A

§ 4.5.3 Unit Prices, if any, are as follows:

N/A

§ 4.5.4 Allowances, if any, are as follows:

(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both.)

N/A

§ 4.5.5 Assumptions, if any, on which the Guaranteed Maximum Price is based, are as follows:

(Identify the assumptions on which the Guaranteed Maximum Price is based.)

N/A

§ 4.5 CHANGES IN THE WORK

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work, with or without a Guaranteed Maximum Price, and no specific provision is made in Sections 4.3.2 or 4.4.2 for adjustment of the Design-Builder's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Design-Builder, the Design-Builder's Fee shall be equitably adjusted on the basis of the Fee established for the original Work, and the Contract Sum shall be adjusted accordingly.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build 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 not later than the First (1st) day of month, the Owner shall make payment to the Design-Builder not later than the ~~Tenth (10th)~~ **TWENTIETH (20th) BK** day of the month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than ~~Ten (10)~~ **TWENTY (20) BK** days after the Owner receives the Application for Payment.

§ 5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipts, invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee, plus (3) payrolls for the period covered by the present Application for Payment.

§ 5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 5.1.4 or 5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

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

§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM

§ 5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum 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.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows: N/A

1. 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 percent (0 %) on the Work, other than services provided by design professionals and other consultants retained directly by the Design-Builder. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
2. 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 percent (0 %);
3. Subtract the aggregate of previous payments made by the Owner; and
4. Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 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 Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section A.9.8.6 of Exhibit A, Terms and Conditions 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 Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

§ 5.2.4 Reduction or limitation of retainage, if any, under Section 5.2.2 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 percentage inserted in Sections 5.2.2.1 and 5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert here provisions for such reduction or limitation.)

§ 5.3 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE N/A

§ 5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ 5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take the Cost of the Work as described in Exhibit B;
2. Add the Design-Builder's Fee, less retainage of N/A (0 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.3.2.1 at the rate stated in Section 4.3.2; or if the Design-Builder's Fee is stated as a fixed sum in this section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the preceding section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
3. Subtract the aggregate of previous payments made by the Owner;
4. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 of resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
5. Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.3.3 Retainage in addition to the retainage stated at Section 5.3.2.2, if any, shall be as follows:

N/A

§ 5.3.4 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than N/A (0 %). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.4 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE

§ 5.4.1 Applications for payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. N/A

§ 5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take the portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner or changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
2. Add the portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Design-Builder's Fee, less retainage of N/A (0 %). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the two preceding sections at the rate stated in Section 4.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work in the two preceding sections bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract the aggregate of previous payments made by the Owner;
5. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 4.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
6. Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.4.3 Except with the Owner's prior approval, payments for the Work, other than for services provided by design professionals and other consultants retained directly by the Design-Builder, shall be subject to retainage of not less than N/A (0 %). The Owner and Design-Builder shall agree on a mutually acceptable procedure for review and approval of payments and retention for Contractors.

§ 5.5 FINAL PAYMENT

§ 5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 The parties appoint the following individual to serve as a Neutral pursuant to Section A.4.2 of Exhibit A, Terms and Conditions:

(Insert the name, address and other information of the individual to serve as a Neutral. If the parties do not select a Neutral, then the provisions of Section A.4.2.2 of Exhibit A, Terms and Conditions, shall apply.)

To Be Determined.

§ 6.2 If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.)

(Check one):

☒ Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

☐ Litigation in a court of competent jurisdiction

☐ Other (Specify)

§ 6.3 ARBITRATION

§ 6.3.1 If Arbitration is selected by the parties as the method of binding dispute resolution, then any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration as provided in Section A.4.4 of Exhibit A, Terms and Conditions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 All Architects, design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Mr. Stephen P. Structural Engineers, Professional Design Group,
Architect & Engineers

§ 7.2 Consultants, if any, engaged directly by the Owner, their professions and responsibilities are listed below:

(Insert name, address, license number, if applicable, and responsibilities to Owner and other information.)

To Be Determined.

§ 7.3 Separate contractors, if any, engaged directly by the Owner, their trades and responsibilities are listed below:

(Insert name, address, license number, if applicable, responsibilities to Owner and other information.)

N/A

§ 7.4 The Owner's Designated Representative is:

(Insert name, address and other information.)

Mr. Bobby Knight, Chairman & President

2/5 The Good Neighbor Center

1905 Barton Lane, N. Charleston, SC 29405

§ 7.4.1 The Owner's Designated Representative identified above shall be authorized to act on the Owner's behalf with respect to the Project.

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§ 7.5 The Design-Builder's Designated Representative is:
(Insert name, address and other information.)

Mr. David Haun
Emory J. Infinger & Associates Construction Co., Inc.
4748 Franchise St., N. Charleston, SC 29418

§ 7.5.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.

§ 7.6 Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

§ 7.7 Other provisions:

The 'New Building Construction Resolution No. 1' is referenced here to and is part of this Contract Agreement and dated 9 December 2010.

§ 7.7.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

§ 7.7.2 Payments due and unpaid under the Design-Build 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.)

(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 Design-Builder'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 any requirements such as written disclosures or waivers.)

ARTICLE 8: ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

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

§ 8.1.1 The Agreement as this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141™-2004.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

Contractor's letter dated 19 November 2010 is referenced here to and is made part of this Contract. OWNER WAIVES ARCHITECTURAL & STRUCTURAL ERRORS & OMISSIONS REQUIREMENT OR CLAIMS OF ANY KIND OR NATURE. ERRORS & OMISSIONS INSURANCE WILL APPLY TO ELECTRICAL & MECHANICAL. (BK)

§ 8.1.3 The Project Criteria, including changes to the Project Criteria proposed by the Design-Builder, if any, and accepted by the Owner, consist of the following:

(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)
a) Reference to existing site plan made available. b) Professional Design Group's preliminary plans enumerated A-1 and dated May 21, 2003. c) Proposed rendering of building exterior by W.R. Stephens, PE dated October 2010.

§ 8.1.4 The Design-Builder's Proposal, dated 8 Dec. 2010, consists of the following:

(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

- A) Proposal letter consisting of eight (8) pages.
- B) Company Brochure

§ 8.1.5 Amendments to the Design-Builder's Proposal, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

N/A

§ 8.1.7 Exhibit A: Terms and Conditions.
(If the parties agree to substitute terms and conditions other than those contained in AIA Document A141-2004, Exhibit A, Terms and Conditions, then identify such terms and conditions and attach to this Agreement as Exhibit A.)

N/A

§ 8.1.8 Exhibit B: Determination of the Cost of the Work, if applicable.
(If the parties agree to substitute a method to determine the Cost of the Work other than that contained in AIA Document A141-2004, Exhibit B: Determination of the Cost of the Work, then identify such other method to determine the Cost of the Work and attach to this Agreement as Exhibit B. If the Contract Sum is a Stipulated Sum, then Exhibit B is not applicable.)

N/A

§ 8.1.9 Exhibit C: Insurance and Bonds (Applicable).
(Complete AIA Document A141-2004, Exhibit C, Insurance and Bonds or indicate "not applicable.")
a) General Liability, Worker's Compensation and Automobile Insurance
b) Builder's Risk Insurance is included.

§ 8.1.10 Other Documents, if any, forming part of the Design-Build Documents are as follows:
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

- a) Proposal for Architectural, Electrical and Mechanical design by Professional Design Group, Inc. dated 4 November 2010 is acknowledged.
- b) Mechanical Engineering & Testing proposal for special inspections dated 8 November 2010 is acknowledged.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies; of which one is to be delivered to the Design-Builder and one to the Owner.

The Good Neighbor Center

Bobbly Knight
OWNER (Signature)

Mr. Bobbly Knight
Chairman & President
(Printed name and title)

Emory J. Infinger
DESIGN-BUILDER (Signature)

Emory J. Infinger
President
(Printed name and title)

(Note: Electronic copies of the Contract shall be considered legal and binding)
CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

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AIA Document A141™ – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:
(Name and location or address)

The Good Neighbor Center
1905 Burton Lane
North Charleston, SC 29405

THE OWNER:
(Name and address)

The Good Neighbor Center
1905 Burton Lane
North Charleston, SC 29405

THE DESIGN-BUILDER:
(Name and address)

Emory J. Infinger & Associates
Construction Company, Inc.
4748 Franchise Street
North Charleston, SC 29418

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This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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APPENDIX 0229 CERTIORARI

ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.3 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture, identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.1.1.5, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The Work means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part and which may include design and construction by the Owner or by separate contractors.

§ A.1.1.8 NEUTRAL

The Neutral is the individual appointed by the parties to decide Claims and disputes pursuant to Section A.4.2.1.

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall be entitled to rely on the completeness and accuracy of the information contained in the Project Criteria, but not that such information complies with applicable laws, regulations and codes, which shall be the obligation of the Design-Builder to determine. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder recognized such non-compliance prior to execution of this Agreement and failed to notify the Owner.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

§ A.1.4 INTERPRETATION

§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS

§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA

§ A.1.6.1 Drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder are Instruments of Service. The Design-Builder, Design-Builder's Architect and other providers of professional services individually shall retain all common law, statutory and other reserved rights, including copyright in those Instruments of Service furnished by them. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to this Project.

§ A.1.6.2 Upon execution of the Design-Build Contract, the Design-Builder grants to the Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, including the Project's further development by the Owner and others retained by the Owner for such purposes, provided that the Owner shall comply with all obligations, including prompt payment of sums when due, under the Design-Build Documents. Subject to the Owner's compliance with such obligations, such license shall extend to those parties retained by the Owner for such purposes, including other design professionals. The Design-Builder shall obtain similar non-exclusive licenses from its design professionals, including the Architect. The Owner shall not otherwise assign or transfer any license herein to another party without prior written agreement of the Design-Builder. Any unauthorized reproduction or use of the Instruments of Service by the Owner or others shall be at the Owner's sole risk and expense without liability to the Design-Builder and its design professionals. Except as provided in Section A.1.6.4, termination of this Agreement prior to completion of the Design-Builder's services to be performed under this Agreement shall terminate this license.

§ A.1.6.3 Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, the Owner and the Design-Builder shall agree in writing on the specific conditions governing the format thereof, including any special limitations or licenses not otherwise provided in the Design-Build Documents.

§ A.1.6.4 If this Agreement is terminated for any reason other than the default of the Owner, each of the Design-Builder's design professionals, including the Architect, shall be contractually required to convey to the Owner a non-exclusive license to use that design professional's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon the Owner's written notice to that design professional of the Owner's assumption of the Design-Builder's contractual duties and obligations to that design professional and payment to that design professional of all amounts due to that design professional and its consultants. If the Owner does not assume the remaining duties and obligations of the Design-Builder to that design professional under this Agreement, then the Owner shall indemnify and hold harmless that design professional from all claims and any expense, including legal fees, which that design professional shall thereafter incur by reason of the Owner's use of such Instruments of Service. The Design-Builder shall incorporate the requirements of this Section A.1.6.4 in all agreements with its design professionals.

§ A.1.6.5 Submission or distribution of the Design-Builders documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved in Section A.1.6.1.

ARTICLE A.2 OWNER

§ A.2.1 GENERAL

§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builders schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builders within 15 days after receipt of a written request information necessary and relevant for the Design-Builders to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builders performance of the Work under the Owners control shall be furnished by the Owner after receipt from the Design-Builders of a written request for such information or services.

§ A.2.2.2 The Owner shall be responsible to provide surveys if not required by the Design-Build Documents to be provided by the Design-Builders describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, easements, and adjoining property and structures; adjacent drainage; rights-of-way restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; location, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including invert and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builders, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builders design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builders in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builders under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Owner under Section A.2.2 shall be furnished at the Owner's expense, and the Design-Builders shall be entitled to rely upon the accuracy and completeness thereof, except as otherwise specifically provided in the Design-Build Documents or to the extent the Owner advises the Design-Builders to the contrary in writing.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builders.

§ A.2.2.8 The Owner shall, at the request of the Design-Builders, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builders reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Owner shall furnish the services of geotechnical engineers or other consultants, if not required by the Design-Build Documents to be provided by the Design-Builder, for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ A.2.2.11 The Owner shall promptly obtain easements, zoning variances, and legal authorizations regarding site utilization where essential to the execution of the Owner's program.

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

1. Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
2. Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
3. Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
4. Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
5. Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builders failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builders, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builders.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builders, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builders agree to in writing.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK

§ A.2.4.1 If the Design-Builders fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builders to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty of the part of the Owner to exercise this right for the benefit of the Design-Builders or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

§ A.2.5.1 If the Design-Builders defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builders a second written notice to correct such deficiencies within a three-day period. If the Design-Builders within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builders the reasonable cost of correcting such deficiencies. If payments due the Design-Builders are not sufficient to cover such amounts, the Design-Builders shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL

§ A.3.1.1 The Design-Builders is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The Design-Builders may be an architect or other design professional, a construction contractor, a real estate developer or any other person or entity legally permitted to do business as a design-builder in the location where the Project is located. The term "Design-Builders" means the Design-Builders or the Design-Builders's authorized representative. The Design-Builders's representative is authorized to act on the Design-Builders's behalf with respect to the Project.

§ A.3.1.2 The Design-Builders shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES

§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builders shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions. The Owner understands and agrees that the services performed by the Design-Builders's Architect and the Design-Builders's other design professionals and consultants are undertaken and performed in the sole interest of and for the benefit of the Design-Builders.

§ A.3.2.2 The agreements between the Design-Builders and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and

financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner upon the Owner's written request.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities,

including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work; shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- (1) be consistent with the approved design documents;
- (2) provide information for the use of those in the building trades; and
- (3) include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certifications; (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Build shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Build has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Build shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Build shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or qualifications related to systems, materials or equipment, or when the Design-Build in its discretion provides such design services or qualifications through a Contractor, the Design-Build shall cause professional design services or qualifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by other professionals, shall require such design professional's written approval. The Owner shall be entitled to rely upon the accuracy, reliability and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Build shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Build shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Build shall be responsible for the supervision and direction of the Work, using the Design-Build Documents as a guide. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Build shall evaluate the jobsite safety thereof and, if necessary, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Build determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Build shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Build is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of change proposals by the Design-Build, the Owner shall be solely responsible for any resulting loss or damage.

§ A.3.3.8 The Design-Build shall be responsible for inspection of portions of Work already performed to determine if such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Build shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Build may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Build shall enforce strict discipline and good order among the Design-Build's employees and other persons performing under the Design-Build Contract. The Design-Build shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect.

§ A.3.7 PERMITS, FEES AND NOTICES

§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and law enforcement or public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES

§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

§ A.3.8.2 Unless otherwise provided in the Design-Build Documents:

1. allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
3. whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section A.3.8.2.1 and (2) changes in Design-Builder's costs under Section A.3.8.2.2.

§ A.3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ A.3.9 DESIGN-BUILDER'S SCHEDULE

§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract, shall prepare and submit for the Owner's confirmation the Design-Builder's schedule for the Work. The schedule shall not exceed time limits and shall meet the schedule as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-

Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

A.3.9.2 The Design-Build shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

A.3.9.3 The Design-Build shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

A.3.10 DOCUMENTS AND SAMPLES AT THE SITE

A.3.10.1 The Design-Build shall maintain at the site for the Owner one record copy of the drawings, specifications, agenda, Change Order and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Build or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Build to illustrate materials or equipment for some portion of the Work.

A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Build proposes to conform to the Design-Build Documents.

A.3.11.5 The Design-Build shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Build represents that the Design-Build has determined and verified materials, field measurements and field construction or is related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

A.3.12 USE OF SITE

A.3.12.1 The Design-Build shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

A.3.13 CUTTING AND PATCHING

A.3.13.1 The Design-Build shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

A.3.13.2 The Design-Build shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Build shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor. Such consent shall not be unreasonably withheld. The Design-Build shall not unreasonably withhold from the Owner or a separate contractor the Design-Build's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION

§ A.3.17.1 In the full extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property other than the Work itself, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce the rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section A.3.17.

§ A.3.17.2 In no event shall any person or entity indemnified under this Section A.3.17 by an employee of the Design-Builder, the Architect, a Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section A.3.17.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, the Architect or a Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, then the observing party shall give notice to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall negotiate with the Design-Builder an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Design-Build Contract is justified, the Owner shall so notify the Design-Builder in writing, stating the reasons. Claims by the Design-Builder in opposition to such determination must be made within 21 days after the Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted but if the Owner and Design-Builder cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall proceed pursuant to Section A.4.2.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ A.4.1.6 If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner, (4) termination of the Design-Build Contract by the Owner, (5) Owner's suspension or for other reasonable grounds, Claim shall be filed in accordance with this Section A.4.1.

§ A.4.1.7 Claims for Additional Time

§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given to the Design-Builder. Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 Adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by the Design-Builder that weather conditions were abnormal for the period of time could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 Unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

§ A.4.2.1 **Decision by Neutral.** If the parties have identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents, then Claims, excluding those arising under Sections A.10.3 through A.10.5, shall be referred initially to the Neutral for decision. An initial decision by the Neutral shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Neutral with no decision having been rendered by the Neutral. Unless the Neutral and all affected parties agree, the Neutral will not decide disputes between the Design-Builder and persons or entities other than the Owner.

§ A.4.2.2 **Decision by Owner.** If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Sections A.4.2.1 and A.4.2.2 shall be in writing, shall state the reasons therefor and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ A.4.2.4 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, of any of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ A.4.2.5 If a Claim is or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 MEDIATION

§ A.4.3.1 Any Claim arising out of or related to the Design-Build Contract, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, shall, after initial decision of the Claim or 30 days after submission of the Claim for initial decision, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable or other binding dispute resolution proceedings by either party.

§ A.4.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect at the time of the mediation. Request for mediation shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration or other binding dispute resolution proceedings but, in such event, mediation shall proceed in advance thereof or of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ A.4.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ A.4.4 ARBITRATION

§ A.4.4.1 Claims, except those waived as provided for in Sections A.4.1.10, A.9.10.4 and A.9.10.5, for which initial decisions have not become final and binding, and which have not been resolved by mediation but which are subject to arbitration pursuant to Sections 6.2 and 6.3 of the Agreement or elsewhere in the Design-Build Documents, shall be

decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association.

A.4.2 A demand for arbitration may be made no earlier than concurrently with the filing of a request for mediation, and no later than 90 days after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section A.4.1.

A.4.3 An arbitration pursuant to this Section A.4.4 may be joined with an arbitration involving common issues of law or fact between the Owner or Design-Builder and any person or entity with whom the Owner or Design-Builder has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to the Design-Build Contract shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to the Design-Build Contract or not a party to an agreement with the Owner or Design-Builder, except by written consent containing a specific reference to the Design-Build Contract signed by the Owner and Design-Builder, and any other person or entities sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to the Design-Build Contract shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

A.4.4 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

A.4.5 Judgment, Finality and Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered thereon in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS

A.5.1 In addition to the provisions stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, upon execution after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

A.5.2 The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

A.5.3 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

A.5.4 The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

ARTICLE A.6 CONTINGENT ASSIGNMENT OF CONTRACTS

A.6.1 The assignment of a portion of the Work is assigned by the Design-Builder to the Owner provided that:
1. The assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and

2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ A.5.5.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- 1 a change in the Work;
- 2 the amount of the adjustment, if any, in the Contract Sum; and
- 3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on a lump sum, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based upon one of the following methods:

- 1 a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 2 unit prices stated in the Design-Build Documents or subsequently agreed upon, or equitably adjusted as provided in Section A.4.1.9;
- 3 a method determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- 4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable expenditure and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section shall be limited to the following:

- 1 additional costs of professional services;
- 2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- 3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

- 4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- 5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 6 additional costs of supervision and field-office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed by a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 This Section A.8.3 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 For the first Application for Payment, where the Contract Sum is based upon a Stipulated Sum or the Cost of the Work plus contractor's fee with a Guaranteed Maximum Price, the Design-Builder shall submit to the Owner an itemized schedule of values allocated to various portions of the Work prepared in such form and supported by such data substantiating its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such applications shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting changes provided for in the Design-Build Documents.

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work other than Instruments of Service covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder's Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a written acknowledgement of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from facts and omissions, because of the following:

1. defective Work not remedied;
2. third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
3. failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum; damage to the Owner or a separate contractor;
5. reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
6. consistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall

create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. The warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion.

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by a written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents; (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be acceptable to the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder shall furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents and bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

1. Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
2. Failure of the Work to comply with the requirements of the Design-Build Documents; or
3. Breach of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver conclusively by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. Employees on the Work and other persons who may be affected thereby;
2. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and
3. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Design-Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ A.10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner and the liability is attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.6 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.7 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

ARTICLE 10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), and if the condition is disclosed in the Design-Build Documents, the Design-Builder shall, upon recognizing the condition, immediately shut work in the affected area and report the condition to the Owner.

§ A.10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder shall promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Design-Builder. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up, which adjustments shall be accomplished as provided in Article A.7.

§ A.10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them from and against Claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from the performance of the Work in the affected area if in fact the material or substance exists on-site as of the date of the design being disclosed in the Design-Build Documents and presents the risk of bodily injury or death as described in the Design-Build Documents and has not been rendered harmless, provided that such Claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (other than the Work itself) to the extent that such damage, loss or expense is not due to the negligence of the Design-Builder, Contractors, Subcontractors, Architect, Architect's consultants and the agents and employees of any of them.

§ A.10.4 The Owner shall not be responsible under Section A.10.3 for materials and substances brought to the site by the Design-Builder unless such materials or substances were required by the Design-Build Documents.

§ A.10.5 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ A.10.6 EMERGENCIES

§ A.10.6.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

ARTICLE A.11 - INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Design-Builder from claims set forth below that may arise out of or result from the Design-Builder's operations under the Design-Build Contract and for which the Design-Builder may be legally liable, whether such operations be by the Design-Builder, by a Contractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Design-Builder's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Design-Builder's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations; and
8. claims involving contractual liability insurance applicable to the Design-Builder's obligations under Section A.3.17.

§ A.11.2.2 The insurance required by Section A.11.2.1 shall be written for not less than limits of liability specified in the Design-Build Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ A.11.2.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section A.11.2 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section A.9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Design-Builder with reasonable promptness in accordance with the Design-Builder's information and belief.

§ A.11.3 OWNER'S LIABILITY INSURANCE

§ A.11.3.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ A.11.4 PROPERTY INSURANCE

§ A.11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk, "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Design-Build Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at all times on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section A.9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section A.11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.

§ A.11.4.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the risks of fire (with extended coverage) and physical loss or damage including, without limitation, duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and shoring, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable code requirements and shall cover reasonable compensation for Design-Builder's services and expenses incurred as a result of such insured loss.

§ A.11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Design-Build Contract and the amount described above, the Owner shall so inform the Design-Builder in writing prior to commencement of the Work. The Design-Builder may then effect insurance that will protect the interests of the Design-Builder, Contractors and Subcontractors in the Work, and by appropriate Change Order, the cost thereof shall be charged to the Owner. If the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above without so notifying the Design-Builder in writing, then the Owner shall bear any reasonable cost of repair attributable thereto.

§ A.11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ A.11.4.1.4 This property insurance shall cover portions of the Work stored off the site and also portions of the Work on the site.

§ A.11.4.1.5 Partial occupancy or use in accordance with Section A.9.9 shall not commence until the insurance company, or companies providing property insurance have consented to such partial occupancy or use, by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would result in cancellation, lapse or reduction of insurance.

§ A.11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Design-Build Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ A.11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder, Architect, the Design-Builder's other design professionals, if any, Contractors and Subcontractors for loss of use of the Owner's property, including consequential losses due to fire or other hazards, however caused.

§ A.11.4.4 If the Design-Builder requests in writing that insurance for risks other than those described herein or other risks be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design-Builder by appropriate Change Order.

§ A.11.4.5 During the Project construction period the Owner insures property, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section A.11.4.7 for

damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ A.11.4.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section A.11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire and that its limits will not be reduced until at least 30 days' prior written notice has been given to the Design-Builder.

§ A.11.4.7 **Waivers of Subrogation.** The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors described in Section A.6.1, if any, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section A.11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section A.6.1, if any, and the Contractors, Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even if that person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ A.11.4.8 All insurance under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable interagency clause and in Section A.11.4.10. The Design-Builder shall pay Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.

§ A.11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give notice of proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received by the fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made and unless the Owner terminates the Design-Build Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article

§ A.11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power. The Owner as fiduciary shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

ARTICLE A.11 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.5.1 The Owner shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, including payment to design professionals engaged by or on behalf of the Design-Builder, as stipulated in bidding requirements or specifically required in the Agreement or elsewhere in the Design-Build Documents on the date of execution of the Design-Build Contract.

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 A portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered; the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents,

correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK

§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION

§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.2.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for cash or warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work within the time period in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK

§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other

party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents and laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ A.13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ A.13.6.1 As between the Owner and Design-Builder:

1. Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

- 2 Between Substantial Completion and Final Application for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Application for Payment; and
- After Final Application for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Application for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Design-Builder pursuant to any Warranty provided under Section A.3.5, the date of any correction of the Work or failure to correct the Work by the Design-Builder under Section A.12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Design-Builder or Owner, whichever occurs last.

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN-BUILD CONTRACT

A.14.1 TERMINATION BY THE DESIGN-BUILDER

A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
2. an act of God, such as a declaration of national emergency which requires all Work to be stopped;
3. the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
4. the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work performed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

A.14.2 TERMINATION BY THE OWNER FOR CAUSE

A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;
3. persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or
4. otherwise is guilty of substantial breach of a provision of the Design-Build Documents;

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

1. take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Design-Builder;
2. accept assignment of contracts pursuant to Section A.5.5.1; and
3. finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profits. No adjustment shall be made to the extent:

1. that, for reasons not under the control of the Design-Builder, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
2. that an equitable adjustment is made, or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

1. cease operations as directed by the Owner in the notice;
2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
3. complete Work directed to be performed prior to the effective date of termination stated in the notice;
4. terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.



EMORY J. INFINGER & ASSOCIATES CONSTRUCTION CO., INC.

4748 FRANCHISE STREET (29418) • P.O. BOX 41348 • CHARLESTON, SC 29423

December 8, 2010

Ms. Nancy Cook, Executive Director
Mr. Bobby Knight, Board Member
Mr. Mike Collins, Board Member
Ms. Gerry Poston, Board Member
Ms. Kathleen Bounds, Board Member
Ms. Kimberly Calkins, Board Member
Mr. Frank Brown, Board Member
The Good Neighbor Center
1905 Burton Lane
North Charleston, SC 29405

**RE: Proposed New 14 Bed
Transitional Housing Project**

Dear Ms. Cook:

We are pleased to provide the Board with a proposal for design and construction of the subject project. The following is our understanding of the scope of work to construct a 3,631 SF two-story facility, two stairwells and 1st and 2nd floor walkways along with up-dating the existing parking lot based on the preliminary drawings and notes on the bidding documents of Professional Design Group dated May 21, 2003 and enumerated Sheet A1 and proposed rendering provided.

Total Proposal: \$ 799,456.00 (Seven Hundred and Ninety Nine Thousand Four Hundred and Fifty Six Dollars)

Project Specifications:

Division 1 – General Conditions

- 1.1 **Zoning:** It is assumed that the owner has the legal right to build on the property involved, and that the land is properly zoned for intended use.
- 1.2 **Project Drawings:** All required drawings required by general contractor subcontractors and suppliers will be provided by our design team.
- 1.3 **Construction Permits:** Contractor shall obtain and pay for building construction permits/ license fees required by local authorities.

APPENDIX 0258 CERTIORARI

TELEPHONE: (843) 554-9414

FAX: (843) 747-1435

**Proposed New 14 Bed
Transitional Housing Project**

December 8, 2010

Page 2

- 1.4 Impact Fees: Potable water, fire sprinkler and sewer tap or impact fees are not included due to statements there will be no fees, most likely.
- 1.5 Insurance: Contractor shall maintain general liability, automobile liability, and workmen's compensation insurance as required by law for the duration of the project. Certificates of insurance are available upon request. Builders risk insurance shall be carried by us and is included.
- 1.6 Project Clean-up: Prior to final acceptance, contractor shall remove all waste materials and debris arising from construction and shall present all construction areas in a clean condition.
- 1.7 Payment: Once actual construction work proceeds on-site, invoices will be submitted to the owner on or about the first of each month for work performed and materials stored on the site in the preceding month, due and payable within ten (10) days after submission. Additionally, ten (10) percent down payment is requested to commence design work and we will invoice again upon permit approval. No retainage allowed.
- 1.8 Changes: All work shall be completed in a workmanlike manner according to standard practices. Any alteration, or deviation from the specifications or contract involving extra costs or credits, will be executed as mutually agreed upon and be verified by written change order signed by the owner and the contractor.
- 1.9 Temporary Utilities and Sanitary Facilities: Temporary water as required to perform the work will be provided by the owner. Temporary telephone, electric and toilets shall be provided by the contractor, as necessary.
- 1.10 Warranty: The contractor shall guarantee the material and workmanship for one (1) year following the date of substantial completion.
- 1.11 Unknown Conditions: The contractor assumes no responsibility for hidden or unknown conditions. All ramifications resulting from unknown conditions shall be handled in accordance with section 1.8.

**Proposed New 14 Bed
Transitional Housing Project**
December 8, 2010
Page 3

Division 2 – Sitework

- 2.1 **Construction Survey:** Contractor shall layout the proposed building in conformance with the project drawings. Owner shall establish property boundaries in accordance with the latest approved plat to assure proper layout, as may be required.
- 2.2 **Soil Bearing Pressure:** The soil bearing pressure is assumed to be 1500 p.s.f. Soil boring testing is included for verification of this. Testing is included on new fill 95% proctor for compaction.
- 2.3 **Fine Grading:** Contractor shall fine grade perimeter of new building to conform with existing grades.
- 2.4 **Landscaping:** All landscaping by \$2,500 allowance. No permanent fencing is included. Re-use existing plants to extent possible.
- 2.5 **Demolition:** Demolition of existing needed for construction of new building is included in proposal as per preliminary site plan provided/ reviewed.

Division 3 – Concrete

- 3.1 **Concrete:** All concrete shall have a minimum compressive strength of 3000 psi at 28 days. Two (2) sets of Quality Control cylinders will be made on footing and slab areas. Footings and foundations to bear on compacted or virgin soil- no piling anticipated.
- 3.2 **Floor Slab:** The floor slab shall be 4" thick and one layer of 6x6 10/10 wire mesh sheets over a 6 mil visqueen vapor barrier. Second floor slab on deck included.
- 3.3 **Control Joints:** Install saw cut control joints within 24 hours of concrete placement.
- 3.4 **Termite Treatment:** Install termite treatment under foundations and slab-on-grade. Provide a 5-year warranty to be issued to the property owner.

**Proposed New 14 Bed
Transitional Housing Project**
December 8, 2010
Page 4

Division 4 – Masonry

- 4.1 Split-face block Veneer: Provide veneer with rowlock and flashing to base of window height on first floor only.

Division 5 – Metals

- 5.1 Steel stairs/ framing: All to be galvanized steel. Hand rails to be galvanized for paint, as well as stairs.
- 5.2 Structural steel building framing and metal decking included for 2 nd Floor and roof substrate.

Division 6 – Carpentry

- 6.1 Misc. Blocking: Install all necessary blocking for toilet accessories, cabinets/ countertops, etc.
- 6.2 Casework: Kitchen counter/ cabinet will be furnished per details on drawings A1. All millwork will be paint finish. Pantry shelving included \$1,500 allowance.
- 6.3 Framing: All interior and exterior walls to be metal studs. Roof framing to be metal trusses. Roof slope to be 6 in 12. Second floor to be engineered metal bar joist with metal decking.

Division 7 – Insulation

- 7.1 Wall Insulation: Install R-19 faced insulation at all exterior walls. Install sound batt insulation at all interior spaces.
- 7.2 Ceiling Insulation: Install R-30 insulation above the painted drywall ceiling.
- 7.3 Roof insulation to be rigid above metal deck substrate. R value to be verified based on size of hat channels.

**Proposed New 14 Bed
Transitional Housing Project**
December 8, 2010
Page 5

Division 7 – Roofing/ Sheetmetal

- 7.4 **Standing Seam Roofing:** Install roofing on metal furring channels secured to metal substrate deck and over rigid insulation. Roof slope to be 6:12 maximum. Soffit and eave trim to be metal/ aluminum- soffit to be vented.

Division 8 – Doors and Windows

- 8.1 **Metal/ Wood Doors:** Install doors as per drawing A1.
- 8.2 **Aluminum Windows:** Install as per drawing A1. Windows to be fixed double-insulated glass with low E glass or equal. Window sills to be cultured marble. Jambs and heads of windows to be drywall. Window treatments by Owner.

Division 9 – Finishes

- 9.1 **Drywall:** Install 5/8" type-x gypsum board at all walls on the two floors. Install fire rated walls as noted on Drawing A1.
- 9.2 **Flooring:** Install a maximum of 3 colors in 12x12 vinyl composite tile and base.
- 9.3 Install FRP panels in all restrooms, floor to ceiling in lieu of ceramic tile on drawing A1. These are washable and durable wall panels.
- 9.4 **Painting:** Install a prime coat and two finish coat paint system at all interior walls, ceilings, door frames, wood trim and millwork. Paint all exposed hardi-plank siding & trim x 2 coats. Doors to be painted for 3 coat system.

**Proposed New 14 Bed
Transitional Housing Project**
December 8, 2010
Page 6

Division 10 – Specialties

10.1 Toilet Accessories: Install the following toilet accessories:

- (10) toilet paper holders
- (10) mirrors (to be metal trim)
- (8) grab bars
- (3) paper towels dispensers
- (3) soap dispensers

Division 15 – Plumbing

15.1 Fixtures: All plumbing fixtures to be installed per drawing A1. An existing 3 Compartment sink to be relocated. Tankless water heaters, minimum number, as required. Two hose bibbs on exterior. Fire line for sprinkler included. All exterior gas lines & meter by SCE & G (NIC- not-in-contract).

15.2 Sewer or water is included outside the building to tie-ins.

15.3 Grease trap Included x 1,000 gal.

Division 15 – Mechanical/ HVAC

15.4 HVAC Equipment: All ductless HVAC to be installed in rooms per drawing A1. Central location for thermostats included.

15.5 Fire Sprinkler System included.

15.6 New kitchen hood and fire suppression included.

Division 16 - Electrical

16.1 Electrical: All electrical to be installed as per drawing A1. Lights, power outlets, switches per code, AC connections, ceiling fans. Ext. lighting per code & 4 ea security lights. 3-phase power & transformer by SCE & G (NIC). Fire alarm system included.

**Proposed New 14 Bed
Transitional Housing Project**

December 8, 2010

Page 7

General Notes:

- 1) No Owner contingency funds have been allowed in this proposal.
- 2) Design fees include Special Inspections required by code.
- 3) Soil Borings and Surveys are included for design work.
- 4) Existing kitchen equipment and 3-C sink, except new hood, to be relocated.
- 5) Up-dated parking lot includes concrete curbing only at curb cuts/ driveways.
We propose to demolish necessary planters, asphalt, etc. to allow construction of new foundations. We include new asphalt and base repairs/ patching, as required to restore the existing lot and provide for positive drainage away from the building. Then we will re-seal the entire lot and paint line stripes, HC symbols, traffic stop bars, etc. ready for landscaping. HC post signs included.
- 6) Performance and Payment Bonds are excluded.
- 7) All furnishings and appliances, unless noted otherwise, are excluded.
- 8) Final location of building on-site based on best fit and engineering practices.
- 9) Existing flagpole relocation is included.
- 10) Security/ construction temporary fencing is included.
- 11) Liquidated damages are excluded.
- 12) LEED Certification excluded.
- 13) Exterior or interior signage is excluded, except Handi-cap signage.
- 14) Progress schedules will be provided and up-dated monthly to ensure a timely completion.
- 15) All waste and debris will be properly disposed of at approved sites.
- 16) We will comply with OSHA safety regulations.
- 17) Submittals will be provided to the Engineer of Record for approval, color selections, etc.
- 18) No detention pond is included or anticipated based on previous information received, as well as review of a preliminary site plan provided.

We anticipate the project duration to be approximately six (6) months after receipt of all building permits. Building permits, including design-work is anticipated to take approximately four (4) months using conventional methods. We would like to utilize **Fast-Track** construction methods for the earliest completion, if possible. This may help to shorten the actual time to complete the facility.

**Proposed New 14 Bed
Transitional Housing Project**

December 8, 2010

Page 8

Our proposal will be honored for sixty (60) calendar days from this date, after this period it is subject to review. We sincerely thank you all for the opportunity and privilege to offer this proposal.

Please indicate the Board's agreement to proceed with formal contract preparation in the space provided below.

Sincerely,

**Emory J. Infinger & Associates
Construction Company, Inc.**


Emory Infinger
President

cc: Bid file, Mr. Rick Stephens, PE (w/ enclosure)

Enclosure: Company Brochures (6 ea)

Acceptance:

Ms. Nancy Cook, Executive Director

Date _____

EMORY J. INFINGER & ASSOCIATES

CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	4/18/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

COPIES	DATE	NO.	DESCRIPTION
3	04/18/11	1	Application for Payment No. 1

THESE ARE TRANSMITTED as checked below:

- ☒ For Approval and Payment ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US.

REMARKS

COPY TO IA-316-21 w/a Supt. w/a
Acc't w/a

SIGNED:

David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0266 CERTIORARI



"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT
AIA DOCUMENT G702/CM

PAGE ONE OF 3 PAGES

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 1
PERIOD TO: 4/15/2011
PROJECT NO:

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT DATE: 12/10/10

CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 10,834.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 810,290.00
4. TOTAL COMPLETED & STORED TO DATE \$ 57,603.00
(Column G on G703)
5. RETAINAGE: State Grant Only
a. 3.5 % of Completed Work \$ 2,016.00
(Columns D+E on G703)
b. 3.5 % of Stored Material \$
(Column F on G703)
Total Retainage (Line 5a + 5b or
Total in Column 1 of G703) \$ 2,016.00
6. TOTAL EARNED LESS RETAINAGE \$ 55,587.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$
8. CURRENT PAYMENT DUE \$ 55,587.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 754,703.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

By: *Emory J. Infinger* Date: 04/18/11

Emory J. Infinger, President

State of: South Carolina
County of: Dorchester
Subscribed and sworn to before
me this 18th day of April 2011

Notary Public: *Glenn H. Hines*
My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents; and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$10,264.00	
Total approved this Month	\$570.00	
TOTALS	\$10,834.00	
NET CHANGES by Change Order	\$10,834.00	

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0267 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702					APPLICATION NUMBER: 1				
PROJECT:					APPLICATION DATE: 4/18/11				
The Shelter					PERIOD TO: 4/15/11				
1905 Burton Lane					ARCHITECT'S PROJECT NO:				
North Charleston, SC 29405									
A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ -	\$ 34,806	\$ -	\$ 34,806	43%	\$ 45,640	\$ 1,218
2	General Conditions	\$ 88,677	\$ -	\$ 5,682	\$ -	\$ 5,682	6%	\$ 82,995	\$ 199
3	Builders Risk Insurance	\$ 6,851	\$ -	\$ 6,851	\$ -	\$ 6,851	100%	\$ -	\$ 240
4	Permit and Licenses	\$ 9,963	\$ -	\$ -	\$ -	\$ -		\$ 9,963	\$ -
5	Mobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ -	\$ -	\$ -	\$ -		\$ 54,233	\$ -
8	Concrete	\$ 35,251	\$ -	\$ -	\$ -	\$ -		\$ 35,251	\$ -
9	Masonry	\$ 13,615	\$ -	\$ -	\$ -	\$ -		\$ 13,615	\$ -
10	Steel	\$ 129,154	\$ -	\$ -	\$ -	\$ -		\$ 129,154	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ -	\$ -	\$ -	\$ -		\$ 20,738	\$ -
12	Wood/Carpentry	\$ 3,608	\$ -	\$ -	\$ -	\$ -		\$ 3,608	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection	\$ 39,407	\$ -	\$ -	\$ -	\$ -		\$ 39,407	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ -	\$ -	\$ -	\$ -		\$ 14,933	\$ -
16	Windows & Glazing	\$ 7,897	\$ -	\$ -	\$ -	\$ -		\$ 7,897	\$ -
17	Drywall/Insulation	\$ 48,861	\$ -	\$ -	\$ -	\$ -		\$ 48,861	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
	Subtotals Page 2	\$ 617,028	\$ -	\$ 47,339	\$ -	\$ 47,339	8%	\$ 569,689	\$ 1,657

AIA Document G702 * APPLICATION AND CERTIFICATE FOR PAYMENT * 1992 EDITION * AIA * 1992 * THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20005-5292

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G703-1992

APPENDIX 0268 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

CONTINUATION SHEET

ATTACHMENT TO AIA DOCUMENT G702

PROJECT:
The Shelter
1905 Burton Lane
North Charleston, SC 29405

APPLICATION NUMBER: 1
APPLICATION DATE: 4/18/11
PERIOD TO: 4/15/11
ARCHITECT'S PROJECT NO:

A	B	C	D	E	F	G	H	I	
Item No.	Description of Work	Scheduled Value	Work Completed		Materials Presently Stored (Not In D or E)	Total Completed And Stored To Date (D + E + F)	% (G/C)	Balance To Finish (C - G)	Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ -	\$ -	\$ -	\$ -		\$ 36,147	\$ -
24	HVAC Systems	\$ 60,471	\$ -	\$ -	\$ -	\$ -		\$ 60,471	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ -	\$ -	\$ -	\$ -		\$ 15,138	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ -	\$ -	\$ -	\$ -		\$ 42,202	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ -	\$ -	\$ -	\$ -		\$ 1,250	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1	\$ 10,264	\$ -	\$ 10,264	\$ -	\$ 10,264		\$ -	\$ 359
33	Change Order No. 2	\$ 570	\$ -	\$ -	\$ -	\$ -		\$ 570	\$ -
34		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
35		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
36		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
37		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 193,262	\$ -	\$ 10,264	\$ -	\$ 10,264	5%	\$ 182,998	\$ 359
44	Subtotals Page 2	\$ 617,028	\$ -	\$ 47,339	\$ -	\$ 47,339	8%	\$ 569,689	\$ 1,657
	TOTALS	\$ 810,290	\$ -	\$ 57,603	\$ -	\$ 57,603	7%	\$ 752,687	\$ 2,016

AIA Document G702 * APPLICATION AND CERTIFICATE FOR PAYMENT * 1992 EDITION * AIA * 1992 * THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292

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G703-1992

APPENDIX 0269 CERTIORARI

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS (See instructions on back)		OMB APPROVAL NO. 0348-0002	PAGE 01 OF 01 PAGES	
1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		2. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL	3. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY 08-873-SC		5. PARTIAL PAYMENT REQUEST NO. 01		
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST FROM (Month, day, year) 12/10/2010 TO (Month, day, year) 04/15/2011		
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		9. PAYEE (When check is to be sent if different than item 8) Name: No. and Street: City, State and ZIP Code:		
11. STATUS OF FUNDS				
CLASSIFICATION	PROGRAMS	FUNCTIONS	ACTIVITIES	TOTAL
	(a) Rehabilitation	(b) New Construction	(c)	
a. Administrative expense	\$	\$	\$	\$ 0.00
b. Preliminary expense				0.00
c. Land, structures, right-of-way				0.00
d. Architectural engineering-basic fees				0.00
e. Other architectural engineering fee				0.00
f. Project inspection fees				0.00
g. Land development				0.00
h. Relocation expense				0.00
i. Relocation payments to individuals and businesses				0.00
j. Demolition and removal				0.00
k. Construction and project improvement cost		57,603.00		57,603.00
l. Equipment				0.00
m. Miscellaneous cost				0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	57,603.00		0.00
o. Deductions for program income				0.00
p. Net cumulative to date (line n minus line o)	0.00	57,603.00		0.00
q. Federal share to date		37,442.00		37,442.00
r. Rehabilitation grants (100% reimbursement)				0.00
s. Total Federal share (sum of lines q and r)	0.00	37,442.00		37,442.00
t. Federal payments previously requested				0.00
u. Amount requested for reimbursement	\$	\$ 37,442.00	\$	\$ 37,442.00
v. Percentage of physical completion of project		7 %	%	%
12. CERTIFICATION		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share, due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT Bobby Knight Bobby Knight, President		
		DATE REPORT SUBMITTED May 9, 2011 TELEPHONE (Area code, number, and extension) 843/735-0814		
b. REPRESENTATIVE CERTIFYING TO LINE 11V		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		
		Emory J. Infinger, President DATE SIGNED May 9, 2011 TELEPHONE (Area code, number, and extension) 843/554-8414		

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STANDARD FORM 271 (Rev. 7-97)
Prescribed by OMB Circular A-102 and A-110

APPENDIX 0270 CERTIORARI

EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	6/10/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:
North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

COPIES	DATE	NO.	DESCRIPTION
3	06/07/11	1	Application for Payment No. 2

THESE ARE TRANSMITTED as checked below:

- ☒ For Approval and Payment ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-21 w/a Supt. w/a
Acc't w/a

SIGNED: 
David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0271 CERTIORARI
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"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT
AIA DOCUMENT G702/GM

PAGE ONE OF 3 PAGES

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION # 2
PERIOD TO: 5/31/2011
PROJECT NO:

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT DATE: 12/10/10

CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 10,834.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 810,290.00
4. TOTAL COMPLETED & STORED TO DATE \$ 95,226.00

By: Emory J. Infinger Date: 06/07/11

Emory J. Infinger, President

State of: South Carolina

County of: Dorchester

Subscribed and sworn to before me this 7th day of June 2011

Notary Public: Charles H. Hester
My Commission expires: 03/12/17

5. RETAINAGE: State Grant Only
a. 3.5 % of Completed Work \$ 3,333.00
(Columns D+E on G703)
b. 3.5 % of Stored Material
(Column F on G703)
Total Retainage (Line 5a + 5b or
Total in Column 1 of G703 \$ 3,333.00

6. TOTAL EARNED LESS RETAINAGE \$ 91,893.00
(Line 4 less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 55,587.00

8. CURRENT PAYMENT DUE \$ 36,306.00

9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 718,397.00

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$10,264.00	
Total approved this Month	\$570.00	
TOTALS	\$10,834.00	
NET CHANGES by Change Order	\$10,834.00	

OWNER: By: Date:
This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0272 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages.

ATTACHMENT TO AIA DOCUMENT G702

APPLICATION NUMBER: 2
 APPLICATION DATE: 6/7/11
 PERIOD TO: 5/31/11
 ARCHITECT'S PROJECT NO:

PROJECT:
 The Shelter
 1905 Burton Lane
 North Charleston, SC 29405

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ 34,806	\$ 24,531	\$ -	\$ 59,337	74%	\$ 21,109	\$ 2,077
2	General Conditions	\$ 88,677	\$ 5,882	\$ 4,272	\$ -	\$ 9,954	11%	\$ 78,723	\$ 348
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ 240
4	Permit and Licenses	\$ 9,963	\$ -	\$ 2,490	\$ -	\$ 2,490	25%	\$ 7,473	\$ 87
5	Mobilization	\$ 1,817	\$ -	\$ 910	\$ -	\$ 910	50%	\$ 907	\$ 32
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ -	\$ 5,420	\$ -	\$ 5,420	10%	\$ 48,813	\$ 190
8	Concrete	\$ 35,251	\$ -	\$ -	\$ -	\$ -		\$ 35,251	\$ -
9	Masonry	\$ 13,615	\$ -	\$ -	\$ -	\$ -		\$ 13,615	\$ -
10	Steel	\$ 129,154	\$ -	\$ -	\$ -	\$ -		\$ 129,154	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ -	\$ -	\$ -	\$ -		\$ 20,738	\$ -
12	Wood/Carpentry	\$ 3,608	\$ -	\$ -	\$ -	\$ -		\$ 3,608	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection	\$ 39,407	\$ -	\$ -	\$ -	\$ -		\$ 39,407	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ -	\$ -	\$ -	\$ -		\$ 14,933	\$ -
16	Windows & Glazing	\$ 7,897	\$ -	\$ -	\$ -	\$ -		\$ 7,897	\$ -
17	Drywall/Insulation	\$ 48,861	\$ -	\$ -	\$ -	\$ -		\$ 48,861	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
	Subtotals Page 2	\$ 617,028	\$ 47,339	\$ 37,623	\$ -	\$ 84,962	14%	\$ 532,066	\$ 2,974

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G703-1992

APPENDIX 0273 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

APPLICATION NUMBER: 2-
APPLICATION DATE: 6/7/11
PERIOD TO: 5/31/11
ARCHITECT'S PROJECT NO:

PROJECT:
The Shelter
1905 Burton Lane
North Charleston, SC 29405

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ -	\$ -	\$ -	\$ -		\$ 36,147	\$ -
24	HVAC Systems	\$ 60,471	\$ -	\$ -	\$ -	\$ -		\$ 60,471	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ -	\$ -	\$ -	\$ -		\$ 15,138	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ -	\$ -	\$ -	\$ -		\$ 42,202	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ -	\$ -	\$ -	\$ -		\$ 1,250	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1	\$ 10,264	\$ 10,264	\$ -	\$ -	\$ 10,264		\$ -	\$ 359
33	Change Order No. 2	\$ 570	\$ -	\$ -	\$ -	\$ -		\$ 570	\$ -
34		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
35		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
36		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
37		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 193,262	\$ 10,264	\$ -	\$ -	\$ 10,264	5%	\$ 182,998	\$ 359
44	Subtotals Page 2	\$ 617,028	\$ 47,339	\$ 37,623	\$ -	\$ 84,962	14%	\$ 532,066	\$ 2,974
	TOTALS	\$ 810,290	\$ 57,603	\$ 37,623	\$ -	\$ 95,228	12%	\$ 715,064	\$ 3,333

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APPENDIX 0274 CERTIORARI

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS		OMB APPROVAL NO. 0348-0002		PAGE 01 OF 01 PAGES	
(See Instructions on back)		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY 08-873-SC		5. PARTIAL PAYMENT REQUEST NO. 02	
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST FROM (Month, day, year) 04/16/2011 TO (Month, day, year) 05/31/2011			
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		10. PAYEE (Please check if to be state if different than item 8) Name: No. and Street: City, State and ZIP Code:			
11. STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS		FUNCTIONS		TOTAL
	(a) Rehabilitation	(b) New Construction	(c)		
a. Administrative expense	\$	\$	\$	\$	0.00
b. Preliminary expense					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fee					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		95,226.00			95,226.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	95,226.00			95,226.00
o. Deductions for program income					0.00
p. Net cumulative to date (line n minus line o)	0.00	95,226.00			95,226.00
q. Federal share to date		61,897.00			61,897.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)	0.00	61,897.00			61,897.00
t. Federal payments previously requested		37,442.00			37,442.00
u. Amount requested for reimbursement	\$	24,455.00	\$	\$	24,455.00
v. Percentage of physical completion of project		12 %		%	%
12. CERTIFICATION I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
				DATE REPORT SUBMITTED	
				June 10, 2011	
				TELEPHONE (Area code, number, and extension) 843/735-0814	
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
				DATE SIGNED	
				June 7, 2011	
				TELEPHONE (Area code, number, and extension) 843/554-9414	

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Prescribed by OMB Circular A-102 and A-110

APPENDIX 0275 CERTIORARI

EMORY J. INFINGER & ASSOCIATES

LETTER OF TRANSMITTAL

CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

DATE	7/7/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:
North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

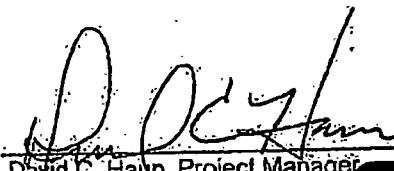
COPIES	DATE	NO.	DESCRIPTION
3	07/06/11	1	Application for Payment No. 3

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☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-21 w/a Supt. w/a
Acct w/a

SIGNED: 
David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0276 CERTIORARI

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"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702/CM

PAGE ONE OF 3 PAGES

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 3
PERIOD TO: 6/30/2011
PROJECT NO:

CONTRACT DATE: 12/10/10

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348

VIA ENGINEER:

Charleston, SC 29423
CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 28,986.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 828,442.00
4. TOTAL COMPLETED & STORED TO DATE \$ 128,087.00
(Column G on G703)
5. RETAINAGE: State Grant Only
a. 3.5 % of Completed Work \$ 4,483.00
(Columns D+E on G703)
b. 3.5 % of Stored Material \$
(Column F on G703)
Total Retainage (Line 5a + 5b or
Total in Column 1 of G703) \$ 4,483.00
6. TOTAL EARNED LESS RETAINAGE \$ 123,604.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 91,893.00
8. CURRENT PAYMENT DUE \$ 31,711.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 704,838.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$10,834.00	
Total approved this Month	\$18,152.00	
TOTALS	\$28,986.00	
NET CHANGES by Change Order	\$28,986.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

By: *Emory J. Infinger* Date: 07/07/11
Emory J. Infinger, President

State of: South Carolina
County of: Dorchester
Subscribed and sworn to before me this 7th day of July 2011.

Notary Public: *Cheryl L. Hinkle*
My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0277 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

PROJECT:

The Shelter

1905 Burton Lane

North Charleston, SC 29405

APPLICATION NUMBER:

3

APPLICATION DATE:

7/8/11

PERIOD TO:

6/30/11

ARCHITECT'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ 59,337	\$ 17,087	\$ -	\$ 76,424	95%	\$ 4,022	\$ 2,675
2	General Conditions	\$ 88,677	\$ 9,954	\$ 3,177	\$ -	\$ 13,131	15%	\$ 75,546	\$ 460
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ 240
4	Permit and Licenses	\$ 9,963	\$ 2,490	\$ -	\$ -	\$ 2,490	25%	\$ 7,473	\$ 87
5	Mobilization	\$ 1,817	\$ 910	\$ -	\$ -	\$ 910	50%	\$ 907	\$ 32
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ 5,420	\$ -	\$ -	\$ 5,420	10%	\$ 48,813	\$ 190
8	Concrete	\$ 35,251	\$ -	\$ 8,315	\$ -	\$ 8,315	24%	\$ 26,936	\$ 291
9	Masonry	\$ 13,615	\$ -	\$ -	\$ -	\$ -		\$ 13,615	\$ -
10	Steel	\$ 129,154	\$ -	\$ -	\$ -	\$ -		\$ 129,154	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ -	\$ -	\$ -	\$ -		\$ 20,738	\$ -
12	Wood/Carpentry	\$ 3,608	\$ -	\$ -	\$ -	\$ -		\$ 3,608	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection	\$ 39,407	\$ -	\$ -	\$ -	\$ -		\$ 39,407	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ -	\$ -	\$ -	\$ -		\$ 14,933	\$ -
16	Windows & Glazing	\$ 7,897	\$ -	\$ -	\$ -	\$ -		\$ 7,897	\$ -
17	Drywall/Insulation	\$ 48,861	\$ -	\$ -	\$ -	\$ -		\$ 48,861	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
	Subtotals Page 2	\$ 617,028	\$ 84,962	\$ 28,579	\$ -	\$ 113,541	18%	\$ 503,487	\$ 3,974

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APPENDIX 0278 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

APPLICATION NUMBER: 3

PROJECT:

APPLICATION DATE: 7/6/11

The Shelter
1905 Burton Lane
North Charleston, SC 29405

PERIOD TO: 6/30/11

ARCHITECT'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ -	\$ -	\$ -	\$ -		\$ 36,147	\$ -
24	HVAC Systems	\$ 60,471	\$ -	\$ -	\$ -	\$ -		\$ 60,471	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ -	\$ -	\$ -	\$ -		\$ 15,138	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ -	\$ -	\$ -	\$ -		\$ 42,202	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ -	\$ -	\$ -	\$ -		\$ 1,250	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1	\$ 10,264	\$ 10,264	\$ -	\$ -	\$ 10,264		\$ -	\$ 359
33	Change Order No. 2	\$ 570	\$ -	\$ -	\$ -	\$ -		\$ 570	\$ -
34	Change Order No. 3	\$ 18,152	\$ -	\$ 4,282	\$ -	\$ 4,282		\$ 13,870	\$ 150
35		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
36		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
37		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 211,414	\$ 10,264	\$ 4,282	\$ -	\$ 14,546	7%	\$ 196,868	\$ 509
44	Subtotals Page 2	\$ 617,028	\$ 84,962	\$ 28,579	\$ -	\$ 113,541	18%	\$ 503,487	\$ 3,974
	TOTALS	\$ 828,442	\$ 95,226	\$ 32,861	\$ -	\$ 128,087	15%	\$ 700,355	\$ 4,483

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APPENDIX 0279 CERTIORARI

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS		OMB APPROVAL NO. 0348-0002		PAGE 01 OF 01 PAGES	
(See Instructions on back)		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO. 03	
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST FROM (Month, day, year) 08/01/2011 TO (Month, day, year) 06/30/2011			
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		10. PAYEE (Please check to be used if Rural (See Rev 2)) Name: No. and Street: City, State and ZIP Code:			
11. STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS		FUNCTIONS		TOTAL
	(a) Rehabilitation	(b) New Construction	(c)	(d)	
a. Administrative expense					0.00
b. Preliminary expense					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fee					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		128,087.00			128,087.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	128,087.00			128,087.00
o. Deductions for program income					0.00
p. Net cumulative to date (line n minus line o)	0.00	128,087.00			128,087.00
q. Federal share to date		83,257.00			83,257.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)	0.00	83,257.00			83,257.00
t. Federal payments previously requested		61,897.00			61,897.00
u. Amount requested for reimbursement		21,360.00			21,360.00
v. Percentage of physical completion of project		15 %			%
12. CERTIFICATION		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REPORT SUBMITTED	
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due, which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		July 7, 2011	
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		July 7, 2011	
		TYPED OR PRINTED NAME AND TITLE Bobby Knight, President		TELEPHONE (Area code, domestic and international) 843/735-0814	
		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 		DATE SIGNED July 7, 2011	
		TYPED OR PRINTED NAME AND TITLE Emory J. Infinger, President		TELEPHONE (Area code, domestic and international) 843/554-9414	

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STANDARD FORM 271 (Rev. 7-91)
Prescribed by OMB Circular A-102 and A-110

APPENDIX 0280 CERTIORARI

EMORY J. INFINGER & ASSOCIATES

CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	8/1/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached
 ☒ Mailed
 ☐ Faxed
 ☐ Hand Carried
☐ Shop Drawings
 ☐ Prints
 ☐ Plans
 ☐ Samples
 ☐ Specifications
☐ Copy of letter
 ☐ Change order
 ☒ See Below

COPIES	DATE	NO.	DESCRIPTION
3	08/03/11	1	Application for Payment No. 4

THESE ARE TRANSMITTED as checked below:

- ☒ For Approval and Payment
 ☐ Approved as submitted
 ☐ Resubmit copies for approval
☐ For your use
 ☐ Approved as noted
 ☐ Submit copies for distribution
☐ As requested
 ☐ Returned for corrections
 ☐ Return corrected prints
☐ For review and comment
 ☐ _____
☐ FOR BIDS DUE _____
 ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-21 w/a Supt. w/a
Acc'l w/a

SIGNED:

David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.
APPENDIX 0281 CERTIORARI



OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS		OMB APPROVAL NO. 0348-0002		PAGE 01 OF 01 PAGES	
(See Instructions on back)		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		4. FEDERAL ORIGIN OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO. 04	
6. EMPLOYER IDENTIFICATION NUMBER 57-0936275		7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310		PERIOD COVERED BY THIS REQUEST FROM (Month, day, year) 07/01/2011 TO (Month, day, year) 07/31/2011	
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		9. PAYEE (Where check is to be sent if different than Gen 8) Name: No. and Street: City, State and ZIP Code:			
STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS		FUNCTIONS		TOTAL
	(a) Rehabilitation	(b) New Construction	(c) ACTIVITIES		
a. Administrative expense	\$	\$	\$	\$	0.00
b. Preliminary expense					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fee					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		335,852.00			335,852.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)		0.00	335,852.00		335,852.00
o. Deductions for program income					0.00
p. Net cumulative to date (line n minus line o)		0.00	335,852.00		335,852.00
q. Federal share to date			218,304.00		218,304.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)		0.00	218,304.00		218,304.00
t. Federal payments previously requested			83,257.00		83,257.00
u. Amount requested for reimbursement	\$	\$	135,047.00	\$	135,047.00
v. Percentage of physical completion of project		%	39 %	%	%
12. CERTIFICATION I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
				DATE REPORT SUBMITTED August 1, 2011	
				TELEPHONE (Area code, number, and extension) 843/735-0814	
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
				DATE SIGNED 8/1/11	
				TELEPHONE (Area code, number, and extension) 843/554-8414	

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Prescribed by OMB Circular A-102 and A-110

APPENDIX 0282 CERTIORARI

"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT

PAGE ONE OF 3 PAGES

AIA DOCUMENT G702/CM

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 4
PERIOD TO: 7/31/2011
PROJECT NO:

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT DATE: 12/10/10

CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

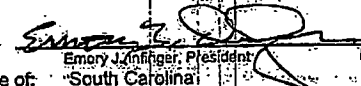
Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 61,436.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 860,892.00
4. TOTAL COMPLETED & STORED TO DATE \$ 335,852.00
(Column G on G703)
5. RETAINAGE: State Grant Only
a. 3.5 % of Completed Work \$ 7,436.00
(Columns D+E on G703)
b. 3.5 % of Stored Material \$ 4,319.00
(Column F on G703)
Total Retainage (Line 5a + 5b or
Total in Column 1 of G703) \$ 11,755.00
6. TOTAL EARNED LESS RETAINAGE \$ 324,097.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 123,604.00
8. CURRENT PAYMENT DUE \$ 200,493.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 536,795.00

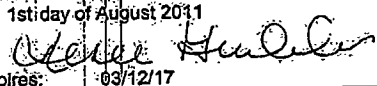
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$28,986.00	
Total approved this Month	\$32,450.00	
TOTALS	\$61,436.00	
NET CHANGES by Change Order	\$61,436.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

By:  Date: 08/01/11

Emory J. Infinger, President
State of: South Carolina
County of: Dorchester
Subscribed and sworn to before me this 1st day of August 2011

Notary Public: 
My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0283 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

PROJECT:
The Shelter
1905 Burton Lane
North Charleston, SC 29405

APPLICATION NUMBER: 4
APPLICATION DATE: 8/1/11
PERIOD TO: 7/31/11
ARCHITECT'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ 76,424	\$ 4,022	\$ -	\$ 80,446	100%	\$ -	\$ 2,816
2	General Conditions	\$ 88,677	\$ 13,131	\$ 20,566	\$ -	\$ 33,697	38%	\$ 54,980	\$ 1,179
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ 240
4	Permit and Licenses	\$ 9,983	\$ 2,490	\$ -	\$ -	\$ 2,490	25%	\$ 7,473	\$ 87
5	Mobilization	\$ 1,817	\$ 910	\$ 907	\$ -	\$ 1,817	100%	\$ -	\$ 64
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ 5,420	\$ 19,600	\$ -	\$ 25,020	46%	\$ 29,213	\$ 876
8	Concrete	\$ 35,251	\$ 8,315	\$ 22,710	\$ -	\$ 31,025	88%	\$ 4,226	\$ 1,086
9	Masonry	\$ 13,615	\$ -	\$ -	\$ -	\$ -		\$ 13,615	\$ -
10	Steel	\$ 129,154	\$ -	\$ -	\$ 123,400	\$ 123,400	96%	\$ 5,754	\$ 4,319
11	Steel Roof Trusses	\$ 20,738	\$ -	\$ -	\$ -	\$ -		\$ 20,738	\$ -
12	Wood/Carpentry	\$ 3,608	\$ -	\$ -	\$ -	\$ -		\$ 3,608	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection	\$ 39,407	\$ -	\$ -	\$ -	\$ -		\$ 39,407	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ -	\$ -	\$ -	\$ -		\$ 14,933	\$ -
16	Windows & Glazing	\$ 7,897	\$ -	\$ -	\$ -	\$ -		\$ 7,897	\$ -
17	Drywall/Insulation	\$ 48,861	\$ -	\$ -	\$ -	\$ -		\$ 48,861	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
Subtotals Page 2		\$ 617,028	\$ 113,541	\$ 67,805	\$ 123,400	\$ 304,746	49%	\$ 312,282	\$ 10,666

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APPENDIX 0284 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702						APPLICATION NUMBER: 4			
PROJECT:						APPLICATION DATE: 8/1/11			
The Shelter						PERIOD TO: 7/31/11			
1905 Burton Lane						ARCHITECT'S PROJECT NO:			
North Charleston, SC 29405									
A	B	C	D	E	F	G	H	I	
Item No.	Description of Work	Scheduled Value	Work Completed		Materials Presently Stored (Not In D or E)	Total Completed And Stored To Date (D + E + F)	%(G/C)	Balance To Finish (C - G)	Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ -	\$ 3,597	\$ -	\$ 3,597	10%	\$ 32,550	\$ 126
24	HVAC Systems	\$ 60,471	\$ -	\$ -	\$ -	\$ -		\$ 60,471	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ -	\$ -	\$ -	\$ -		\$ 15,138	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ -	\$ -	\$ -	\$ -		\$ 42,202	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ -	\$ -	\$ -	\$ -		\$ 1,250	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1	\$ 10,264	\$ 10,264	\$ -	\$ -	\$ 10,264	100%	\$ -	\$ 359
33	Change Order No. 2	\$ 570	\$ -	\$ -	\$ -	\$ -		\$ 570	\$ -
34	Change Order No. 3	\$ 18,152	\$ 4,282	\$ 12,963	\$ -	\$ 17,245	95%	\$ 907	\$ 604
35	Change Order No. 4	\$ 32,450	\$ -	\$ -	\$ -	\$ -		\$ 32,450	\$ -
36		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
37		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 243,864	\$ 14,546	\$ 16,560	\$ -	\$ 31,106	13%	\$ 212,758	\$ 1,089
44	Subtotals Page 2	\$ 617,028	\$ 113,541	\$ 67,805	\$ 123,400	\$ 304,746	49%	\$ 312,282	\$ 10,666
	TOTALS	\$ 860,892	\$ 128,087	\$ 84,365	\$ 123,400	\$ 335,852	39%	\$ 525,040	\$ 11,755

AIA Document G702 * APPLICATION AND CERTIFICATE FOR PAYMENT * 1992 EDITION * AIA * 1992 * THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292

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APPENDIX 0285 CERTIORARI

EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	9/1/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

COPIES	DATE	NO.	DESCRIPTION
3	09/01/11	1	Application for Payment No. 5

THESE ARE TRANSMITTED as checked below:

- ☒ For Approval and Payment ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-21 w/a Supl. w/a
Acc'l w/a

SIGNED:

David C. Haun
David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0286 CERTIORARI
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"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT
AIA DOCUMENT G702/CM

PAGE ONE OF 3 PAGES

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 5
PERIOD TO: 8/31/2011
PROJECT NO:

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT DATE: 12/10/10

CONTRACT FOR: General Construction/Design-Build Project

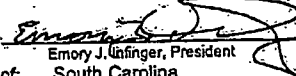
CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 90,520.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 889,976.00
4. TOTAL COMPLETED & STORED TO DATE \$ 424,094.00
(Column G on G703)
5. RETAINAGE: See HTF draw request Project #11210
 - a. % of Completed Work \$
(Columns D+E on G703)
 - b. % of Stored Material \$
(Column F on G703)
 Total Retainage (Line 5a + 5b or
Total in Column 1 of G703 \$
6. TOTAL EARNED LESS RETAINAGE \$ 424,094.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 324,097.00
8. CURRENT PAYMENT DUE \$ 99,997.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 465,882.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

By:  Date: 09/01/11

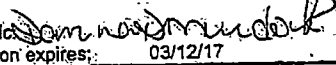
Emory J. Infinger, President

State of: South Carolina

County of: Dorchester

Subscribed and sworn to before

me this 1st day of September 2011

Notary Public 

My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$61,436.00	
Total approved this Month	\$29,084.00	
TOTALS	\$90,520.00	
NET CHANGES by Change Order	\$90,520.00	

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0287 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

PROJECT:

The Shelter

1905 Burton Lane

North Charleston, SC 29405

APPLICATION NUMBER: 5

APPLICATION DATE: 9/1/11

PERIOD TO: 8/31/11

ARCHITECT'S PROJECT NO:

North Charleston, SC 29405									
A	B	C	D	E	F	G	H	I	
Item No.	Description of Work	Scheduled Value	Work Completed		Materials Presently Stored (Not In D or E)	Total Completed And Stored To Date (D + E + F)	% (G/C)	Balance To Finish (C - G)	Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ 80,446	\$ -	\$ -	\$ 80,446	100%	\$ -	\$ -
2	General Conditions	\$ 88,677	\$ 33,697	\$ 7,981	\$ -	\$ 41,678	47%	\$ 46,999	\$ -
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ -
4	Permit and Licenses	\$ 9,963	\$ 2,490	\$ 7,473	\$ -	\$ 9,963	100%	\$ -	\$ -
5	Mobilization	\$ 1,817	\$ 1,817	\$ -	\$ -	\$ 1,817	100%	\$ -	\$ -
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ 25,020	\$ -	\$ -	\$ 25,020	46%	\$ 29,213	\$ -
8	Concrete	\$ 35,251	\$ 31,025	\$ 4,226	\$ -	\$ 35,251	100%	\$ -	\$ -
9	Masonry	\$ 13,615	\$ -	\$ -	\$ -	\$ -		\$ 13,615	\$ -
10	Steel	\$ 129,154	\$ -	\$ 129,154	\$ -	\$ 129,154	100%	\$ -	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ -	\$ 20,738	\$ -	\$ 20,738	100%	\$ -	\$ -
12	Wood/Carpentry	\$ 3,608	\$ -	\$ -	\$ -	\$ -		\$ 3,608	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection	\$ 39,407	\$ -	\$ -	\$ -	\$ -		\$ 39,407	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ -	\$ -	\$ -	\$ -		\$ 14,933	\$ -
16	Windows & Glazing	\$ 7,897	\$ -	\$ -	\$ -	\$ -		\$ 7,897	\$ -
17	Drywall/Insulation	\$ 48,861	\$ -	\$ -	\$ -	\$ -		\$ 48,861	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
	Subtotals Page 2	\$ 617,028	\$ 181,346	\$ 169,572	\$ -	\$ 350,918	57%	\$ 266,110	\$ -

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APPENDIX 0288 CERTIORARI

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS		OMB APPROVAL NO. D348-0002		PAGE 1 OF 1 PAGES	
(See Instructions on back)		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO. 05	
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER 88310	PERIOD COVERED BY THIS REQUEST FROM (Month, day, year) 08/01/2011 TO (Month, day, year) 08/31/2011			
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		9. PAYEE (Where check is to be sent if different from item 8) Name: No. and Street: City, State and ZIP Code:			
11. STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS	FUNCTIONS	ACTIVITIES	TOTAL	
	(a) Rehabilitation	(b) New Construction	(c)		
a. Administrative expense	\$	\$	\$	\$ 0.00	
b. Preliminary expense				0.00	
c. Land, structures, right-of-way				0.00	
d. Architectural engineering basic fees				0.00	
e. Other architectural engineering fee				0.00	
f. Project inspection fees				0.00	
g. Land development				0.00	
h. Relocation expense				0.00	
i. Relocation payments to individuals and businesses				0.00	
j. Demolition and removal				0.00	
k. Construction and project improvement cost		424,094.00		424,094.00	
l. Equipment				0.00	
m. Miscellaneous cost				0.00	
n. Total cumulative to date (sum of lines a thru m)	0.00	424,094.00		424,094.00	
o. Deductions for program income				0.00	
p. Net cumulative to date (line n minus line o)	0.00	424,094.00		424,094.00	
q. Federal share to date		275,661.00		275,661.00	
r. Rehabilitation grants (100% reimbursement)				0.00	
s. Total Federal share (sum of lines q and r)	0.00	275,661.00		275,661.00	
t. Federal payments previously requested		218,304.00		218,304.00	
u. Amount requested for reimbursement	\$	\$ 57,357.00	\$	\$ 57,357.00	
v. Percentage of physical completion of project	%	48 %	%	% %	
12. CERTIFICATION I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REPORT SUBMITTED	
		a. RECIPIENT		September 1, 2011	
		TYPED OR PRINTED NAME AND TITLE		TELEPHONE (Area code, number, and extension)	
		Bobby Knight, President		843/735-0814	
		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE SIGNED	
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		September 1, 2011	
		TYPED OR PRINTED NAME AND TITLE		TELEPHONE (Area code, number, and extension)	
		Emory J. Infinger, President		843/554-9414	

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STANDARD FORM 211 (Rev 3-97)
Prescribed by OMB Circular A-102 and A-110

EMORY J. INFINGER & ASSOCIATES

CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	10/5/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached
 ☒ Mailed
 ☐ Faxed
 ☐ Hand Carried
☐ Shop Drawings
 ☐ Prints
 ☐ Plans
 ☐ Samples
 ☐ Specifications
☐ Copy of letter
 ☐ Change order
 ☒ See Below

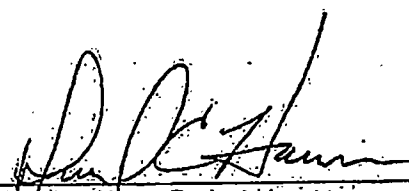
COPIES	DATE	NO.	DESCRIPTION
3	10/05/11	1	Application for Payment No. 6

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- ☒ For Approval and Payment
 ☐ Approved as submitted
 ☐ Resubmit copies for approval
☐ For your use
 ☐ Approved as noted
 ☐ Submit copies for distribution
☐ As requested
 ☐ Returned for corrections
 ☐ Return corrected prints
☐ For review and comment
 ☐ _____
☐ FOR BIDS DUE _____
 ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-21 w/a Supt. w/a
Acc'l w/a

SIGNED: 
David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0290 CERTIORARI
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OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS (See instructions on back)		OMB APPROVAL NO. 0348-0002		PAGE 01 OF 01 PAGES	
1. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
Department of Veteran Affairs Grant & Per Diem Program		FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		3. PARTIAL PAYMENT REQUEST NO.	
4. EMPLOYER IDENTIFICATION NUMBER 57-0938275	5. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST FROM (Month, day, year) 09/01/2011 TO (Month, day, year) 09/30/2011			
6. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		10. PAYEE (Always check to be equal if different than item 9) Name: No. and Street: City, State and ZIP Code:			
13. STATUS OF FUNDS:					
CLASSIFICATION	PROGRAMS		FUNCTIONS	ACTIVITIES	TOTAL
	(a) Rehabilitation	(b) New Construction	(c)		
a. Administrative expense	\$	\$	\$		0.00
b. Preliminary expense					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fee					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		515,592.00			515,592.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	515,592.00			515,592.00
o. Deductions for program income					0.00
p. Net cumulative to date (line n minus line o)	0.00	515,592.00			515,592.00
q. Federal share to date		335,135.00			335,135.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)	0.00	335,135.00			335,135.00
t. Federal payments previously requested		275,661.00			275,661.00
u. Amount requested for reimbursement	\$	\$ 59,474.00	\$	\$	59,474.00
v. Percentage of physical completion of project		%	56 %	%	%
12. CERTIFICATION:		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REPORT SUBMITTED	
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		TYPED OR PRINTED NAME AND TITLE Bobby Knight, President	
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL Emory J. Infinger, President	
				TELEPHONE (Area code, number, and extension) 843/735-0014	
				DATE SIGNED October 5, 2011	
				TELEPHONE (Area code, number, and extension) 843/554-9414	

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STANDARD FORM 271 (Rev. 3-77)
Prescribed by OMB Circular A-102 and A-110

APPENDIX 0291 CERTIORARI

"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702/CM

PAGE ONE OF 3 PAGES

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 6
PERIOD TO: 9/30/2011
PROJECT NO:

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT DATE: 12/10/10

CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 120,877.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 920,333.00
4. TOTAL COMPLETED & STORED TO DATE \$ 515,592.00
(Column G on G703)
5. RETAINAGE: See HTF draw request Project #11210
 - a. % of Completed Work \$
(Columns D+E on G703)
 - b. % of Stored Material \$
(Column F on G703)
- Total Retainage (Line 5a + 5b or
Total in Column 1 of G703) \$
6. TOTAL EARNED LESS RETAINAGE \$ 515,592.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 405,261.00
8. CURRENT PAYMENT DUE \$ 110,331.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 404,741.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$90,520.00	
Total approved this Month	\$30,357.00	
TOTALS	\$120,877.00	
NET CHANGES by Change Order	\$120,877.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

By: Emory J. Infinger Date: 10/05/11

Emory J. Infinger, President

State of: South Carolina

County of: Dorchester

Subscribed and sworn to before me this 5th day of October 2011

Notary Public: [Signature]

My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0292 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702						APPLICATION NUMBER: 6.			
PROJECT:						APPLICATION DATE: 10/5/11			
The Shelter						PERIOD TO: 9/30/11			
1905 Burton Lane						ARCHITECT'S PROJECT NO:			
North Charleston, SC 29405									
A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ 80,446	\$ -	\$ -	\$ 80,446	100%	\$ -	\$ -
2	General Conditions	\$ 88,677	\$ 41,678	\$ 11,528	\$ -	\$ 53,206	60%	\$ 35,471	\$ -
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ -
4	Permit and Licenses	\$ 9,963	\$ 9,963	\$ -	\$ -	\$ 9,963	100%	\$ -	\$ -
5	Mobilization	\$ 1,817	\$ 1,817	\$ -	\$ -	\$ 1,817	100%	\$ -	\$ -
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ 25,020	\$ -	\$ -	\$ 25,020	46%	\$ 29,213	\$ -
8	Concrete	\$ 35,251	\$ 35,251	\$ -	\$ -	\$ 35,251	100%	\$ -	\$ -
9	Masonry	\$ 13,615	\$ -	\$ -	\$ 9,500	\$ 9,500	70%	\$ 4,115	\$ -
10	Steel	\$ 129,154	\$ 129,154	\$ -	\$ -	\$ 129,154	100%	\$ -	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ 20,738	\$ -	\$ -	\$ 20,738	100%	\$ -	\$ -
12	Wood/Carpentry	\$ 3,608	\$ -	\$ 1,500	\$ -	\$ 1,500	42%	\$ 2,108	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection/Roofing	\$ 39,407	\$ -	\$ 3,941	\$ -	\$ 3,941	10%	\$ 35,466	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ -	\$ 4,331	\$ -	\$ 4,331	29%	\$ 10,602	\$ -
16	Windows & Glazing	\$ 7,897	\$ -	\$ -	\$ -	\$ -		\$ 7,897	\$ -
17	Drywall/Insulation	\$ 48,861	\$ -	\$ 36,600	\$ -	\$ 36,600	75%	\$ 12,261	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
Subtotals Page 2		\$ 617,028	\$ 350,918	\$ 57,900	\$ 9,500	\$ 418,318	68%	\$ 198,710	\$ -

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G703-1992

APPENDIX 0293 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

APPLICATION NUMBER: 6

PROJECT:

APPLICATION DATE: 10/5/11

The Shelter

PERIOD TO: 9/30/11

1905 Burton Lane

ARCHITECT'S PROJECT NO:

North Charleston, SC 29405

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ 8,897	\$ 3,200	\$ -	\$ 12,097	33%	\$ 24,050	\$ -
24	HVAC Systems	\$ 60,471	\$ -	\$ -	\$ -	\$ -		\$ 60,471	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ -	\$ 3,100	\$ -	\$ 3,100	20%	\$ 12,038	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ 2,500	\$ 6,500	\$ -	\$ 8,000	19%	\$ 34,202	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ 1,250	\$ -	\$ -	\$ 1,250	100%	\$ -	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1 P&P Bonds	\$ 10,264	\$ 10,264	\$ -	\$ -	\$ 10,264	100%	\$ -	\$ -
33	Change Order No. 2 E&O Premium	\$ 570	\$ 570	\$ -	\$ -	\$ 570	100%	\$ -	\$ -
34	Change Order No. 3 Conc. Fndt.	\$ 18,152	\$ 17,245	\$ -	\$ -	\$ 17,245	95%	\$ 907	\$ -
35	Change Order No. 4 Struct. Steel	\$ 32,450	\$ 32,450	\$ -	\$ -	\$ 32,450	100%	\$ -	\$ -
36	Change Order No. 5 Drywall & Glass	\$ 29,084	\$ -	\$ 9,598	\$ -	\$ 9,598	33%	\$ 19,486	\$ -
37	Change Order No. 6 HVAC & Misc.	\$ 30,357	\$ -	\$ 2,700	\$ -	\$ 2,700	9%	\$ 27,657	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 303,305	\$ 73,176	\$ 24,098	\$ -	\$ 97,274	32%	\$ 206,031	\$ -
44	Subtotals Page 2	\$ 617,028	\$ 350,918	\$ 57,900	\$ 9,500	\$ 418,318	66%	\$ 198,710	\$ -
	TOTALS	\$ 920,333	\$ 424,094	\$ 81,998	\$ 9,500	\$ 515,592	56%	\$ 404,741	\$ -

AIA Document G702 • APPLICATION AND CERTIFICATE FOR PAYMENT • 1992 EDITION • AIA • 1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292

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G703-1992

APPENDIX 0294 CERTIORARI

EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	10/5/2011	JOB NO.	1A-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand-Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

COPIES	DATE	NO.	DESCRIPTION
3	10/05/11	1	Application for Payment No. 6

THESE ARE TRANSMITTED as checked below:

- ☒ For Approval and Payment ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO 1A-316-21 w/a Supt. w/a
Acc't w/a

SIGNED:

David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0295 CERTIORARI
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OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS		OMB APPROVAL NO. 0348-0002		PAGE 01 OF 01 PAGES	
(See instructions on back)		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO.	
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST			
		FROM (Month, day, year) 09/01/2011		TO (Month, day, year) 09/30/2011	
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		9. PAYEE (Where check is to be sent if different than item 8) Name: No. and Street: City, State and ZIP Code:			
11. STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS		FUNCTIONS	ACTIVITIES	TOTAL
	(a) Rehabilitation	(b) New Construction	(c)		
a. Administrative expense	\$	\$	\$	\$	0.00
b. Preliminary expense					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fee					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		515,592.00			515,592.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	515,592.00			515,592.00
o. Deductions for program income					-0.00
p. Net cumulative to date (line n minus line o)	0.00	515,592.00			515,592.00
q. Federal share to date		335,135.00			335,135.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)	0.00	335,135.00			335,135.00
t. Federal payments previously requested		275,661.00			275,661.00
u. Amount requested for reimbursement	\$	\$ 59,474.00	\$	\$	59,474.00
v. Percentage of physical completion of project	%	56 %	%	%	%
12. CERTIFICATION					
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
		Bobby Knight, President		DATE REPORT SUBMITTED	
b. REPRESENTATIVE CERTIFYING TO LINE 11V		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE SIGNED	
		Emory J. Infinger, President		October 5, 2011	

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Prescribed by OMB Circular A-102 and A-110

APPENDIX 0296 CERTIORARI

"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702/CM

PAGE ONE OF 3 PAGES

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 6
PERIOD TO: 9/30/2011
PROJECT NO:

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT DATE: 12/10/10

CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 120,877.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 920,333.00
4. TOTAL COMPLETED & STORED TO DATE \$ 515,592.00
(Column G on G703)
5. RETAINAGE: See HTF draw request Project #11210
 - a. % of Completed Work \$
(Columns D+E on G703)
 - b. % of Stored Material \$
(Column F on G703)
 Total Retainage (Line 5a + 5b or
Total in Column 1 of G703 \$ 515,592.00
6. TOTAL EARNED LESS RETAINAGE \$ 405,261.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 405,261.00
8. CURRENT PAYMENT DUE \$ 110,331.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 404,741.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$90,520.00	
Total approved this Month	\$30,357.00	
TOTALS	\$120,877.00	
NET CHANGES by Change Order	\$120,877.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

By: Emory J. Infinger, President Date: 10/05/11

State of: South Carolina

County of: Dorchester

Subscribed and sworn to before
me this 5th day of October 2011

Notary Public: Debbie H. H. H.
My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0297 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702						APPLICATION NUMBER: 6			
PROJECT: The Shelter 1905 Burton Lane North Charleston, SC 29405.						APPLICATION DATE: 10/5/11			
						PERIOD TO: 9/30/11			
						ARCHITECT'S PROJECT NO:			
A	B	C	D	E	F	G	H	I	
Item No.	Description of Work	Scheduled Value	Work Completed		Materials Presently Stored (Not In D or E)	Total Completed And Stored To Date (D + E + F)	% (G/C)	Balance To Finish (C - G)	Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ 80,446	\$ -	\$ -	\$ 80,446	100%	\$ -	\$ -
2	General Conditions	\$ 88,677	\$ 41,678	\$ 11,528	\$ -	\$ 53,206	60%	\$ 35,471	\$ -
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ -
4	Permit and Licenses	\$ 9,963	\$ 9,963	\$ -	\$ -	\$ 9,963	100%	\$ -	\$ -
5	Mobilization	\$ 1,817	\$ 1,817	\$ -	\$ -	\$ 1,817	100%	\$ -	\$ -
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ 25,020	\$ -	\$ -	\$ 25,020	46%	\$ 29,213	\$ -
8	Concrete	\$ 35,251	\$ 35,251	\$ -	\$ -	\$ 35,251	100%	\$ -	\$ -
9	Masonry	\$ 13,615	\$ -	\$ -	\$ 9,500	\$ 9,500	70%	\$ 4,115	\$ -
10	Steel	\$ 129,154	\$ 129,154	\$ -	\$ -	\$ 129,154	100%	\$ -	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ 20,738	\$ -	\$ -	\$ 20,738	100%	\$ -	\$ -
12	Wood/Carpentry	\$ 3,608	\$ -	\$ 1,500	\$ -	\$ 1,500	42%	\$ 2,108	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection/Roofing	\$ 39,407	\$ -	\$ 3,941	\$ -	\$ 3,941	10%	\$ 35,466	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ -	\$ 4,331	\$ -	\$ 4,331	29%	\$ 10,602	\$ -
16	Windows & Glazing	\$ 7,897	\$ -	\$ -	\$ -	\$ -		\$ 7,897	\$ -
17	Drywall/Insulation	\$ 48,861	\$ -	\$ 36,600	\$ -	\$ 36,600	75%	\$ 12,261	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
Subtotals Page 2		\$ 617,028	\$ 350,918	\$ 57,900	\$ 9,500	\$ 418,318	68%	\$ 198,710	\$ -

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APPENDIX 0298 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

PROJECT:
The Shelter
1905 Burton Lane
North Charleston, SC 29405

APPLICATION NUMBER: 6
APPLICATION DATE: 10/5/11
PERIOD TO: 9/30/11
ARCHITECT'S PROJECT NO:

North Charleston, SC 29405									
A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)	% (G/C)	H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ 8,897	\$ 3,200	\$ -	\$ 12,097	33%	\$ 24,050	\$ -
24	HVAC Systems	\$ 60,471	\$ -	\$ -	\$ -	\$ -		\$ 60,471	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ -	\$ 3,100	\$ -	\$ 3,100	20%	\$ 12,038	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ 2,500	\$ 5,500	\$ -	\$ 8,000	19%	\$ 34,202	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ 1,250	\$ -	\$ -	\$ 1,250	100%	\$ -	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1 P&P Bonds	\$ 10,264	\$ 10,264	\$ -	\$ -	\$ 10,264	100%	\$ -	\$ -
33	Change Order No. 2 E&O Premium	\$ 570	\$ 570	\$ -	\$ -	\$ 570	100%	\$ -	\$ -
34	Change Order No. 3 Conc. Fndt.	\$ 18,162	\$ 17,245	\$ -	\$ -	\$ 17,245	95%	\$ 907	\$ -
35	Change Order No. 4 Struct. Steel	\$ 32,450	\$ 32,450	\$ -	\$ -	\$ 32,450	100%	\$ -	\$ -
36	Change Order No. 5 Drywall & Glass	\$ 29,084	\$ -	\$ 9,598	\$ -	\$ 9,598	33%	\$ 19,486	\$ -
37	Change Order No. 6 HVAC & Misc.	\$ 30,357	\$ -	\$ 2,700	\$ -	\$ 2,700	9%	\$ 27,657	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 303,305	\$ 73,176	\$ 24,098	\$ -	\$ 97,274	32%	\$ 206,031	\$ -
44	Subtotals Page 2	\$ 617,028	\$ 350,918	\$ 57,900	\$ 9,500	\$ 418,318	68%	\$ 198,710	\$ -
	TOTALS	\$ 920,333	\$ 424,094	\$ 81,998	\$ 9,500	\$ 515,592	56%	\$ 404,741	\$ -

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APPENDIX 0299 CERTIORARI

EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	11/3/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

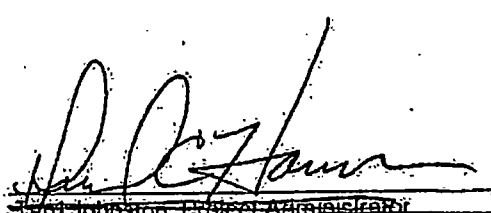
COPIES	DATE	NO.	DESCRIPTION
3		1	Form 271 for partial payment no. 6 revised to \$18,266.00 per Michelle Lewis' email dated 11/1/11

THESE ARE TRANSMITTED as checked below:

- ☐ For Approval and Payment ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☒ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-21 w/encl.
Acc't w/encl.

SIGNED: 

Tom Johnston, Project Administrator

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0300 CERTIORARI

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OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS (See instructions on back)		OMB APPROVAL NO. 0348-0002		PAGE 01 OF 01 PAGES	
1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL			
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO. 06	
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST FROM (Month, day, year) 09/01/2011 TO (Month, day, year) 09/30/2011			
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		10. PAYEE (Where check is to be sent if different than item 8) Name: No. and Street: City, State and ZIP Code:			
II. STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS		FUNCTIONS		TOTAL
	(a) Rehabilitation	(b) New Construction	(c) ACTIVITIES		
a. Administrative expense	\$	\$	\$	\$	0.00
b. Preliminary expense					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fee					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		515,592.00			515,592.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	515,592.00			515,592.00
o. Deductions for program income					0.00
p. Net cumulative to date (line n minus line o)	0.00	515,592.00			515,592.00
q. Federal share to date		293,887.00			293,887.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)	0.00	293,887.00			293,887.00
t. Federal payments previously requested		275,661.00			275,661.00
u. Amount requested for reimbursement	\$	\$ 18,226.00	\$	\$	18,226.00
v. Percentage of physical completion of project	%	56 %	%	%	%
12. CERTIFICATION		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REPORT SUBMITTED	
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		TYPED OR PRINTED NAME AND TITLE	
		b. REPRESENTATIVE CERTIFYING TO LINE 11v		TYPED OR PRINTED NAME AND TITLE	
		Bobby Knight, President		TELEPHONE (Area code, number, and extension) 843/735-0814	
		Emory J. Infinger, President		DATE SIGNED November 3, 2011	
				TELEPHONE (Area code, number, and extension) 843/554-9414	

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APPENDIX 0301 CERTIORARI

David Haun

From: Rick Stephens [wrstephens_pe@yahoo.com]
 Sent: Wednesday, November 02, 2011 10:57 AM
 To: David Haun
 Subject: Fw: budget revised as of 10/31/11
 Attachments: Second Submission Documents.doc

W.R. Stephens, PE

P.O. Box 2128
 Goose Creek, SC
 29445

----- Forwarded Message -----

From: "Lewis, Michelle R." <Michelle.Lewis1@va.gov>
 To: Bobby Knight <bknight@construction-group.com>; "Langer, Susan" <Susan.Langer@va.gov>
 Cc: "FA Johnson II, Esq." <FAJohnson@fajohnsondevelopmentgroup.com>; W. Arnold Scharnitzky
 <wascpa@knology.net>; Martha <mrsopa@knology.net>; Rick Stephens <wrstephens_pe@yahoo.com>
 Sent: Tuesday, November 1, 2011 3:09 PM
 Subject: RE: budget revised as of 10/31/11

Mr. Knight,

Thank you for the quick response. I reviewed the SF 424C and it appears that your costs have increased by \$99,733.00. However, the one thing that has not been documented is the Van that was approved. I failed to bring up the van yesterday and I apologize for that. In deducting the VA Share of the Van from the total award it brings the construction award to \$532,350.00. That makes the VA participation 57% of the total construction costs. You will then have \$9,750.00 to put towards the purchase of the van. Your total required match is \$391,633.00.

This does change the amount that can be paid out in future payments. As of Payment #5, the calculations are:

Total Costs	65% Paid	57%	
Difference			
\$424,094.00	\$275,661.00	\$241,733.58	\$33,927.42

Your payment application number 6 would need to be changed as follow:

Item 11q & s = \$293,887.44 (this equals 57% of the costs)

Item 11t = 275,661.00

Item 11u = \$18,226.44

Please correct the SF 271 and enter the new payment request in HHS and I will approve this payment. Future payments will be on hold pending receipt of verification of increased match requirement. This can be accomplished by submitting an updated Match and Feasibility Page and submitting documentation of the match. (award letters, etc).

Please let me know if you have any questions. I have attached a document that has the Match and Feasibility Page in it for your convenience.

Michelle Lewis
 Project Development Specialist
 VA Grant & Per Diem Program
 877-332-0334 (Toll Free)
 877-332-0335 (Fax)

APPENDIX 0302 CERTIORARI

11/3/2011

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Providers Website http://www.va.gov/HOMELESS/GPD_ProviderWebsite.asp
Program Homepage <http://www.va.gov/HOMELESS/GPD.asp>

 Veteran....Serving Veterans

From: constgrp@gmail.com [mailto:constgrp@gmail.com] On Behalf Of Bobby Knight
Sent: Monday, October 31, 2011 3:13 PM
To: Lewis, Michelle R.; Langer, Susan
Cc: FA Johnson II, Esq.; W. Arnold Scharnitzky; Martha; Rick Stephens
Subject: Fwd: budget revised as of 10/31/11

Michelle.

please see attached docs. we will meet with the county and state representatives about the gap our global economy has dealt this project. Questions or comments – please keep me posted.

Thanks,

Bobby

----- Forwarded message -----

From: JOHN MITCHELL <emailjohnmitchell@gmail.com>
Date: Mon, Oct 31, 2011 at 3:00 PM
Subject: budget revised as of 10/31/11
To: BOBBY KNIGHT <bknight@construction-group.com>

Bobby,

Please send to Michelle

W A Scharnitzky CPA LLC

EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	11/3/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

COPIES	DATE	NO.	DESCRIPTION
3	11/03/11	1	Application for Payment No. 7

THESE ARE TRANSMITTED as checked below:

- ☒ For Approval and Payment ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-21 w/a Supl. w/a
Acc't w/a

SIGNED:

David C. Haun, Project Manager

If enclosures are not so noted, kindly notify us at once.

APPENDIX 0304 CERTIORARI

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"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT

PAGE ONE OF 3 PAGES

AIA DOCUMENT G702/CM

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 7
PERIOD TO: 10/31/2011
PROJECT NO:

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT DATE: 12/10/10

CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 120,877.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 920,333.00
4. TOTAL COMPLETED & STORED TO DATE \$ 585,690.00
(Column G on G703)
5. RETAINAGE: See HTF draw request Project #11210
 - a. % of Completed Work \$
 - (Columns D+E on G703)
 - b. % of Stored Material \$
 - (Column F on G703)
- Total Retainage (Line 5a + 5b or
Total in Column 1 of G703) \$
6. TOTAL EARNED LESS RETAINAGE \$ 585,690.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 515,592.00
8. CURRENT PAYMENT DUE \$ 70,098.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 334,643.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$90,520.00	
Total approved this Month	\$30,357.00	
TOTALS	\$120,877.00	
NET CHANGES by Change Order	\$120,877.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

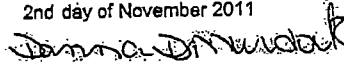
By:  Date: 11/03/11

Emory J. Infinger, President

State of: South Carolina

County of: Dorchester

Subscribed and sworn to before
me this 2nd day of November 2011

Notary Public: 
My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$
(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0305 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

PROJECT:

The Shelter

1905 Burton Lane

North Charleston, SC 29405

APPLICATION NUMBER: 7

APPLICATION DATE: 11/3/11

PERIOD TO: 10/31/11

ARCHITECT'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ 80,446	\$ -	\$ -	\$ 80,446	100%	\$ -	\$ -
2	General Conditions	\$ 88,677	\$ 53,206	\$ 7,981	\$ -	\$ 61,187	69%	\$ 27,490	\$ -
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ -
4	Permit and Licenses	\$ 9,963	\$ 9,963	\$ -	\$ -	\$ 9,963	100%	\$ -	\$ -
5	Mobilization	\$ 1,817	\$ 1,817	\$ -	\$ -	\$ 1,817	100%	\$ -	\$ -
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ 25,020	\$ -	\$ -	\$ 25,020	46%	\$ 29,213	\$ -
8	Concrete	\$ 35,251	\$ 35,251	\$ -	\$ -	\$ 35,251	100%	\$ -	\$ -
9	Masonry	\$ 13,615	\$ -	\$ 13,615	\$ -	\$ 13,615	100%	\$ -	\$ -
10	Steel	\$ 129,154	\$ 129,154	\$ -	\$ -	\$ 129,154	100%	\$ -	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ 20,738	\$ -	\$ -	\$ 20,738	100%	\$ -	\$ -
12	Wood/Carpentry	\$ 3,608	\$ 1,500	\$ -	\$ -	\$ 1,500	42%	\$ 2,108	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection/Roofing	\$ 39,407	\$ 3,941	\$ 2,577	\$ -	\$ 6,518	17%	\$ 32,889	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ 4,331	\$ -	\$ -	\$ 4,331	29%	\$ 10,602	\$ -
16	Windows & Glazing	\$ 7,897	\$ -	\$ 3,192	\$ -	\$ 3,192	40%	\$ 4,705	\$ -
17	Drywall/Insulation/Studs/Ceiling	\$ 48,861	\$ 36,600	\$ -	\$ -	\$ 36,600	75%	\$ 12,261	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
Subtotals Page 2		\$ 617,028	\$ 408,818	\$ 27,385	\$ -	\$ 436,183	71%	\$ 180,845	\$ -

AIA Document G702 • APPLICATION AND CERTIFICATE FOR PAYMENT • 1992 EDITION • AIA • 1992 • THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, D.C. 20006-5292

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G703-1992

APPENDIX 0306 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

PROJECT:
The Shelter
1905 Burton Lane
North Charleston, SC 29405

APPLICATION NUMBER: 7
APPLICATION DATE: 11/3/11
PERIOD TO: 10/31/11
ARCHITECT'S PROJECT NO:

A	B	C	D	E	F	G	H	L	
Item No.	Description of Work	Scheduled Value	Work Completed		Materials Presently Stored (Not In D or E)	Total Completed And Stored To Date (D + E + F)	% (G/C)	Balance To Finish (C - G)	Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ 12,097	\$ 12,687	\$ -	\$ 24,784	69%	\$ 11,363	\$ -
24	HVAC Systems	\$ 60,471	\$ -	\$ 13,600	\$ -	\$ 13,600	22%	\$ 46,871	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ 3,100	\$ 9,942	\$ -	\$ 13,042	86%	\$ 2,096	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ 8,000	\$ 2,966	\$ -	\$ 10,966	26%	\$ 31,236	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ 1,250	\$ -	\$ -	\$ 1,250	100%	\$ -	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1 P&P Bonds	\$ 10,264	\$ 10,264	\$ -	\$ -	\$ 10,264	100%	\$ -	\$ -
33	Change Order No. 2 E&O Premium	\$ 570	\$ 570	\$ -	\$ -	\$ 570	100%	\$ -	\$ -
34	Change Order No. 3 Conc. Fndt.	\$ 18,152	\$ 17,245	\$ 907	\$ -	\$ 18,152	100%	\$ -	\$ -
35	Change Order No. 4 Struct. Steel	\$ 32,450	\$ 32,450	\$ -	\$ -	\$ 32,450	100%	\$ -	\$ -
36	Change Order No. 5 Drywall & Glass	\$ 29,084	\$ 9,598	\$ 12,131	\$ -	\$ 21,729	75%	\$ 7,355	\$ -
37	Change Order No. 6 HVAC & Misc.	\$ 30,357	\$ 2,700	\$ -	\$ -	\$ 2,700	9%	\$ 27,657	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 303,305	\$ 87,274	\$ 52,233	\$ -	\$ 149,507	49%	\$ 153,798	\$ -
44	Subtotals Page 2	\$ 617,028	\$ 408,818	\$ 27,365	\$ -	\$ 436,183	71%	\$ 180,845	\$ -
	TOTALS	\$ 920,333	\$ 506,092	\$ 79,598	\$ -	\$ 585,690	64%	\$ 334,643	\$ -

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G703-1992

APPENDIX 0307 CERTIORARI

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS (See instructions on back)		OMB APPROVAL NO. 0340-0002		PAGE 01 OF 01 PAGES	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO. 07			
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST			
		FROM (Month, day, year) 10/01/2011 TO (Month, day, year) 10/31/2011			
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		10. PAYEE (Please check if to be sent if different than item 8) Name: No. and Street: City, State and ZIP Code:			
11. STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS		FUNCTIONS	ACTIVITIES	TOTAL
	(a) Rehabilitation	(b) New Construction	(c)		
a. Administrative expense	\$	\$	\$	\$	0.00
b. Preliminary expense					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fee					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		585,690.00			585,690.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	585,690.00			585,690.00
o. Deductions for program income					0.00
p. Net cumulative to date (line n minus line o)	0.00	585,690.00			585,690.00
q. Federal share to date		333,843.00			333,843.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)	0.00	333,843.00			333,843.00
t. Federal payments previously requested		293,887.00			293,887.00
u. Amount requested for reimbursement	\$	\$ 39,956.00	\$	\$	39,956.00
v. Percentage of physical completion of project	%	64 %	%	%	%
12. CERTIFICATION					
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
				DATE REPORT SUBMITTED	
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
				DATE SIGNED	
				TELEPHONE (Area code, number, and extension)	
				TELEPHONE (Area code, number, and extension)	

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Prescribed by OMB Circular A-102 and A-110

APPENDIX 0308 CERTIORARI

EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	12/12/2011	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

COPIES	DATE	NO.	DESCRIPTION.
3	12/12/11	1	Application for Payment No. 8

THESE ARE TRANSMITTED as checked below:

- ☒ For Approval and Payment ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO: IA-316-21 w/a Supt. w/a
Acct w/a

SIGNED:

David C. Haun
David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0309 CERTIORARI



"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT

PAGE ONE OF 3 PAGES

AIA DOCUMENT G702/CM

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 8
PERIOD TO: 11/30/2011
PROJECT NO:

CONTRACT DATE: 12/10/10

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 120,877.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 920,333.00
4. TOTAL COMPLETED & STORED TO DATE \$ 623,782.00
(Column G on G703)
5. RETAINAGE: See HTF draw request Project #11210
 - a. % of Completed Work, \$
(Columns D+E on G703)
 - b. % of Stored Material \$
(Column F on G703)
 Total Retainage (Line 5a + 5b or
Total in Column 1 of G703) \$ 623,782.00
6. TOTAL EARNED LESS RETAINAGE \$ 296,551.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 585,690.00
8. CURRENT PAYMENT DUE \$ 38,092.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 296,551.00

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$90,520.00	
Total approved this Month	\$30,357.00	
TOTALS	\$120,877.00	
NET CHANGES by Change Order	\$120,877.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

By: Emory J. Infinger Date: 12/13/11

Emory J. Infinger, President

State of: South Carolina

County of: Dorchester

Subscribed and sworn to before
me this 13th day of December 2011

Notary Public: Danna M. Mudd
My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for. Insert all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0310 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

APPLICATION NUMBER: 8
 APPLICATION DATE: 12/12/11
 PERIOD TO: 11/30/11
 ARCHITECT'S PROJECT NO:

PROJECT:
 The Shelter
 1905 Burton Lane
 North Charleston, SC 29405

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
1	Engineering & Plans	\$ 80,446	\$ 80,446	\$ -	\$ -	\$ 80,446	100%	\$ -	\$ -
2	General Conditions	\$ 88,677	\$ 61,187	\$ 3,547	\$ -	\$ 64,734	73%	\$ 23,943	\$ -
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ -
4	Permit and Licenses	\$ 9,963	\$ 9,963	\$ -	\$ -	\$ 9,963	100%	\$ -	\$ -
5	Mobilization	\$ 1,817	\$ 1,817	\$ -	\$ -	\$ 1,817	100%	\$ -	\$ -
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ 25,020	\$ -	\$ -	\$ 25,020	46%	\$ 29,213	\$ -
8	Concrete	\$ 35,251	\$ 35,251	\$ -	\$ -	\$ 35,251	100%	\$ -	\$ -
9	Masonry	\$ 13,615	\$ 13,615	\$ -	\$ -	\$ 13,615	100%	\$ -	\$ -
10	Steel	\$ 129,154	\$ 129,154	\$ -	\$ -	\$ 129,154	100%	\$ -	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ 20,738	\$ -	\$ -	\$ 20,738	100%	\$ -	\$ -
12	Wood/Carpentry	\$ 3,608	\$ 1,500	\$ -	\$ -	\$ 1,500	42%	\$ 2,108	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection/Roofing	\$ 39,407	\$ 6,518	\$ -	\$ -	\$ 6,518	17%	\$ 32,889	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ 4,331	\$ -	\$ -	\$ 4,331	29%	\$ 10,602	\$ -
16	Windows & Glazing	\$ 7,897	\$ 3,192	\$ 2,274	\$ -	\$ 5,466	69%	\$ 2,431	\$ -
17	Drywall/Insulation/Studs/Ceiling	\$ 48,861	\$ 36,600	\$ 4,549	\$ -	\$ 41,149	84%	\$ 7,712	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Toilet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
	Subtotals Page 2	\$ 617,028	\$ 436,183	\$ 10,370	\$ -	\$ 446,553	72%	\$ 170,475	\$ -

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APPENDIX 0311 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702
PROJECT:
The Shelter
1905 Burton Lane
North Charleston, SC 29405

APPLICATION NUMBER: 8
APPLICATION DATE: 12/12/11
PERIOD TO: 11/30/11
ARCHITECT'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not in D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ 24,784	\$ 11,863	\$ -	\$ 36,647	101%	\$ (500)	\$ -
24	HVAC Systems	\$ 60,471	\$ 13,600	\$ -	\$ -	\$ 13,600	22%	\$ 46,871	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ 13,042	\$ -	\$ -	\$ 13,042	86%	\$ 2,096	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ 10,966	\$ 13,105	\$ -	\$ 24,071	57%	\$ 18,131	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ 1,250	\$ -	\$ -	\$ 1,250	100%	\$ -	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1 P&P Bonds	\$ 10,264	\$ 10,264	\$ -	\$ -	\$ 10,264	100%	\$ -	\$ -
33	Change Order No. 2 E&O Premium	\$ 570	\$ 570	\$ -	\$ -	\$ 570	100%	\$ -	\$ -
34	Change Order No. 3 Conc. Fndt.	\$ 18,152	\$ 18,152	\$ -	\$ -	\$ 18,152	100%	\$ -	\$ -
35	Change Order No. 4 Struct. Steel	\$ 32,450	\$ 32,450	\$ -	\$ -	\$ 32,450	100%	\$ -	\$ -
36	Change Order No. 5 Drywall & Glass	\$ 29,084	\$ 21,729	\$ 2,754	\$ -	\$ 24,483	84%	\$ 4,601	\$ -
37	Change Order No. 6 HVAC & Misc.	\$ 30,357	\$ 2,700	\$ -	\$ -	\$ 2,700	9%	\$ 27,657	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 303,305	\$ 149,507	\$ 27,722	\$ -	\$ 177,229	58%	\$ 126,076	\$ -
44	Subtotals Page 2	\$ 617,028	\$ 436,183	\$ 10,370	\$ -	\$ 446,553	72%	\$ 170,475	\$ -
	TOTALS	\$ 920,333	\$ 585,690	\$ 38,092	\$ -	\$ 623,782	68%	\$ 296,551	\$ -

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APPENDIX 0312 CERTIORARI

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS		OMB APPROVAL NO. 0348-0002		PAGE 01 OF 01 PAGES	
(See instructions on back)		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO. 08	
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST: FROM (Month, day, year) 11/01/2011 TO (Month, day, year) 11/30/2011			
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		10. PAYEE (Where check is to be sent if different than item 8) Name: No. and Street: City, State and ZIP Code:			
11. STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS		FUNCTIONS		TOTAL
	(a) Rehabilitation	(b) New Construction	(c) ACTIVITIES		
a. Administrative expense	\$	\$	\$		0.00
b. Preliminary expenses					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fees					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		623,782.00			623,782.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	623,782.00			623,782.00
o. Deductions for program income					0.00
p. Net cumulative to date (line n minus line o)	0.00	623,782.00			623,782.00
q. Federal share to date		355,556.00			355,556.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)	0.00	355,556.00			355,556.00
t. Federal payments previously requested		333,843.00			333,843.00
u. Amount requested for reimbursement	\$	\$ 21,713.00	\$		\$ 21,713.00
v. Percentage of physical completion of project	%	68 %	% %		%
12. CERTIFICATION:		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REPORT SUBMITTED	
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		TYPED OR PRINTED NAME AND TITLE	
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		TYPED OR PRINTED NAME AND TITLE	
		Bobby Knight, President		TELEPHONE (Area code, number, and extension) 843/735-0814	
		Emory J. Infinger, President		DATE SIGNED TELEPHONE (Area code, number, and extension) 843/554-9414	

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APPENDIX 0313 CERTIORARI

EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.

PO BOX 41348 - CHARLESTON, SC 29423
(843) 554-9414 (843) 747-1435 (fax)

LETTER OF TRANSMITTAL

DATE	1/6/2012	JOB NO.	IA-316
ATTENTION: Mr. Bobby Knight			
RE: The Shelter 1905 Burton Lane North Charleston, SC 29405			

TO:

North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

WE ARE SENDING YOU:

- ☒ Attached ☒ Mailed ☐ Faxed ☐ Hand Carried
☐ Shop Drawings ☐ Prints ☐ Plans ☐ Samples ☐ Specifications
☐ Copy of letter ☐ Change order ☒ See Below

COPIES	DATE	NO.	DESCRIPTION
3	01/06/12	1	Application for Payment No. 9

THESE ARE TRANSMITTED as checked below:

- ☒ For Approval and Payment ☐ Approved as submitted ☐ Resubmit copies for approval
☐ For your use ☐ Approved as noted ☐ Submit copies for distribution
☐ As requested ☐ Returned for corrections ☐ Return corrected prints
☐ For review and comment ☐ _____
☐ FOR BIDS DUE _____ ☐ PRINTS RETURNED AFTER LOAN TO US

REMARKS

COPY TO IA-316-21 w/a Supt. w/a
Acc't w/a

SIGNED:

David C. Haun, Project Manager

If enclosures are not as noted, kindly notify us at once.

APPENDIX 0314 CERTIORARI

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"South Code 29-6-10 et. seq. requires timely payment to construction contractors and subcontractors, and provides interest penalties for late payment."

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702/CM

PAGE ONE OF 3 PAGES

TO (OWNER): North Charleston Community
Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

PROJECT: The Shelter
1905 Burton Lane
North Charleston, SC

APPLICATION #: 9
PERIOD TO: 12/31/2011
PROJECT NO:

FROM (CONTRACTOR):
Emory J. Infinger & Assoc. Construction Co., Inc.
PO Box 41348
Charleston, SC 29423

VIA ENGINEER:

CONTRACT DATE: 12/10/10

CONTRACT FOR: General Construction/Design-Build Project

CONTRACTOR'S APPLICATION FOR PAYMENT

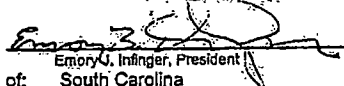
Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 799,456.00
2. Net Change by Change Orders \$ 120,877.00
3. CONTRACT SUM TO DATE (Line 1 +/- 2) \$ 920,333.00
4. TOTAL COMPLETED & STORED TO DATE \$ 664,215.00
(Column G on G703)
5. RETAINAGE: See HTF draw request Project #11210
 - a. % of Completed Work \$
(Columns D+E on G703)
 - b. % of Stored Material \$
(Column F on G703)
 Total Retainage (Line 5a + 5b or
Total in Column 1 of G703) \$ 664,215.00
6. TOTAL EARNED LESS RETAINAGE \$ 664,215.00
(Line 4 less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT
(Line 6 from prior Certificate) \$ 623,782.00
8. CURRENT PAYMENT DUE \$ 40,433.00
9. BALANCE TO FINISH, INCLUDING RETAINAGE
(Line 3 less Line 6) \$ 256,118.00

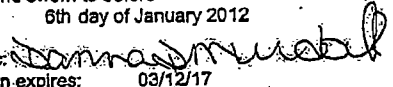
CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$90,520.00	
Total approved this Month	\$30,357.00	
TOTALS	\$120,877.00	
NET CHANGES by Change Order	\$120,877.00	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown therein is now due.

CONTRACTOR: Emory J. Infinger & Assoc. Construction Co., Inc.

By:  Date: 01/06/12

Emory J. Infinger, President
State of: South Carolina
County of: Dorchester
Subscribed and sworn to before
me this 6th day of January 2012

Notary Public: 
My Commission expires: 03/12/17

CERTIFICATE FOR PAYMENT

In accordance with Contract Documents, based on on-site observations and the data comprising application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated; the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$

(Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the Continuation Sheet that are changed to conform to the amount certified.)

OWNER: By: Date:

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner of Contractor under this Contract.

APPENDIX 0315 CERTIORARI

CONTINUATION SHEET

Page 2 of 3 Pages.

ATTACHMENT TO AIA DOCUMENT G702
PROJECT:
The Shelter
1905 Burton Lane
North Charleston, SC 29405

APPLICATION NUMBER: 9
APPLICATION DATE: 1/6/12
PERIOD TO: 12/31/11
ARCHITECT'S PROJECT NO:

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G		H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period		Total Completed And Stored To Date (D + E + F)	% (G/C)		
1	Engineering & Plans	\$ 80,446	\$ 80,446	\$ -	\$ -	\$ 80,446	100%	\$ -	\$ -
2	General Conditions	\$ 88,677	\$ 64,734	\$ 7,945	\$ -	\$ 72,679	82%	\$ 15,998	\$ -
3	Builders Risk Insurance	\$ 6,851	\$ 6,851	\$ -	\$ -	\$ 6,851	100%	\$ -	\$ -
4	Permit and Licenses	\$ 9,963	\$ 9,963	\$ -	\$ -	\$ 9,963	100%	\$ -	\$ -
5	Mobilization	\$ 1,817	\$ 1,817	\$ -	\$ -	\$ 1,817	100%	\$ -	\$ -
6	Demobilization	\$ 1,817	\$ -	\$ -	\$ -	\$ -		\$ 1,817	\$ -
7	Sitework	\$ 54,233	\$ 25,020	\$ -	\$ -	\$ 25,020	46%	\$ 29,213	\$ -
8	Concrete	\$ 35,251	\$ 35,251	\$ -	\$ -	\$ 35,251	100%	\$ -	\$ -
9	Masonry	\$ 13,615	\$ 13,615	\$ -	\$ -	\$ 13,615	100%	\$ -	\$ -
10	Steel	\$ 129,154	\$ 129,154	\$ -	\$ -	\$ 129,154	100%	\$ -	\$ -
11	Steel Roof Trusses	\$ 20,738	\$ 20,738	\$ -	\$ -	\$ 20,738	100%	\$ -	\$ -
12	Wood/Carpentry	\$ 3,608	\$ 1,500	\$ -	\$ -	\$ 1,500	42%	\$ 2,108	\$ -
13	Millwork/Cabinetry	\$ 3,580	\$ -	\$ -	\$ -	\$ -		\$ 3,580	\$ -
14	Thermal/Moisture Protection/Roofing	\$ 39,407	\$ 6,518	\$ -	\$ -	\$ 6,518	17%	\$ 32,889	\$ -
15	Doors, Frames & Hardware	\$ 14,933	\$ 4,331	\$ -	\$ -	\$ 4,331	29%	\$ 10,602	\$ -
16	Windows & Glazing	\$ 7,897	\$ 5,466	\$ -	\$ -	\$ 5,466	69%	\$ 2,431	\$ -
17	Drywall/Insulation/Studs/Ceiling	\$ 48,881	\$ 41,149	\$ -	\$ -	\$ 41,149	84%	\$ 7,732	\$ -
18	FRP Panels	\$ 7,872	\$ -	\$ -	\$ -	\$ -		\$ 7,872	\$ -
19	Vinyl Tile & Base	\$ 9,083	\$ -	\$ -	\$ -	\$ -		\$ 9,083	\$ -
20	Field Painting	\$ 18,286	\$ -	\$ -	\$ -	\$ -		\$ 18,286	\$ -
21	Exterior Siding & Trim	\$ 19,001	\$ -	\$ -	\$ -	\$ -		\$ 19,001	\$ -
22	Specialties/Tollet Accessories, Etc.	\$ 1,938	\$ -	\$ -	\$ -	\$ -		\$ 1,938	\$ -
	Subtotals Page 2	\$ 617,028	\$ 446,553	\$ 7,945	\$ -	\$ 454,498	74%	\$ 162,530	\$ -

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APPENDIX 0316 CERTIORARI

CONTINUATION SHEET

Page 3 of 3 Pages

ATTACHMENT TO AIA DOCUMENT G702

APPLICATION NUMBER: 9
APPLICATION DATE: 1/6/12
PERIOD TO: 12/31/11
ARCHITECT'S PROJECT NO:

PROJECT:
The Shelter
1905 Burton Lane
North Charleston, SC 29405

A Item No.	B Description of Work:	C Scheduled Value	D Work Completed		F Materials Presently Stored (Not In D or E)	G Total Completed And Stored To Date (D + E + F)	H % (G/C)	I Balance To Finish (C - G)	J Retainage
			From Previous Application (D + E)	This Period					
23	Plumbing Work	\$ 36,147	\$ 36,647	\$ -	\$ -	\$ 36,647	101%	\$ (500)	\$ -
24	HVAC Systems	\$ 60,471	\$ 13,600	\$ 32,488	\$ -	\$ 46,088	76%	\$ 14,383	\$ -
25	Kitchen Exhaust Hood	\$ 17,165	\$ -	\$ -	\$ -	\$ -		\$ 17,165	\$ -
26	Fire Sprinkler System	\$ 15,138	\$ 13,042	\$ -	\$ -	\$ 13,042	86%	\$ 2,096	\$ -
27	Fire Alarm System	\$ 6,055	\$ -	\$ -	\$ -	\$ -		\$ 6,055	\$ -
28	Electrical Systems	\$ 42,202	\$ 24,071	\$ -	\$ -	\$ 24,071	57%	\$ 18,131	\$ -
29	Allowance 1 - Relocate Flagpole	\$ 1,250	\$ 1,250	\$ -	\$ -	\$ 1,250	100%	\$ -	\$ -
30	Allowance 2 - Pantry Shelves	\$ 1,500	\$ -	\$ -	\$ -	\$ -		\$ 1,500	\$ -
31	Allowance 3 - Landscaping	\$ 2,500	\$ -	\$ -	\$ -	\$ -		\$ 2,500	\$ -
32	Change Order No. 1 P&P Bonds	\$ 10,264	\$ 10,264	\$ -	\$ -	\$ 10,264	100%	\$ -	\$ -
33	Change Order No. 2 E&O Premium	\$ 570	\$ 570	\$ -	\$ -	\$ 570	100%	\$ -	\$ -
34	Change Order No. 3 Conc. Fndt.	\$ 18,152	\$ 18,152	\$ -	\$ -	\$ 18,152	100%	\$ -	\$ -
35	Change Order No. 4 Struct. Steel	\$ 32,450	\$ 32,450	\$ -	\$ -	\$ 32,450	100%	\$ -	\$ -
36	Change Order No. 5 Drywall & Glass	\$ 29,084	\$ 24,483	\$ -	\$ -	\$ 24,483	84%	\$ 4,601	\$ -
37	Change Order No. 6 HVAC & Misc.	\$ 30,357	\$ 2,700	\$ -	\$ -	\$ 2,700	9%	\$ 27,657	\$ -
38		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
39		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
40		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
41		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
42		\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	\$ -
43	Subtotals Page 3	\$ 303,305	\$ 177,229	\$ 32,488	\$ -	\$ 209,717	69%	\$ 93,588	\$ -
44	Subtotals Page 2	\$ 617,028	\$ 446,553	\$ 7,945	\$ -	\$ 454,498	74%	\$ 162,530	\$ -
	TOTALS	\$ 920,333	\$ 623,782	\$ 40,433	\$ -	\$ 664,215	72%	\$ 256,118	\$ -

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APPENDIX 0317 CERTIORARI

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS		OMB APPROVAL NO. 0348-0002		PAGE 01 OF 01 PAGES	
(See instructions on back)		1. TYPE OF REQUEST ☐ FINAL ☒ PARTIAL		2. BASIS OF REQUEST ☐ CASH ☒ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED Department of Veteran Affairs Grant & Per Diem Program		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY		5. PARTIAL PAYMENT REQUEST NO. 09	
6. EMPLOYER IDENTIFICATION NUMBER 57-0938275	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER B8310	PERIOD COVERED BY THIS REQUEST			
		FROM (Month, day, year) 12/01/2011		TO (Month, day, year) 12/31/2011	
8. RECIPIENT ORGANIZATION Name: North Charleston Community Interfaith Shelter No. and Street: 1905 Burton Lane City, State and ZIP Code: North Charleston, SC 29405		10. PAYEE (Where check is to be sent if different than firm 8) Name: No. and Street: City, State and ZIP Code:			
11. STATUS OF FUNDS					
CLASSIFICATION	PROGRAMS		FUNCTIONS		TOTAL
	(a) Rehabilitation	(b) New Construction	(c)		
a. Administrative expense	\$	\$	\$	\$	0.00
b. Preliminary expense					0.00
c. Land, structures, right-of-way					0.00
d. Architectural engineering basic fees					0.00
e. Other architectural engineering fee					0.00
f. Project inspection fees					0.00
g. Land development					0.00
h. Relocation expense					0.00
i. Relocation payments to individuals and businesses					0.00
j. Demolition and removal					0.00
k. Construction and project improvement cost		664,215.00			664,215.00
l. Equipment					0.00
m. Miscellaneous cost					0.00
n. Total cumulative to date (sum of lines a thru m)	0.00	664,215.00			664,215.00
o. Deductions for program income					0.00
p. Net cumulative to date (line n minus line o)	0.00	664,215.00			664,215.00
q. Federal share to date		378,603.00			378,603.00
r. Rehabilitation grants (100% reimbursement)					0.00
s. Total Federal share (sum of lines q and r)	0.00	378,603.00			378,603.00
t. Federal payments previously requested		355,556.00			355,556.00
u. Amount requested for reimbursement	\$	\$ 23,047.00	\$	\$	23,047.00
v. Percentage of physical completion of project	%	72 %	%	%	%
12. CERTIFICATION					
I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.	a. RECIPIENT		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REPORT SUBMITTED
			TYPED OR PRINTED NAME AND TITLE		TELEPHONE (Area code, number, and extension)
			Bobby Knight, President		843/735-0814
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	
				TYPED OR PRINTED NAME AND TITLE	
				Emory J. Infinger, President	
				TELEPHONE (Area code, number, and extension)	
				843/554-9414	

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APPENDIX 0318 CERTIORARI.

CHANGE ORDER

AIA DOCUMENT G701

OWNER ☒
ARCHITECT/Engineer ☒
CONTRACTOR ☒
FIELD ☒
OTHER ☒

PROJECT: The Good Neighbor Center
(name, address) 1905 Burton Lane
N. Charleston, SC 29405
TO CONTRACTOR: Emory J. Infinger & Assoc.
(name, address) Construction Co., Inc.
4748 Franchise St.
PO Box 41348
Charleston, SC 29423

CHANGE ORDER NUMBER: 001

DATE: 1 March 2011

ARCHITECT'S PROJECT NO: IA-316

CONTRACT DATE: 10 December 2010

CONTRACT FOR: New Construction

The Contract is changed as follows:

See attachment #001 dated 1 March 2011 for enumeration and description of changes covered by this Change Order.



Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) (Guaranteed Maximum Price) was \$ 799,456.00

Net change by previously authorized Change Orders \$ 0.00

The (Contract Sum) (Guaranteed Maximum Price) prior to this Change Order was \$ 799,456.00

The (Contract Sum) (Guaranteed Maximum Price) will be (increased) (decreased) (unchanged) by this Change Order in the amount of \$ 10,264.00

The new (Contract Sum) (Guaranteed Maximum Price) including this Change Order will be \$ 809,720.00

The Contract Time will be (increased) (decreased) (unchanged) by zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is same as original contract term

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive.

W. R. Stephens &
Associates, Inc.
Engineer of Record
111 Spring Hall Dr.
Address
Goose Creek, SC 29445

Emory J. Infinger & Assoc.
Construction Co., Inc.
CONTRACTOR
4748 Franchise St.
Address
N. Charleston, SC 29418

North Charleston Community
Interfaith Shelter
OWNER
1905 Burton Ln.
Address
N. Charleston, SC 29405

BY W.R. Stephens, PE
W. R. Stephens, PE
DATE 1 March 2011

BY Emory J. Infinger
Emory J. Infinger
DATE 1 March 2011

BY Bobby Knight
Bobby Knight
DATE 1 March 2011



**EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.**

4748 FRANCHISE STREET (29418) • P.O. BOX 41348 • CHARLESTON, SC 29423

1 March 2011

Attachment #001 to Change Order #001

**Owner: North Charleston Community Interfaith Shelter
1905 Burton Lane
N. Charleston, South Carolina 29405**

**Project: The Good Neighbor Center
1905 Burton Lane
N. Charleston, South Carolina 29405**

The new construction contract dated 10 December 2010 is changed, as follows:

- 1. Performance & Payment Bond in the full amount of the contract, adds... \$10,264.00**
- 2. The legal name of the Owner is changed to:**

**North Charleston Community Interfaith Shelter
1905 Burton Lane
N. Charleston, South Carolina 29405**
- 3. Contract retainage per Article #5.4.3 shall be changed from zero (0%) percent to read: "Subject to ten (10 %) percent retainage on South Carolina Housing Trust Funds (35% of total contract); VA Funds (65% of total contract) remain as zero (0 %) percent retainage"**
- 4. Elapsed time since contract execution on 10 December 2010 is currently 82 consecutive calendar days. Any additional cost incurred due to delays beyond our control shall be subject to review, upon receipt of final bids from vendors/ sub-contractors. Recent global events have changed market conditions and this may affect our previous estimated budget.**

End of Attachment

APPENDIX 0320 CERTIORARI

TELEPHONE: (843) 554-9414

FAX: (843) 747-1435

CHANGE ORDER

OWNER ☒
 ARCHITECT Engr. ☒
 CONTRACTOR ☒
 FIELD ☒
 OTHER ☒

AIA DOCUMENT G701

PROJECT: The Shelter
 (name, address) 1905 Burton Lane
 N. Charleston, SC 29405
 TO CONTRACTOR: Emory J. Infinger & Assoc.
 (name, address) Construction Co., Inc.
 4748 Franchise Street
 PO Box 41348
 Charleston, SC 29423

CHANGE ORDER NUMBER: 002
 DATE: 13 April 2011
 ARCHITECT'S PROJECT NO: 1A-316
 CONTRACT DATE: 10 December 2010
 CONTRACT FOR: New Construction

The Contract is changed as follows:

See attachment #002 dated 13 April 2011 for enumeration and description of modifications incorporated by this change order.



Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) ~~(Contract Sum)~~ was \$ 799,456.00
 Net change by previously authorized Change Orders \$ 10,264.00
 The (Contract Sum) ~~(Contract Sum)~~ prior to this Change Order was \$ 809,720.00
 The (Contract Sum) ~~(Contract Sum)~~ will be (increased) (decreased)
 (increased) by this Change Order in the amount of \$ 570.00
 The new (Contract Sum) ~~(Contract Sum)~~ including this Change Order will be \$ 810,290.00

The Contract Time will be (increased) (decreased) (unchanged) by (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is per original contract.

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive.

WR Stephens & Assoc., Inc.
 ARCHITECT
 111 Spring Hall Dr.
 Address
 Goose Creek, SC 29445

Emory J. Infinger & Assoc.
 CONTRACTOR
 4748 Franchise Street
 Address
 N. Charleston, SC 29418

North Charleston Community Interfaith
 OWNER
 Shelter
 1905 Burton Lane
 Address
 N. Charleston, SC 29405

BY WR Stephens, PE
 WR Stephens, PE
 DATE 4/13/11

BY Emory J. Infinger
 Emory J. Infinger
 DATE 4-13-11

BY Bobby Knight
 Bobby Knight
 DATE 15 April 2011

13 April 2011

Attachment #002 to Change Order #002

Owner: North Charleston Community Interfaith Shelter
1905 Burton Lane
N. Charleston, South Carolina 29405

Project: The Shelter (formerly called GNC)
1905 Burton Lane
N. Charleston, South Carolina 29405

The new construction contract dated 10 December 2010 and previously amended by Change Order #001 dated 1 March 2011 is herewith changed, as follows:

1. Existing flagpole to remain in place, deducts the sum of: (\$1,250.00)
2. W R Stephens & Associates, Inc. Premium cost for E&O Insurance adds the sum of: \$1,820.00
3. The Project name is herewith changed to: The Shelter

End of Attachment

CHANGE ORDER

OWNER ☒
~~XXXXXX~~ Engr. ☒
 CONTRACTOR ☒
 FIELD ☒
 OTHER ☒

AIA DOCUMENT G701

PROJECT: The Shelter
 (name, address) 1905 Burton Lane
 N. Charleston, SC 29405

CHANGE ORDER NUMBER: 003

DATE: 7 June 2011

TO CONTRACTOR: Emory J. Infinger & Assoc.
 (name, address) Construction Co., Inc.
 4748 Franchise Street
 PO Box 41348
 Charleston, SC 29423

ARCHITECT'S PROJECT NO: IA-316

CONTRACT DATE: 10 December 2010

CONTRACT FOR: New Construction

The Contract is changed as follows:

For additional concrete foundations and miscellaneous concrete work. In accordance with the structural foundation plans by W.R. Stephens & Associates, Inc. dated 3 June 2011, entitled S001, S002 and S003: Foundation Design based on Coastal Engineering & Testing's soil report dated 28 March 2011 requiring substantial isolated column footings. Includes miscellaneous concrete items, such as stair curbing, walkway steps and planter curbing per civil engineer. Estimated foundation and slab was based on monolithic slab footing in original bid proposal which assumed proper soil conditions at site existed. Planter curbing, stair curbing and walkway steps were added after bid proposal and deemed necessary. Current estimate \$41,700 less \$25,198 (original allowance) equals \$16,502 plus 10% fee equalling \$18,152.



Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) (~~808,290.00~~) was \$799,456.00
 Net change by previously authorized Change Orders \$10,834.00
 The (Contract Sum) (~~808,290.00~~) prior to this Change Order was \$810,290.00
 The (Contract Sum) (~~808,290.00~~) will be (increased) (decreased)
 (unchanged) by this Change Order in the amount of \$18,152.00
 The new (Contract Sum) (~~808,290.00~~) including this Change Order will be \$828,442.00

The Contract Time will be (~~100 days~~) (unchanged) by (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is per original contract.

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive.

MR Stephens & Assoc., Inc.	Emory J. Infinger & Assoc.	North Charleston Community Interfaith
ARCHITECT	CONTRACTOR	OWNER
111 Spring Hall Dr.	4748 Franchise Street	1905 Burton Lane
Address	Address	Address
Goose Creek, SC 29445	N. Charleston, SC 29418	N. Charleston, SC 29405
BY <i>W.R. Stephens, PE</i>	BY <i>Emory J. Infinger</i>	BY <i>Bobby Knight</i>
MR Stephens, PE	Emory J. Infinger	Bobby Knight
DATE <i>JUNE 7, 2011</i>	DATE <i>6-8-11</i>	DATE <i>JUNE 7, 2011</i>

CHANGE ORDER

AIA DOCUMENT G701

OWNER ☒
XEROX/Engr. ☒
CONTRACTOR ☒
FIELD ☒
OTHER ☒

PROJECT: The Shelter
(name, address) 1905 Burton Lane
N. Charleston, SC 29405
TO CONTRACTOR: Emory J. Infinger & Assoc.
(name, address) Construction Co., Inc.
4748 Franchise Street
PO Box 41348
Charleston, SC 29423

CHANGE ORDER NUMBER: 04
DATE: 25 July 2011
ARCHITECT'S PROJECT NO.: IA-316
CONTRACT DATE: 10 December 2010
CONTRACT FOR: New Construction

The Contract is changed as follows:

- 1) Provide all structural and miscellaneous steel erection to complete the project to include stairs, handrails and guardrails, Add \$33,200.00
- 2) Credit custom jobsite sign. Deduct (\$ 750.00)

Net Add \$32,450.00



Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) (One hundred and twenty thousand dollars) was \$ 799,456.00
Net change by previously authorized Change Orders \$ 28,986.00
The (Contract Sum) (Eight hundred and twenty thousand dollars) prior to this Change Order was \$ 828,442.00
The (Contract Sum) (One hundred and twenty thousand dollars) will be (increased) (decreased) by this Change Order in the amount of \$ 32,450.00
The new (Contract Sum) (One hundred and fifty thousand dollars) including this Change Order will be \$ 860,892.00

The Contract Time will be (increased) (decreased) (unchanged) by Fourteen days (14) days.
The date of Substantial Completion as of the date of this Change Order therefore is 23 January 2012.

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive.

WR Stephens & Assoc., Inc.
ARCHITECT
111 Spring Hall Dr.
Address
Goose Creek, SC 29445

Emory J. Infinger & Assoc.
CONTRACTOR
4748 Franchise Street
Address
N. Charleston, SC 29418

North Charleston Community Interfaith
OWNER
Shelter
1905 Burton Lane
Address
N. Charleston, SC 29405

BY WR Stephens
WR Stephens, PE
DATE 7/27/11

BY Emory J. Infinger
Emory J. Infinger
DATE

BY Bobby Knight
Bobby Knight
DATE 7/27/11

CHANGE ORDER

AIA DOCUMENT G701

OWNER ☒
~~ARCHITECT~~ Engr. ☒
 CONTRACTOR ☒
 FIELD ☒
 OTHER ☒

PROJECT: The Shelter
 (name, address) 1905 Burton Lane
 N. Charleston, SC 29405
 TO CONTRACTOR: Emory J. Infinger & Assoc.
 (name, address) Construction Co., Inc.
 4748 Franchise Street
 PO Box 41348
 Charleston, SC 29423

CHANGE ORDER NUMBER: 05
 DATE: 18 August 2011
 ARCHITECT'S PROJECT NO: IA-316
 CONTRACT DATE: 10 December 2010
 CONTRACT FOR: New Construction

The Contract is changed as follows:

- 1) Furnish and install one (1) Oasis, barrier free water cooler, Model #PBAC, Add-----\$ 1,271.00
 - 2) Premium cost of metal framing, drywall, insulation, OSB sheathing, acoustical ceilings, porch framing, mechanical clips, and other associated materials, plus additional labor, equipment and material for added porch framing and interior partitions and two (2) layer drywall in all restrooms per NFPA, and R-30 insulation between 1st and 2nd floor, add-----\$23,985.00
 - 3) Provide impact glass (DP50) and frame 25, as requested in black finish in lieu of plywood protected windows. Add-----\$ 3,501.00
 - 4) Provide door signage, in addition to original allowance for HC restroom signage Add-----\$ 327.00
- Total of items 1-4 Adds-----\$29,084.00



Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) (~~800,000.00~~) was.....\$ 799,456.00
 Net change by previously authorized Change Orders.....\$ 61,436.00
 The (Contract Sum) (~~800,000.00~~) prior to this Change Order was.....\$ 860,892.00
 The (Contract Sum) (~~800,000.00~~) will be (increased) (~~800,000.00~~)
 (increased) by this Change Order in the amount of.....\$ 29,084.00
 The new (Contract Sum) (~~800,000.00~~) including this Change Order will be.....\$ 889,976.00

The Contract Time will be (increased) (~~30~~) by seven calendar days (7) days.
 The date of Substantial Completion as of the date of this Change Order therefore is 30 January 2012

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive.

WR Stephens & Assoc., Inc.

ARCHITECT

111 Spring Hall Dr.

Address

Goose Creek, SC 29445

Emory J. Infinger & Assoc.

CONTRACTOR

4748 Franchise Street

Address

N. Charleston, SC 29418

North Charleston Community Interfaith

OWNER

1905 Burton Lane

Address

N. Charleston, SC 29405

BY

WR Stephens, PE

DATE

BY

Emory J. Infinger

DATE

BY

Bobby Knight

DATE

CHANGE ORDER

OWNER ☒
~~ARCHITECT~~ Engr. ☒
 CONTRACTOR ☒
 FIELD ☒
 OTHER ☒

AIA DOCUMENT G701

PROJECT: The Shelter
 (name, address) 1905 Burton Lane
 N. Charleston, SC 29405

CHANGE ORDER NUMBER: 06

DATE: 9 September 2011

TO CONTRACTOR: Emory J. Infinger & Assoc.
 (name, address) Construction Co., Inc.
 4748 Franchise Street
 PO Box 41348
 Charleston, SC 29423

ARCHITECT'S PROJECT NO: IA-316

CONTRACT DATE: 10 December 2010

CONTRACT FOR: New Construction

The Contract is changed as follows:

- 1) Change drop-in sink to wall-hung sinks Add-----\$546.00
 - 2) Reimbursement cost for 30-ton crane one (1) extra day Add-----\$504.00
 - 3) Add #01, furnish and install broan attic fan and wire Add-----\$1,169.00
 - 4) Credit premium cost of black anodized window metal and provide dark bronze anodized metal Deduct--\$(225.00)
 - 5) Furnish and install FRP panels 5' high in all restrooms on the adjacent wall closes to water closet Adds-----\$1,446.00
 - 6) Special instructions for FEMA welding (8/22, 23, 24/2011) Adds-----\$2,167.00
 - 7) Furnish and install 10-ton Mitsubishi ductless AC system Adds-----\$24,750.00
- Total of items 1-7 is the sum of-----\$30,357.00



Not valid until signed by the Owner, Architect and Contractor.

The original (Contract Sum) ~~(to be completed by owner)~~ was \$ 799,456.00
 Net change by previously authorized Change Orders \$ -90,520.00
 The (Contract Sum) ~~(to be completed by owner)~~ prior to this Change Order was \$ 889,976.00
 The (Contract Sum) ~~(to be completed by owner)~~ will be (increased) (decreased)
 (unchanged) by this Change Order in the amount of \$ 30,357.00
 The new (Contract Sum) ~~(to be completed by owner)~~ including this Change Order will be \$ 920,333.00

The Contract Time will be ~~(to be completed by owner)~~ (unchanged) by zero (0) days.
 The date of Substantial Completion as of the date of this Change Order therefore is 30 January 2012

NOTE: This summary does not reflect changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive.

WR Stephens & Assoc., Inc.

Emory J. Infinger & Assoc.

North Charleston Community Interfaith

ARCHITECT

CONTRACTOR

OWNER

Shelter

111 Spring Hall Dr.

4748 Franchise Street

1905 Burton Lane

Address

Address

Address

Goose Creek, SC 29445

N. Charleston, SC 29418

N. Charleston, SC 29405

BY

BY

BY

WR Stephens, PE

Emory J. Infinger

Bobby Knight

DATE

DATE 9-9-11

DATE

[illegible]

283

PLAINTIFF'S
EXHIBIT
21



**EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.**

4748 FRANCHISE STREET (29418) • P.O. BOX 41348 • CHARLESTON, SC 29423

December 26 2011

North Charleston Community Interfaith Shelter
1905 Burton Lane
North Charleston, SC 29405

Attn: Mr. Bobby Knight

RE: The Shelter
NCCIS New Construction #08-0873-SC

Dear Mr. Knight

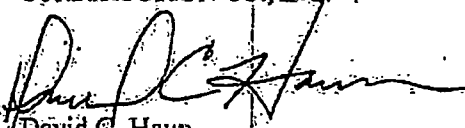
This project has been inactive for nearly two months due to lack of payment. As you can see in the attached photographs the exposed wood is weathering, the felt is expanding from moisture, the ice and water shield on the roof has been exposed to the sun and should have been covered by now and the exterior doors and windows need to be installed to prevent rain from blowing in and creating a mold hazard.

We proposed a rescue option in early November which would have avoided stopping work, secured the building, and left approximately \$280,000.00 in your grant accounts. This rescue option can still be done but the cost has and is increasing.

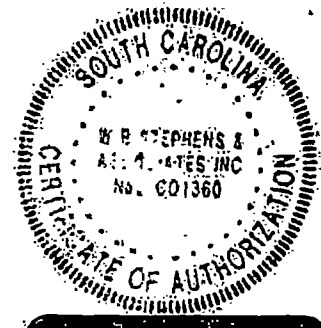
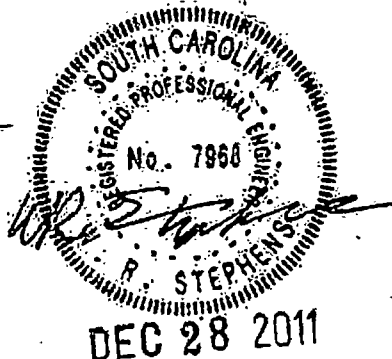
We understand that you are seeking additional funds to increase your VA grant but something needs to be done now with the available grant funds to secure and protect the current investment.

Please respond with your plans to continue with this project or abandon it. We and our subcontractors and suppliers cannot finance this project and stored materials such as plumbing fixtures, HVAC equipment need to be paid for or returned.

Sincerely,
EMORY J. INFINGER & ASSOCIATES
CONSTRUCTION CO., INC.


David C. Haun
Project Manager

cc: IA-316-19



TELEPHONE: (843) 554-9414

FAX: (843) 747-1435

APPENDIX 0328 CERTIORARI





DEPARTMENT OF VETERANS AFFAIRS
Veterans Health Administration
Washington, DC 20420

June 13, 2012

In Reply Refer To: VA National GPD Program Office
10770 N. 46th St. Suite C-200
Tampa, FL 33617

Mr. Bobby Knight, Board Chairman & President
North Charleston Community Interfaith Shelter
d.b.a. Good Neighbor Center
3940 Hottinger Avenue
North Charleston, SC 29405

Dear Mr. Knight:

This letter is in response to your requests in your letter of May 27, 2012, regarding the North Charleston Community Interfaith Shelter, d.b.a. the Good Neighbor Center grant projects 97-45-SC and 08-873-SC.

The Grant and Per Diem Program Office sent a pre-determination letter to the agency on August 11, 2011, for the amount of overbilling of per diem based on the fiscal review of project 97-45-SC conducted by VA's Financial Service Center. The reply was due on October 1, 2011. The agency failed to respond by the date indicated in the GPD letter. A second letter reminding the agency of the need to respond was sent on January 20, 2012, with a response due of March 1, 2012. The agency failed to respond by the date due. Subsequently, as per protocol, the GPD Program Office has prepared and forwarded a letter of indebtedness to the VA Associate Deputy Secretary for Financial and Business Operations for issuance to North Charleston Community Interfaith Shelter seeking to recover the overbilling in the amount of \$122,073.00. This letter will arrive under separate cover and was address to you, in care of your agency's attorney.

In regard to the per diem for project 97-45-SC: The one day of per diem for April 1, 2012, requested by your agency is under review. The GPD Program Office contacted the VA Liaison to facilitate payment for this one day of service. In turn the VA Liaison has contacted your agency's attorney to facilitate the payment for this day and requested your agency provide the billing documentation.

The local VAMC suspended admissions and per diem payment to the agency on April 2, 2012, for project number 97-45-SC due to the failure of the agency to pass the inspection requirements. This was a result of the agency not responding to the VAMC requests to make the changes needed to meet safety requirements. To date this situation has not changed. If the agency makes the needed safety corrections and passes the GPD inspection then per diem may be reinstated. If your agency has questions regarding the required corrections please contact your VA Liaison.

APPENDIX 0329 CERTIORARI



Regarding project 08-873-SC: In a letter dated November 16, 2011, North Charleston Community Interfaith Shelter was informed the capital grant payments for project number 08-873-SC will be held until such time as the agency could demonstrate it has in place all matching funds needed to complete the project. This withhold of capital payments included a request for payment of \$18,000.00 dollars.

This decision to withhold was based on e-mails from your agency indicating the project costs had increased by \$99,000 and your agency could not provide documentation that it has in place firm commitments of match funding to ensure the project completion.

To date this has not been accomplished. Therefore, the capital funding that remains for this project continues to be held until such time as the agency can demonstrate it has the matching funds to complete the project. Per the five year requirements regarding capital grant funding, the remaining capital funds are scheduled to be returned to the US Treasury on May 1, 2013.

If the agency documents the firm match needed to complete the project prior to the funds being swept per the five year requirement VA would release the remaining funding and continue on with the project. Upon project completion and the passing of the VA GPD inspection requirements the agency under this project would be eligible for per diem payments.

If the agency fails to document firm match prior to the funds being swept VA would have to terminate the project and seek recapture of any capital grant funding previously drawn.

If you have any questions regarding this correspondence, you may contact the VA National Grant and Per Diem Program Office at 1-877-332-0334.

Sincerely,

A handwritten signature in black ink, reading "Jeffery L. Quarles MRC, LICDC". The signature is fluid and cursive.

Jeffery L. Quarles, MRC, LICDC
Director, Grant/Per Diem Program

cc: Mr. Gordon Garrett, Attorney for the Board
Ms. Patricia Bradford, VISN 7 Homeless Coordinator
Ms. Linda William, VAGPD Liaison



DEPARTMENT OF
VETERANS AFFAIRS
JAMES A. HALEY VETERANS HOSPITAL
13000 BRUCE B. DOWNS BLVD.
TAMPA, FL 33612-4745

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, \$300

(GPD)

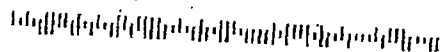
PRE-SORTED
FIRST CLASS



UNITED STATES POSTAGE
02 1M \$ 00.42⁴
0304257179 JUN 15 2012
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Mr. Bobby Knight, Board Chairman & President
North Charleston Community Interfaith Shelter
d.b.a. Good Neighbor Center
3940 Hottinger Avenue
North Charleston, SC 29405

9 EEX-RMP 29405



APPENDIX 0331 CERTIORARI

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Emory J. Infinger and Associates Construction Company,
Inc., Respondent,

v.

North Charleston Community Interfaith Shelter, Inc.,
Bobby Knight, in his official capacity as Chairman and
President of Board for The Good Neighbor Center, The
Good Neighbor Center, Bank of America, N.A., S.C.
State Housing Finance and Development Authority,
Atlantic Construction Services, Inc., L&W Supply
Corporation dba CK Supply, Now Mechanical, Inc.,
Wilson & Associates Electrical Contractors, Inc.,
Defendants,

Of which North Charleston Community Interfaith
Shelter, Inc. is the Appellant.

Appellate Case No. 2016-002366

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2020-UP-004
Heard December 10, 2019 – Filed January 8, 2020

AFFIRMED

APPENDIX 0332 CERTIORARI

Jackson Seth Whipper, of Whipper Law Firm, and
William Koatesworth Swope, of The Swope Law Firm,
PA, both of Charleston, for Appellant.

Theodore Luke Manos, of Robertson Hollingsworth
Manos & Rahn, LLC, of Charleston, for Respondent.

PER CURIAM: The North Charleston Community Interfaith Shelter, Inc. (the Shelter) appeals a Master-in-Equity's order foreclosing Emory J. Infinger and Associates Construction Company, Inc.'s (Infinger's) mechanic's lien against the Shelter and finding the Shelter breached the parties' contract. The Shelter alleges (1) Infinger's mechanic's lien was barred because it was not filed within the ninety day period found in section 29-5-90 of the South Carolina Code (2007), (2) Infinger breached the parties' agreement (the Agreement) by not following the Agreement's dispute resolution regime, and (3) the Master's damage award failed to specify the elements of damages pursuant to the Agreement. We affirm the Master's order.

I.

We find the Shelter's first issue is not preserved. The Shelter never raised this issue at trial, and therefore, it is unpreserved. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge."); *In re Walter M.*, 386 S.C. 387, 392, 688 S.E.2d 133, 136 (Ct. App. 2009) ("Arguments raised for the first time on appeal are not preserved for our review.").

We also find the Shelter's second issue is not preserved. While the Shelter did state this issue broadly in its two-page motion for a new trial, the Master did not rule on this issue, and the Shelter did not file a Rule 59(e), SCRCP, motion. *See Shealy v. Aiken Cty.*, 341 S.C. 448, 460, 535 S.E.2d 438, 444–45 (2000) (holding trial court's general ruling insufficient to preserve specific issue for appellate review, and finding when trial court does not explicitly rule on an argument raised, and no Rule 59(e) motion was filed, appellate court may not address the issue). Therefore, this issue is not preserved for our review.

Lastly, we find the Shelter's third argument is unpreserved. The Shelter did not raise this issue at trial; rather, the amount of damages was never contested and all

evidence pertaining to damages came in without objection. *In re Walter M.*, 386 S.C. at 392, 688 S.E.2d at 136 ("Arguments raised for the first time on appeal are not preserved for our review.").

Accordingly, due to the Shelter's issues being unpreserved, we affirm the Master's order.

AFFIRMED.

LOCKEMY, C.J., and KONDUROS and HILL, JJ., concur.

91980

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

Mikell Ross Scarborough, Circuit Court Judge

Appellate Case No. 2016-002366

RECEIVED

JAN 23 2020

SC Court of Appeals

Emory J. Infinger and Associates Construction Company, Inc.

v.

North Charleston Community Interfaith Shelter, Inc., Bobby Knight, in his official capacity as Chairman and President of Board for The Good Neighbor Center, bank of America, N.A., S.C. State Housing and Development Authority, Atlantic Construction Services, Inc., L & W Supply Corporation dba CK Supply, Now Mechanical, Inc., Wilson and Associates Electrical Contractor, Inc., Defendants,

Of which North Charleston Community Interfaith Shelter, Inc. is the
Appellant

PETITION FOR REHEARING

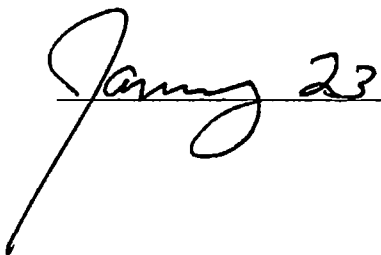
COMES NOW the Appellant, calling the Court's attention to the following issues that result from the Court's holdings affirming the decisions of the lower court or forgiving the error of the lower court; and Appellant requests a rehearing for further review on the following bases:

1. Appellant filed a Motion for New Trial and to Alter or Amen the Judgment per SCRCP 59 (a) and (e). (R.p. 161-162).
2. Appellant's grounds for the motion were properly before the trial court-
 - a.) AIA Contract (R.p. 195-198) (Plaintiff Ex.2, R.p. 174).
 - b.) Value of storage (R.p. 159, 1. 7-11).
 - c.) Plaintiff dismissed their complaint and lien (R.p. 158).
 - d.) On the issue of alteration or amendment of judgment (R.p.117).

- e.) All questions on the amount actually earned by Plaintiff below. (R.p. 89-159).
3. The subject construction contract satisfied the technical requirements of the South Carolina Uniform Arbitration Act and the Federal Arbitration Act. Bradley v. Brentwood Homes, Inc., 398 S.C.447, 455, 730 S.E.2d 312, 316 (2012). (R.p.161)
4. A party failing to fulfill the requirements of its legal remedy cannot later come to the courts complaining of hardship, seeking an equitable remedy. EllisDon Construction, Inc. v. Clemson University, 391 S.C. 552, 707 S.E. 2d 399 (2011) (R.p. 161).
5. The trial court's decision is not supported by the evidence.

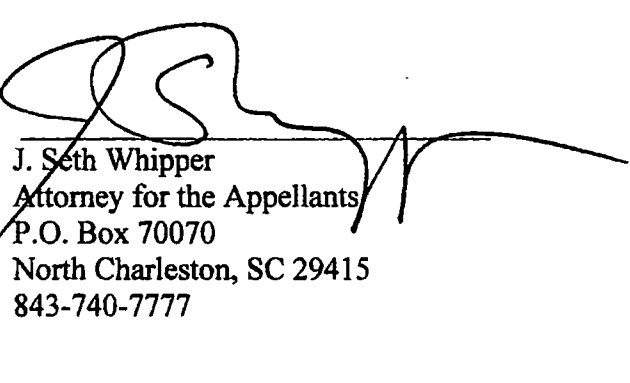
Wherefore, having recited these issues, Appellant requests a rehearing of this appeal.

Respectfully Submitted,

 _____, 2020

Other Counsel of Record:

Theodore L. Manos
William K. Swope


J. Seth Whipper
Attorney for the Appellants
P.O. Box 70070
North Charleston, SC 29415
843-740-7777

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

Mikell Ross Scarborough, Circuit Court Judge

Appellate Case No. 2016-002366

Emory J. Infinger and Associates Construction Company, Inc. Respondent

v.

North Charleston Community Interfaith Shelter, Inc., Bobby Knight, in his official capacity as Chairman and President of Board for The Good Neighbor Center, bank of America, N.A., S.C. State Housing and Development Authority, Atlantic Construction Services, Inc., L & W Supply Corporation dba CK Supply, Now Mechanical, Inc., Wilson and Associates Electrical Contractor, Inc., Defendants,

Of which North Charleston Community Interfaith Shelter, Inc.

is Appellant

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

J. Seth Whipper
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Attorney for Appellants

PERTINENT FACTS

The hearing was held before the Honorable Judge Scarborough, Master in Equity for Charleston County South Carolina at 10:00 AM on December 8th 2015.

The Plaintiff and the Defendant, N.C.C.I.S., were represented by counsel, Theodore L. Manos for the Plaintiff and J. Seth Whipper for the Defendant, N.C.C.I.S. The attorney for the South Carolina State Housing and Trust Fund (SCHTF) did not appear, they did have an ANSWER on file. The Court did not notify SCHTF of the hearing.

The Court made a preliminary ruling in favor of the Plaintiff based upon their presentation that the amount sought was \$196,412.00. The Plaintiff began with a statement, and its one witness with an Exhibit package. The Plaintiff's Exhibit 21 was a payments received chart prepared by the Plaintiff. The far right column was a total of UNPAID amounts. The Plaintiff's case in chief was that they were entitled to the full amount sought as this number represented work "completed and stored".

The Defendant, N.C.C.I.S.'s, position, among other matters, was that the SC HTF, the Mortgage provider, sent a State Inspector to review the work as "bricks and mortar" and made the determination for the Owner, NCCIS, as to the percentage that could be paid against the amounts stated by the Plaintiff on each Payment Application, (R.p.127-128) and that the Defendant, N.C.C.I.S, was not the proper party.

The Court, after reviewing the AIA Contract with its Exhibit A, which was undisputed evidence, accepted the Plaintiff's Exhibit; and [i]t was undisputed material fact by the Defendant, N.C.C.I.S.'s testimony and by the Plaintiff's testimony, that this AIA form document was the instrument governing the work. (R.p. 52, Lines 24-25; R.p. 53, Lines 1-4).

DISCUSSION

Where existence of contract is admitted but parties have differed about proper construction, practical construction by the parties is relevant concerning their intention when contract was made, but the rule cannot be invoked to show existence of partly written and partly oral contract. Hudepohl Brewing Co. v. Bannister, 50 F. Supp. 422 (D. C. S.C. 1943). When

determining whether a contract exists, the intention of the parties should be determined from the testimony of all witnesses, and subsequent acts are relevant to show whether the contract was intended. Wright v. Trask, 495 S.E. 2d 222, 329 S.C. 170 (S.C. App. 1997). Under South Carolina Law, assent to proffered terms and conditions need not be express, but may be inferred from parties' conduct. Laidlaw Environmental Services (TOC), Inc. v. Honeywell, Inc., 966 F. Supp. 1401, Affirmed 114 F3d 1232 (D.S.C. 1996). Finally, if [an] agreement is manifested by words, resulting contract is said to be "express"; if it is manifested by conduct, it is said to be "implied". Wade v. Brooks, 413 S.E. 2d 33, 306 S.C. 553, Cert Den. (S. C. App. 1992).

The contract controlling the agreement at the center of this case is relevant in more ways than the "property owner owes money to the Design-Builder." The contract had been modified but not voided. (R.p.276). The contract contains an entire Article regarding dispute resolution. (R.p.195-198) This particular covenant has not been addressed in any way by Plaintiff. Article A.4 of the AIA Document sets out the procedure for resolving claims and disputes. This procedure was not followed. A party failing to fulfill the requirements of its legal remedy cannot later come to the courts complaining of hardship, seeking an equitable remedy. EllisDon Construction, Inc., v. Clemson University, ,391 S.C. 552707 S.E.2d 399 (2011).

The Court herein must take note and consider that Defendant, N.C.C.I.S., met the contract requirements set out in sec. A.2.2.8 obligating the owner to provide reasonable evidence that financial arrangements had been made to complete the project. (R.p.188). Plaintiff's trial exhibit 13 (R.p.276) establishes this notice where the attachment thereon declares the sources of payment and the amount of contribution – SCHTF (35% of total contract) and VA (65% of total contract). From the inception of this project until the Plaintiff withdrew from the project, payment practices and procedures, and administration of the project were guided by this fundamental relationship. Plaintiff and NCCIS even collaborated in a letter urging the Veterans Administration to release some payment to the Plaintiff. In other words, all parties to this contract recognized and accepted the agency dominance, i.e. SCHTF and VA.(R.p. 126, lines 16-17).

Further focus on the amount owed to Plaintiff requires additional review of the contract. Section A.9.3.2. of the 2004 Exhibit A set the standards for material and equipment "delivered and suitably stored at the site for subsequent incorporation in the work "and for materials stored"

off the site. None of the contract standards were met; there is no “material and equipment” as contemplated in the contract on site(R.p. 131-132); the Defendant, N.C.C.I.S., has not approved any offsite storage. There is no advanced approval by the Owner; there were no procedures to establish the Owner’s title to such materials or equipment. There is no foundation in the records for a “materials and equipment on site or offsite” claim. Plaintiff could not quantify the stored materials figure and the figure cannot be left to conjecture. Plaintiff at trial could not give a figure for stored materials, regardless of the contract requirements on those items. (R.p. 131-132) . SCHTF would have been helpful on this issue. Despite filing an Answer, the Court did not notify this party. Notwithstanding the admission of Plaintiff’s Summary of Transactions (Plaintiff’s Ex. 21), SC Rule of Evidence 1006 provides for disclosure of the substance of the summary. In light of the earlier noted shortcomings on the “stored” items issue. We must have some clarity on this fact.

The SCHTF determined that the project was 64% complete; this finding was reported to all parties. (R.p.100,lines 15-21). Defendant, N.C.C.I.S., as required by the contract, brought this and the other difficulties to the attention of the Plaintiff. (R.p. 126, lines 16-17). Plaintiff continued to perform by their own determination and not by the urgings of the Defendant, N.C.C.I.S. Defendant, N.C.C.I.S., informed Plaintiff on or about August 2011 that the V.A. would be withholding funds. (R.p. 124, lines 17-25). To the extent that Defendant, N.C.C.I.S., could not cover future payment applications, Plaintiff waived the failure to perform by completing work without requiring payment.(R.p.23, para. 15).

CONCLUSION

Plaintiff has not satisfied the contract requirements as the Design-Builder and therefore, is not entitled to the relief if seeks. The failure to follow the Claims procedure per Article A. 4 of the 2004 Exhibit A that is the official attachment of the Standard Form of Agreement Between Owner and Design-Builder is fatal. These steps must be taken before resort to court action and it is clear that the court cannot decide this matter before the administrative remedies have been exhausted. Further , in equity, the Plaintiff has not satisfied its legal requirements and therefore cannot ask this court for relief. See, EllisDon Construction, Inc. vs. Clemson University, 391 S.C. 552,707 S.E. 2d 399(2011).

Plaintiff had agreed to accept payment from another source and recognized that Defendant, N.C.C.I.S., was merely a conduit. The Defendant, N.C.C.I.S., had never acted to withhold payments as approved by the agencies and as Owner assigned the inspection duties to the agencies. Any disagreement should have been handled by the Claims procedure.(R.p.196).

Plaintiff had not clarified or made certain what is the basis of the relief for stored items. Plaintiff did not offer any specifics on this point and asks the court to speculate on that figure. If there is to be an award, there must be clarity on the “stored” portion of the claim.

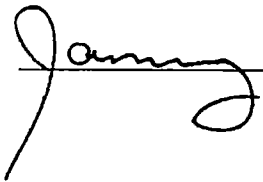
To the extent that Defendant, N.C.C.I.S., could not cover future payment applications, Plaintiff waived the failure to perform by completing work without requiring payments. See, Palmer v. Sovereign Camp. W.O.W., 197 S.C. 379 15 S.E. 2d 655, (1941).

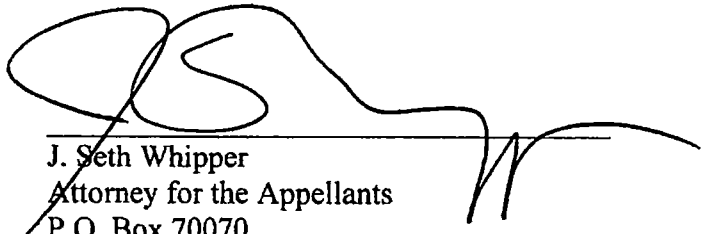
The record is replete with the presentation of issues discussed by Appellant’s arguments. The trial court recognized the Respondent was charged to establish the proper commencement of this action, ruling that Respondent had timely filed their lien (R.p. 158, Lines 15-20). An action that is not properly commenced does not vest the court with the authority to hear the case, i.e. lacks subject matter jurisdiction. See, Elliott v. Persol, 1 Pet. 328, 340, 26 U.S. 328, 340, 7 L Ed. 164 (1828). Lack of subject matter jurisdiction can be raised at any time. Nix v. Columbia Staffing, Inc., 322 S.C. 277, 279, 471 S.E.2d 718, 719 n.1 (Ct.App1989).

In his instructions at the close of testimony and argument, the trial court required the parties to submit proposed orders (R.p. 159, Lines 14-19). The submission of this proposed order preceded the filing of Appellant’s Motion for New Trial or Alter or Amend the Judgment per SCRCP 59(a),(e) (R.p. 161-162). Appellant throughout the hearing raised the issues of non-compliance with the contract and the proper value of the claimed storage and the alleged nonpayment. The initial briefs of the parties indicate that these questions were raised below.

Respondent’s complaint as presented must be denied or substantially adjusted, or Appellant should be granted a rehearing.

Respectfully Submitted,

 23, 2020


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Other Counsel of Record:

Theodore L. Manos, Esquire
William K. Swope, Esquire

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL from Court of Common Pleas of CHARLESTON COUNTY

Mikell Ross Scarborough, Circuit Court Judge

Appellate Case No. 2016-002366

RECEIVED
JAN 23 2020
SC Court of Appeals

Emory J. Infinger and Associates Construction Company, Inc. Respondent

v.

North Charleston Community Interfaith Shelter, Inc., Bobby Knight, in his official capacity as Chairman and President of Board for The Good Neighbor Center, bank of America, N.A., S.C. State Housing and Development Authority, Atlantic Construction Services, Inc., L & W Supply Corporation dba CK Supply, Now Mechanical, Inc., Wilson and Associates Electrical Contractor, Inc., Defendants, Of whom North Charleston Community Interfaith Shelter, Inc. is Appellant

PROOF OF SERVICE

I certify that I have served 1 Original Copy of the Petition For Rehearing, 1 Original Memorandum In Support of Petition for Rehearing , 1 Original Proof of Service, and 6 Copies on South Carolina Court of Appeals by hand delivery on January 23, 2020, addressed to: Clerk, South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina 29211 and served the same on: Theodore L. Manos, Esq., 550 King Street, Suite 300, Charleston, SC 29403; and William K. Swope, Esq., 1525 Sam Rittenberg Blvd., Suite 208, Charleston, SC 29407.

Jan. 23, 2020

LaToya D. Scott
Assistant to J. Seth Whipper
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The South Carolina Court of Appeals

Emory J. Infinger and Associates Construction Company,
Inc., Respondent,

v.

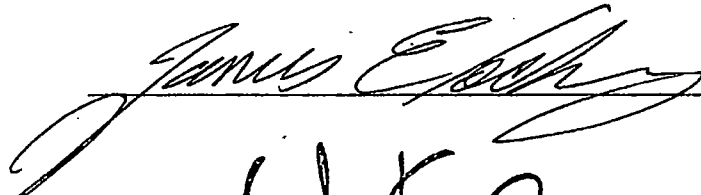
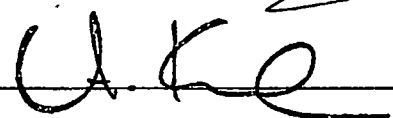
North Charleston Community Interfaith Shelter, Inc.,
Bobby Knight, in his official capacity as Chairman and
President of Board for The Good Neighbor Center, The
Good Neighbor Center, Bank of America, N.A., S.C.
State Housing Finance and Development Authority,
Atlantic Construction Services, Inc., L&W Supply
Corporation dba CK Supply, Now Mechanical, Inc.,
Wilson & Associates Electrical Contractors, Inc.,
Defendants,

Of which North Charleston Community Interfaith
Shelter, Inc. is the Appellant.

Appellate Case No. 2016-002366

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.
 J.

Man 1-

J.

Columbia, South Carolina

cc:

Jackson Seth Whipper, Esquire

Theodore Luke Manos, Esquire

William Koatesworth Swope, Esquire

The Honorable Mikell R. Scarborough

FILED

March 31, 2020