Contract Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contract Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ESCROW AGREEMENT**

THIS AGREEMENT is entered into this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, by and between the CITY OF CHATTANOOGA (“Project Owner”), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”), and SUNTRUST BANK, a Georgia state banking corporation (“Bank”) as escrow agent.

 **W I T N E S S E T H:**

WHEREAS, Project Owner and Contractor entered into a construction contract dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Contract”). The Contract provides that five percent (5%) of progress payments made under the Contract will be withheld as retainage (“Retainage”) from the total of progress payments made by Project Owner to Contractor; and

WHEREAS, pursuant to T.C.A. § 66-34-104 (the “Statute”), the amount withheld as Retainage is to be deposited in a separate escrow account maintained with a third party, at which time the funds pass out of the control of the Property Owner and shall become the sole and separate property of the Contractor, subject to the terms of this Escrow Agreement; and

WHEREAS, Project Owner and Contractor desire that all Retainage withheld under the Contract, be deposited in an interest bearing escrow account pursuant to and in compliance with the Statute; and

WHEREAS, Bank has agreed to accept the Retainage and cause it to be placed in an interest bearing escrow account and to act as escrow agent for said account.

NOW, THEREFORE, in consideration of the premises and mutual covenants and promises hereinafter set forth, it is agreed as follows:

1. In accordance with the requirements of the Statute, Project Owner shall deposit and the Bank shall hold in an interest bearing escrow account, Account No. (“Escrow Account”) all Retainage held pursuant to the Contract.

2. All Retainage withheld from payments to Contractor by Project Owner under the Contract, from this date forward, be deposited in said Escrow Account.

3. The Bank, as escrow agent, shall hold and maintain the Retainage in the Escrow Account until the Bank is presented with a release signed by Project Owner and Contractor, a form of which is attached hereto as Exhibit A, authorizing the disbursement of all or a portion of the funds held on deposit in the Escrow Account plus any accrued interest to Contractor; provided that notwithstanding this Section 3, the Bank may comply with the order of any court of applicable jurisdiction which affects the payment of all or any portion of the funds in the Escrow Account. The account will use Contractor’s tax identification number, and Contractor will furnish the Escrow Agent with a W-9 form for this purpose.

4. In the event of any dispute between the parties resulting in adverse demands being made in connection with this deposit in Escrow, or in the event that any of the parties hereto do not agree as to the disposition of the funds in the Escrow Account, the parties hereto agree that the Bank shall be released of any further obligation under this Agreement by tendering the funds maintained in the Escrow Account into a court of competent jurisdiction in an action in the nature of an interpleader, and the Bank shall have the right to recover its reasonable attorney fees and costs from Project Owner and Contractor, each of whom shall be jointly and severally liable therefor.

5. The Contractor hereto agrees to indemnify and hold Bank harmless from any loss, damages, or liabilities of any kind whatsoever, whether foreseen or unforeseen, whether direct or indirect arising out of or in connection with this Agreement, the Escrow Account and the funds contained therein, or the performance of the Bank’s obligations hereunder, except liability resulting from Bank’s gross negligence or willful misconduct. The Bank may rely upon the signatures of any correspondence from either or both of Project Owner and/or Contractor as being the authentic signatures of the Project Owner or Contractor or, if the Project Owner or Contractor are not natural persons, of persons duly authorized to act on behalf of the Project Owner or Contractor.

6. The Bank shall not be bound by any modification, amendment, termination, cancellation, rescission or supersession of this Escrow Agreement unless the same shall be in writing and signed by all of the other parties hereto and, hereunder are effected thereby, unless it shall have given prior written consent thereto.

7. The Project Owner and Contractor agree, jointly and severally, to reimburse the Bank for any all costs, damages, expenses or claims, including attorney’s fees, which Bank may incur or sustain as a result of or arising out of this Escrow Agreement or Bank’s duties relating thereto (except for Bank’s willful misconduct or negligence) and will pay them ON DEMAND; and the Bank is hereby given a lien upon, and security interest in, the property deposited in the Escrow Account, to secure Bank’s rights to payment or reimbursement.

8. The Bank agrees to provide a statement of the Escrow Account each month to the Project Owner during the term of this Escrow Agreement.

9. The Bank shall receive **no fee** in connection with its rendering of services as escrow agent pursuant to the terms of this Escrow Agreement.

10. The Project Owner and Contractor acknowledge that subject to the rights of Contractor to the Retainage, the Bank maintains a security interest and lien against the Escrow Account and funds contained therein.

11. The Contractor agrees that the Project Owner is not responsible to Contractor for any loss of the Retainage that occurs should Bank be placed in receivership, be taken over by its regulators or otherwise be subject to financial failure.

12. This Escrow Agreement may be executed in three or more counterparts, each of which will be deemed to be an original agreement, but all of which will constitute one and the same document. A counterpart executed by a party and transmitted by facsimile to the other parties will have the same effect as delivery of the original counterpart.

13. This Agreement shall be construed in accordance with the laws of the State of

Tennessee without regard to its conflict of law principles.

ENTERED INTO as of the date first above written.

**CONTRACTOR: PROJECT OWNER:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **CITY OF CHATTANOOGA**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 **BANK:**

 **SUNTRUST BANK**

 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

Contract Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contract Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**RELEASE**

The undersigned, City of Chattanooga, as the Project Owner pursuant to a Construction Contract with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Contractor”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Contract”) hereby certifies that Contractor fully and completely finished all work required of Contractor pursuant to such Contract, except work which may be required pursuant to any guaranty or warranty contained in such Contract, and the undersigned hereby authorizes SunTrust Bank (“Bank”) to release ($ ) paid as retainage pursuant to that certain Escrow Agreement between and among the undersigned, City of Chattanooga (“Project Owner”), Contractor, and Bank, and dated the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 , which agreement is specifically incorporated herein by reference.

This release is executed for the sole purpose of releasing the amounts held in escrow as aforesaid and specifically does not, and shall not, be construed to release or otherwise affect any claims or rights which Project Owner has or may have against Contractor pursuant to said contract or the work performed thereunder.

Attest: **PROJECT OWNER:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **CITY OF CHATTANOOGA**

Secretary

 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Affiant makes oath that the above is true, as sworn before me, a Notary Public, this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (SEAL)

Notary Public

My Commission Expires: \_\_\_\_\_\_\_\_\_\_

**APPROVED BY CONTRACTOR:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_