



Huntsville, Alabama

305 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 8/22/2024

File ID: TMP-4521

Department: Engineering

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to execute Change Order No. 1 between the City of Huntsville, Alabama and Grayson Carter & Son, Inc., for Pratt Avenue Streetscape Improvements, Project No. 71-22-SP18 & ALDOT Project No. TAPHV-TA23(933).

Resolution No.

Finance Information:

Account Number: 3080-71-00000-524001-ALDOT001-

City Cost Amount: \$31,128.03

Total Cost: \$820,618.55

Special Circumstances:

Grant Funded: N/A

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

Change Order No. 1 with Grayson Carter & Son to provide additional drainage infrastructure to avoid utility conflicts during construction.

RESOLUTION NO. 24-

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama that the Mayor be, and is hereby authorized, to execute Change Order No. 1 between the City of Huntsville, Alabama and Grayson Carter & Son, Inc., adopted and approved on the 11th day of January, 2024, by the City of Huntsville, Alabama by Resolution No. 24-17 and is reflected on Change Order No. 1, attached hereto.

BE IT FURTHER RESOLVED that the total Contract amount be and hereby is amended from SEVEN HUNDRED EIGHTY-NINE THOUSAND FOUR HUNDRED NINETY AND .52/100 DOLLARS (\$789,490.52) to EIGHT HUNDRED TWENTY THOUSAND SIX HUNDRED EIGHTEEN DOLLARS AND .55/100 (\$820,618.55) including this Change Order No. 1, an increase of THIRTY-ONE THOUSAND ONE HUNDRED TWENTY-EIGHT AND .03/100 DOLLARS (\$31,128.03). Said Change Order is substantially similar in words and figures as that document attached hereto and identified as "Change Order No. 1 between the City of Huntsville, Alabama and Grayson Carter & Son, Inc., for Pratt Avenue Streetscape Improvements, Project No. 71-22-SP18 & ALDOT Project No. TAPHV-TA23(933)." consisting of two (2) pages plus seventeen (17) additional pages consisting of "Power of Attorney," "Contractor's E-Verify Statement" and "Memorandum of Understanding" with the date of August 22, 2024, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 22nd day of August, 2024.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 22nd day of August, 2024.

Mayor of the City of Huntsville,
Alabama

CHANGE ORDER REQUEST						
OWNER	ARCHITECT/ENGINEER			CONTRACTOR		
City of Huntsville, Alabama	N/A			Grayson Carter & Son Contracting, Inc.		
DATE	8/22/2024	CHANGE ORDER NO.		1		
PROJ. NAME & NUMBER		Pratt Avenue Streetscape Improvements, Project No. 71-22-SP18 & ALDOT Project No. TAPHV-TA23(933)				
NEW NEGOTIATED ITEMS						
ITEM	DESCRIPTION	QUANT	UNIT	UNIT PRICE		EXT AMT.
621C-001	Inlets, Type B	5	EA	\$4,153.90		\$20,769.50
621D-001	Inlet Units, Type B	1.00	EA	\$1,066.48		\$1,066.48
621C-046	Inlets, Type S Special (1 Wing)	3.00	EA	\$4,974.43		\$14,923.29
621D-032	Inlet Units, Type Special	1.00	EA	\$1,479.12		\$1,479.12
533A-097	15 Inch Storm Sewer Pipe (Class 3 R.C.)	48.00	LF	\$62.72		\$3,010.56
						\$0.00
TOTAL NEW NEGOTIATED ITEMS						\$41,248.95
OVERRUN ITEMS						
ITEM	DESCRIPTION	QUANT	UNIT	UNIT PRICE		EXT AMT.
621A-022	Junction Boxes, Type 1 (Modified)	3	EA	\$2,972.08		\$8,916.24
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
						\$0.00
TOTAL OVERRUN ITEMS						\$8,916.24
UNDERRUN ITEMS						
ITEM	DESCRIPTION	QUANT	UNIT	UNIT PRICE		EXT AMT.
621C-015	Inlets, Type S1 or S3 (1 Wing)	6	EA	-\$3,172.86		-\$19,037.16
						\$0.00
						\$0.00
						\$0.00
						\$0.00
TOTAL UNDERRUN ITEMS						-\$19,037.16
TOTAL NEW & OVERRUN ITEMS						\$50,165.19
TOTAL UNDERRUN ITEMS						-\$19,037.16
TOTAL CHANGE ORDER NO. 1						\$69,202.35
Page 1						

CHANGE ORDER REQUEST									
OWNER			ARCHITECT/ENGINEER				CONTRACTOR		
City of Huntsville, Alabama			N/A				Grayson Carter & Son Contracting, Inc.		
DATE			8/22/2024		CHANGE ORDER NO.		1		
PROJ. NAME & NUMBER			Pratt Avenue Streetscape Improvements, Project No. 71-22-SP18 & ALDOT Project No. TAPHV-TA23(933)						
TERMS: As a condition of this contract, pursuant to § 31-13-9(a), Contractor hereby certifies that it has not knowingly employed, hired for employment, or continues to employ an unauthorized alien and has attested to such by sworn affidavit signed before a notary. Further, Contractor provided a copy of such affidavit to the City of Huntsville as part of its contract, along with documentation establishing that Contractor is enrolled in the E-Verify program, and will maintain enrollment throughout the term of this contract. You are hereby authorized, subject to the provisions of your contract for this project, to make the following changes thereto in accordance with this Change Order Request and supporting documents and to furnish the necessary labor, materials and equipment to provide additional <u>drainage infrastructure</u> to avoid <u>utility conflicts during construction</u> .									
THIS CHANGE ORDER SUBMITTED FOR REVIEW AND APPROVAL. JUSTIFICATION IS AS FOLLOWS:									
			Emergencies arising during the course of work.						
			Minor changes of total monetary value and incidental to the original contract necessitated by unforeseeable circumstances arising during the course of work and less than required for competitive bidding.						
			Change of or alternates provided for in the original bidding where there is no difference in price of the Change Order from the original best bid on the alternate.						
X			Change of relatively minor terms not contemplated when the plans and specifications were prepared and the project was bid and which are in the public interest and do not exceed 10% of the Contract Price.						
TOTAL ADDITION OR DEDUCTION TO CONTRACT PRICE (NOTE: Numbers in parentheses are deductions). (See attached sheet for line item breakdown of change order costs.)									
For This Change Order			1				\$69,202.35		
Original Contract Price							\$789,490.52		
Net Total Previous Change Orders							\$0.00		
Previous Revised Contract Price							\$789,490.52		
Revised Contract Price This Date							\$858,692.87		
EXTENSION OF TIME No additional days as a result from this Change Order No. 1. New End Date: N/A									
This contract modification constitutes full and mutual accord and satisfaction for all time and all costs related to this change. By acceptance of this Contract Modification, the Contractor hereby agrees that the modification represents an equitable adjustment of the Contract, and further, agrees to waive all right to file for any further claims or changes arising out of or as a result of this change, or the accumulation of executed Contract Modifications on this Contract. The Contractor and Owner(s) hereby agree to the terms for the Change Order as contained herein.									
CONTRACTOR					CITY OF HUNTSVILLE, ALABAMA				
Grayson Carter & Son Contracting, Inc.									
(Contractor Name)					Kathy Martin, Director of City Engineering				
(Authorized Representative)					Tommy Battle, Mayor				
CONSENT OF SURETY									
(Surety Name)					Council President				
(Authorized Representative)					8/22/2024				
					(Date)				
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HUNTSVILLE

Kathy Martin, P.E.
Director
City Engineer

Urban Development Department Engineering Division

July 30, 2024

Mr. Curtis W. Vincent, PE
North Region Engineer
Alabama Department of Transportation
PO Box 550
Guntersville, AL 35976

Attn: Mr. Travis Kilgore, PE, Guntersville Area Local Transportation Engineer

RE: Supplemental Agreement No.1 for Project No. TAPHV-TA23(933) Pratt Avenue Improvements

Mr. Kilgore:

Submitted herewith is a price proposal from Grayson Carter & Son Contracting, Inc. (Contractor) for the above referenced project. This supplemental agreement is to add Inlets, Type B (pay item 621C-001) as shown in Flagged Revision #1 that will replace existing quantities of pay item 621C-015. Also included is the addition of pay item 621C-046 to account for oversized inlet structures and the overrun of pay item 621A-022 due to utility conflicts. Furthermore, pay item 424B-635 should be removed from the contract as it will no longer be utilized. Therefore, we respectfully request the following contract pay items and quantities be adjusted by Supplemental Agreement No. 1:

ADD TO CONTRACT					
Item	Description	Qty	Unit	Price	Amount
621C-001	Inlets, Type B	5	EA	\$4,153.90	\$20,769.50
621D-001	Inlet Units, Type B	1	EA	\$1,066.48	\$1,066.48
621C-046	Inlets, Type S Special (1 Wing)	3	EA	\$4,974.43	\$14,923.29
621D-032	Inlet Units, Type Special	1	EA	\$1,479.12	\$1,479.12
533A-097	15" Storm Sewer Pipe (Class 3 R.C.)	48	LF	\$62.72	\$3,010.56
621A-022	Junction Boxes, Type 1 (Modified) <i>Existing Item Overrun</i>	3	EA	\$2,972.08	\$8,916.24
Total:					\$50,165.19

Incorporating this contract revision results in the following contract unit price reductions:

REMOVE FROM CONTRACT						
Item	Description	Qty	Unit	Price	Contract Price	Total Cost Reduction
621C-015	Inlets, Type S1 or S3 (1 Wing)	6	EA	\$3,172.86	\$19,037.16	-\$19,037.16
Estimated Total Cost Reduction:						-\$19,037.16

The Star of Alabama

P.O. Box 308 • Huntsville, AL 35804-0308 • Phone 256-427-5300 • Fax 256-427-5325

The total net increase in contract amount for this supplemental agreement is \$31,128.03.

The City of Huntsville understands that the cost overrun caused by this change order will be eligible for Transportation Alternatives Program (TAP) funds based on the terms of the funding agreement between the State and City. These cost overruns may be borne by the city if there are no remaining TAP funds.

Please let us know if you have any questions or need anything further to process this request.

Recommended,
City of Huntsville

A handwritten signature in blue ink that reads "Kathy Martin". The signature is written in a cursive style and is positioned above a horizontal line.

Kathy Martin, PE
Director of Engineering

**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by Robert D. Murray, Vice President, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Renee ELLIS, Paul B. SCOTT JR., Thomas J. GENTILE, Billie Jo SANDERS, David J. DURDEN, Milton A. KOPF and Josh PRICE, all of Montgomery, Alabama**, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 22nd day of January, A.D. 2024.

ATTEST:
**ZURICH AMERICAN INSURANCE COMPANY
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**



By: *Robert D. Murray*
Vice President



By: *Dawn E. Brown*
Secretary

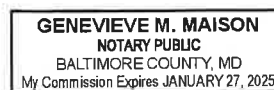


**State of Maryland
County of Baltimore**

On this 22nd day of January, A.D. 2024, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.

Genevieve M. Maison



Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

CERTIFICATE

I, the undersigned, Vice President of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies,
this 22nd day of August, 2024.



Thomas O. McClellan
Vice President

TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:

Zurich Surety Claims
1299 Zurich Way
Schaumburg, IL 60196-1056
reportsfclaims@zurichna.com
800-626-4577

Authenticity of this bond can be confirmed at bondvalidator.zurichna.com or 410-559-8790

PRATT AVENUE STREETSCAPE SUPPLEMENTAL AGREEMENT #1



Grayson Carter & Son Contracting, Inc.

Post Office Box 1069

Athens, Alabama 35612

Contact: Mark K Blair

Phone: (256)-233-3260

Email: mblair@graysoncarterandson.com

Quote To: City of Huntsville
Attention: Jacob Stephens

Job Name: Pratt Avenue Streetscape

Plans By: CDG

Date of Plans: Rev. Mar. 27, 2024

Phone:

Plans Received:

Fax:

Date of Quote:

Revised Aug. 8, 2024

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	JUNCTION BOX TYPE SPECIAL 1 WING	3.00	EA	4,974.43	14,923.29
2	TYPE SPECIAL UNIT	1.00	EA	1,479.12	1,479.12
3	TYPE B INLETS	5.00	EA	4,153.90	20,769.50
4	TYPE B UNITS	1.00	EA	1,066.48	1,066.48
5	15" RCP CL 3	48.00	LF	62.72	3,010.56
GRAND TOTAL					\$41,248.95

NOTES:

Exclusions:

- * Bond (Add 1% if Required).
- * Testing and Inspection.
- * Aid to Construction.
- * As Built Drawings.
- * Adem Permit, Inspections and Reports.
- * Asbestos Surveys and Abatement.
- * Builders Risk and/or Pollution Control Insurance.
- * Hazardous Waste Removal and/or Disposal.
- * Undercut
- * Rock Excavation (Mass and/or Trench).
- * Removal or Relocation of Existing Utilities.
- * Insatallation of New Utilities (Sanitary Sewr, Water, Gas and Electric).

Qualifications:

- * Price Good for 30 Days.
 - * This is a Lump Sum Proposal. Only the Items Listed Are Being Quoted.
 - * Engineering/Layout for Our Items of Work Only.
 - * This proposal has been calculated based on the current prices for various scopes of work. In the event of significant price increases of material, equipment or fuel occurring prior to or during the performance of the agreement through no fault of the contractor or its subcontractors, the proposal or contract sum shall be equitably increased.
- Plans furnished by CDG and dated Mar. 27, 2024. Revised sheets
3, 10, 11, 45, 46 and 47.

CONSTRUCTION AGREEMENT BETWEEN OWNER AND CONTRACTOR

Contractor's E-Verify Clause

Effective May 16, 2012, this notice shall be included in all competitively bid contracts awarded for labor, supplies, or services for the City of Huntsville, Alabama and in the award of all grants or incentives.

E-VERIFY – NOTICE

The Beason-Hammon Alabama Taxpayer and Citizen Protection Act, Act No. 2011-535, Code of Alabama (1975) § 31-13-1 through 31-13-30 (also known as and hereinafter referred to as “ the Alabama Immigration Act”) as amended by Act No. 2012-491 on May 16, 2012 is applicable to all competitively bid contracts with the City of Huntsville. As a condition for the award of a contract and as a term and condition of the contract with the City of Huntsville, in accordance with § 31-13-9 (a) of the Alabama Immigration Act, as amended, any business entity or employer that employs one or more employees shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama.

During the performance of the contract, such business entity or employer shall participate in the E-Verify program and shall verify every employee that is required to be verified according to the applicable federal rules and regulations. The business entity or employer shall assure that these requirements are included in each subcontract in accordance with §31-13-9(c). Failure to comply with these requirements may result in breach of contract, termination of the contract or subcontract, and possibly suspension or revocation of business licenses and permits in accordance with §31-13-9 (e) (1) & (2).

Code of Alabama (1975) § 31-13-9 (k) requires that the following clause be included in all City of Huntsville contracts that have been competitively bid and is hereby made a part of this contract:

“By signing this contract the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.”

**THE E-VERIFY
MEMORANDUM OF UNDERSTANDING
FOR EMPLOYERS**

**ARTICLE I
PURPOSE AND AUTHORITY**

The parties to this agreement are the Department of Homeland Security (DHS) and Grayson Carter & Son Contracting, Inc (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

**ARTICLE II
RESPONSIBILITIES**

A. RESPONSIBILITIES OF THE EMPLOYER

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
 - a. Notice of E-Verify Participation
 - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employer is separated from the company or no longer needs access to E-Verify.

4 The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual

5 The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases

a The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify

6 The Employer agrees to comply with current Form I-9 procedures, with two exceptions

a If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity. If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218

b If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool

Note: Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9

7 The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9

8 The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures

a The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above, (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee, (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation, (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly

employed an unauthorized alien in violation of section 274A(a)(1)(A), and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify

b DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify

9 The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10 The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11 The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II B of this MOU.

12 The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III B below) to contact DHS with information necessary to resolve the challenge.

13 The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status.

(including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14 The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15 The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16 The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at E-Verify@dhs.gov. Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17 The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18 The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon

reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify

19 The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false

20 The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS

21 The Employer agrees that E-Verify trademarks and logos may be used only under license by DHS/USCIS (see M-795 (Web)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify

22 The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU

B. RESPONSIBILITIES OF FEDERAL CONTRACTORS

1 If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors

2 In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify

a An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later

b Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever is later.

c Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin E-Verify verification of all existing employees within 180 days after the election.

e The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as

- i That Form I-9 is complete (including the SSN) and complies with Article II A 6,
- ii The employee's work authorization has not expired, and
- iii The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f The Employer shall complete a new Form I-9 consistent with Article II A 6 or update the previous Form I-9 to provide the necessary information if

- i The Employer cannot determine that Form I-9 complies with Article II A 6,
- ii The employee's basis for work authorization as attested in Section 1 has expired or changed, or
- iii The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with

Article II C 5, but reflects documentation (such as a U S passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II A 5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual

g The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article

3 The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or other officials authorized to review the Employer's compliance with Federal contracting requirements

C. RESPONSIBILITIES OF SSA

1 SSA agrees to allow DHS to compare data provided by the Employer against SSA's database SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database

2 SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U S C § 552a), the Social Security Act (42 U S C 1306(a)), and SSA regulations (20 CFR Part 401)

3 SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry E-Verify provides the information to the Employer

4 SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary In such cases, SSA will provide additional instructions to the employee If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer

Note If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218

D. RESPONSIBILITIES OF DHS

1 DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU

a Automated verification checks on alien employees by electronic means, and

- b Photo verification checks (when available) on employees
- 2 DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process
- 3 DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify
- 4 DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials
- 5 DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice
- 6 DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify
- 7 DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements
- 8 DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry
- 9 DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions

ARTICLE III

REFERRAL OF INDIVIDUALS TO SSA AND DHS

A. REFERRAL TO SSA

- 1 If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify

case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.

4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

B. REFERRAL TO DHS

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the

employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days

5 If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally

6 The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U S Passport, or passport card to DHS for review by

a Scanning and uploading the document, or

b Sending a photocopy of the document by express mail (furnished and paid for by the employer)

7 The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch

8 DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary

9 While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates

ARTICLE IV SERVICE PROVISIONS

A. NO SERVICE FEES

1 SSA and DHS will not charge the Employer for verification services performed under this MOU The Employer is responsible for providing equipment needed to make inquiries To access E-Verify, an Employer will need a personal computer with Internet access

ARTICLE V MODIFICATION AND TERMINATION

A. MODIFICATION

1 This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties

2 Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes

B. TERMINATION

1 The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties

2 Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.

3 An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.

4 The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

ARTICLE VI

PARTIES

A Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

B Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

C The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.

D Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

E The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to,