

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between Troy Community Land Bank Corporation ("Owner") and Gallo Construction Corporation ("Contractor"). Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

- 1.1 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Contractor shall perform all necessary work to complete Gut Rehab of (One or) Two Properties in accordance with the plans and specifications.

ARTICLE 2 – THE PROJECT

- 2.1 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Gut Rehab of 791 River Street, Troy, NY

ARTICLE 3 – ARCHITECT

- 3.1 The Project has been designed by Troy Architecture Practice, PLLC (Architect).

ARTICLE 4 – CONTRACT TIMES

- 4.1 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract

- 4.2 *Dates for Substantial Completion and Final Payment*

Upon Receipt of the Building Permit,

A. The Work shall be substantially completed within 120 ~~days of the notice to proceed~~, and ready for final payment 20 days thereafter and in accordance with Paragraph 14.7 of the General Conditions on the same day.

4.3 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.1 above and that Owner will suffer financial and other losses if the Work is not completed within the times specified in Paragraph 4.2 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty):

1. *Substantial Completion:* Contractor shall pay Owner \$500.00 for each day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.2.A above for Substantial Completion until the Work is substantially complete.
2. *Completion of Remaining Work:* After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner \$500.00 for each day that expires after such until the Work is completed and ready for final payment.
3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

5.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.1.A below:

A. For all Work, a total price of: \$ 334,373.00

ARTICLE 6 – PAYMENT PROCEDURES

6.1 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Owner as provided in the General Conditions.

6.2 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.2.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.7.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.2 of the General Conditions.

a. 95 percent of Work completed (with the balance being retainage).

b. 95 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Owner shall determine in accordance with Paragraph 14.2.B.5 of the General Conditions and less 200 percent of Owner's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.3 *Final Payment*

A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.7 of the General Conditions, Owner shall pay the remainder of the Contract Price as provided in said Paragraph 14.7.

ARTICLE 7 – INTEREST

7.1 All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest at the rate of 0 percent per annum.

ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS

8.1 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.

- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Paragraph SC-4.2 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-46 of the Supplementary Conditions as containing reliable "technical data."
- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.1.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 9 – CONTRACT DOCUMENTS

9.1 *Contents*

A. The Contract Documents consist of the following:

1. This Agreement.
2. General Conditions.
3. Supplementary Conditions.
4. Specifications as included on the drawings and related documents including but not limited to this document, the Project Manual, and applicable environmental assessments and reports.
5. Drawings listed on attached sheet index.
6. Addenda (numbers ---- ____ to --- ____, inclusive).
7. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid.
 - b. Documentation submitted by Contractor prior to Notice of Award.
8. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.

B. The documents listed in Paragraph 9.1.A are attached to this Agreement (except as expressly noted otherwise above).

C. There are no Contract Documents other than those listed above in this Article 9.

D. The Contract Documents may only be amended, modified, or supplemented as provided in

Paragraph 3.4 of the General Conditions.

ARTICLE 10 – MISCELLANEOUS

10.1 *Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

10.2 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

10.3 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

10.4 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part hereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

10.5 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.5:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract

execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "Coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

10.6 TERMINATION OF AGREEMENT; REMEDY FOR BREACH

This Agreement may be terminated by the Land Bank or the Contractor as follows:

- 10.6.1 The Land Bank may terminate this Agreement if the Contractor refuses or fails to supply enough properly skilled workers or proper materials to meet any of its requirements, if the Contractor fails to make payment to Land Bank-approved subcontractors for materials or labor, or disregards laws, ordinances or rules and regulations or orders of a public entity having jurisdiction over the work, or if the Contractor is substantially in breach of any of its provisions. Additionally, the Land Bank may, without cause, order the Contractor in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the Land Bank may determine.
- 10.6.2 The Contractor may terminate this Agreement if the Land Bank is substantially in breach of it.
- 10.6.3 In the event of a breach by the Contractor, the Contractor shall pay to the Land Bank all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the Land Bank to procure a substitute Contractor to satisfactorily complete the work, together with the Land Bank's own costs incurred in procuring a substitute Contractor.

10.7 ADDITIONAL GROUNDS FOR CANCELLATION OF AGREEMENT BY THE LAND BANK; DISQUALIFICATION FOR FUTURE CONTRACTS WITH PUBLIC AUTHORITIES

- 10.7.1 Notwithstanding anything herein to the contrary, and to the extent permitted by law, this Agreement may be cancelled or terminated by the Land Bank without penalty or damages of any kind upon (1) refusal by an owner, shareholder, member, manager director or officer of the Legal Consultant, when called before a grand jury, head of state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state,

any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, or (2) refusal of such person to sign a waiver of immunity against subsequent criminal prosecution, or (3) refusal of such person to answer any relevant question with respect to such transaction or contract.

10.7.2 Further, such person, and any firm, partnership, limited liability company or corporation of which such person is a shareholder, member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal.

10.7.3 In the event of cancellation or termination of this Agreement pursuant to this article, any monies owing by the Land Bank for services completed prior to the cancellation or termination shall be paid to the Contractor.

10.8 NON-DISCRIMINATION

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor its Land Bank-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

10.9 IRANIAN ENERGY SECTOR DIVESTMENT

Contractor hereby represents that Contractor is in compliance with New York State Public Authorities Law Section 2829-c entitled "Iranian Energy Sector Divestment." By signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the state finance law. Specifically, the Contractor represents that it has not:

- (a) Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- (b) Acted as a financial institution and extended \$20 Million or more in credit to another person for forty-five days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

10.10 INDEPENDENT CONTRACTOR STATUS

Contractor is, and will function as, an independent Contractor under the terms of this Agreement, and shall not be considered an agent or employee of the Land Bank for any purpose. The agents, representatives and employees of the Contractor shall not in any manner be, or be held out to be, the agents, representatives or employees of the Land Bank.

10.11 NON-COLLUSIVE BIDDING

By execution of this Agreement, Contractor warrants, under penalty of perjury, that to the best of knowledge and belief; the prices communicated to the Land Bank in establishing the costs of goods and services covered in this Agreement have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other contractor or with any competitor. Unless otherwise required by law, Contractor also warrants that the prices which have been quoted in its Proposal have not been knowingly disclosed by the Contractor prior to opening, directly or indirectly, to any other contractor or to any competitor. Contractor also warrants that no attempt has been made or will be made to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

10.12 NO WAIVER OF PERFORMANCE

Failure of the Land Bank to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the Land Bank's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Contractor.

10.13 GROUND FOR CANCELLATION OF AGREEMENT BY THE LAND BANK; DISQUALIFICATION FOR FUTURE CONTRACTS WITH PUBLIC AUTHORITIES

10.13.1 Notwithstanding anything herein to the contrary, this Agreement may be cancelled or terminated by the Land Bank without penalty or damages of any kind upon (1) refusal by an owner, shareholder, member, manager director or officer of the Contractor, when called before a grand jury, head of state department, temporary state commission or other state agency, the organized crime task force in the department of law, head of a city department, or other city agency, which is empowered to compel the attendance of witnesses and examine them under oath, to testify in an investigation concerning any transaction or contract had with the state, any political subdivision thereof, a public authority or with any public department, agency or official of the state or of any political subdivision thereof or of a public authority, or (2) refusal of such person to sign a waiver of immunity against subsequent criminal prosecution, or (3) refusal of such person to answer any relevant question with respect to such transaction or contract.

10.13.2 Further, such person, and any firm, partnership, limited liability company or corporation of which such person is a shareholder, member, partner, director or officer shall be disqualified from thereafter selling to or submitting bids to or receiving awards from or entering into any contracts with any public authority or official thereof, for goods, work or services, for a period of five years after such refusal.

10.13.3 In the event of cancellation or termination of this Agreement pursuant to this article, any monies owing by the Land Bank for services completed prior to the cancellation or termination shall be paid to the Contractor.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on January 23, 2019 (which is the Effective Date of the Agreement).

OWNER: _____

CONTRACTOR: _____

TROY COMMUNITY LAND BANK CORP.

GALLO CONSTRUCTION CORPORATION

By: Anthony Tozzi

By: Michael A Gallo

Title: Executive Director

Title: VP

(If Contractor is a corporation, a partnership,
or a joint venture, attach evidence of authority
to sign.)

Attest: Brian Barker

Attest: Joan A. Gagnier

Title: Secretary

Title: Controller

Address for giving notices:

Address for giving notices:

Troy Community Land Bank Corporation

200 Broadway, Suite 701

Troy, NY 12180-0826

License No.: _____

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)