

ORIGINAL  
STAMPED IN RED

**RESOLUTION NO.: R-2009-070**

*Authorizing the Interim City Manager to execute Construction Agreements between the City of Columbia and Prominent Homes, Inc. for rehabilitation of 1501 Manning Avenue, Richland County TMS #11411-06-09; 1525 Manning Avenue, Richland County TMS #11411-06-02 and 1527 Manning Avenue, Richland County TMS #11412-06-06*

BE IT RESOLVED by the Mayor and City Council this 16th day of September, 2009, that the Interim City Manager is authorized to execute the attached Construction Agreements between the City of Columbia and Prominent Homes, Inc. for rehabilitation of 1501 Manning Avenue, Richland County TMS #11511-06-09; 1525 Manning Avenue, Richland County TMS #11411-06-02 and 1527 Manning Avenue, Richland County TMS #11412-06-06.

Requested by:

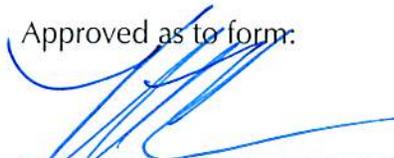
Deborah Livingston, Deputy Director/CDC

  
\_\_\_\_\_  
Mayor

Approved by:

  
\_\_\_\_\_  
Interim City Manager

Approved as to form:

  
\_\_\_\_\_  
City Attorney

ATTEST:

  
\_\_\_\_\_  
City Clerk

Introduced: 9/16/2009

Final Reading: 9/16/2009



8. The Contractor shall furnish to the Owner an executed release of liens or claims of liens by subcontractors in completing this Contract stating that they have been paid in full or will be simultaneously with the disbursement of the proceeds due him under this Contract. Should a lien, suit or action be later filed on the Owner's property with regard to work completed under this Contract, the Contractor shall satisfy or otherwise have removed, said lien within ten (10) days of notice thereof and shall indemnify, hold harmless, and defend the Owner from any damages, potential damages, suits, actions, judgments or costs, including attorneys' fees with relation thereto.

9. LICENSES AND CODES:

A. The Contractor shall obtain and pay for all permits and licenses necessary for the execution and completion of the work and labor to be performed.

B. The Contractor shall perform all work in conformance with applicable local codes and requirements whether or not covered by the specifications and drawings for the work.

10. The Contractor will keep the premises as clean and orderly as is possible during the course of the work and shall remove all trash, rubbish, and debris from the premises and dispose of them in a legal manner. Unless otherwise stated in the Specification Work Sheet, all fixtures, equipment, building units (such as doors, windows, plumbing fixtures, etc.) to be replaced or removed shall become the property of the Contractor.

11. The Contractor will furnish the Owner with all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under the Contract.

12. All utilities necessary to carry out the rehabilitation work such as electricity and water shall be furnished by the Contractor and shall remain on until completion and final inspection.

13. The Contractor will hold the Owner harmless and agrees to indemnify and defend Owner from all claims or liens for labor or materials furnished or used in the performance of the work covered by this Contract, whether furnished or used by the Contractor or any immediate or remote subcontractor.

14. This Contract may be terminated as follows:

A. By the Owner upon ten (10) days written notice to the Contractor if the Contractor defaults, neglects to perform work as prescribed in the Specification Work Sheet, or fails to perform any provision of the Contract.

B. By the Contractor, upon ten (10) days written notice to Owner, if payments are not made as specified herein, or

C. By mutual written consent of all parties, should irreconcilable differences or disputes develop, but such termination does not relieve Contractor from any damages that Owner incurred prior to termination.

D. This Contract can be terminated at the discretion of the Owner under the following conditions:

i. If more than one Contract has been executed with a single Contractor and any one of such Contracts has been terminated under (a) through (c) of Section 14 of the Contract, or

ii. The executed Proceed Order on the Contract to be terminated has not been delivered to the Contractor despite Owner's efforts or if the Proceed Order has been delivered and no work has begun prior to the date of the termination.

15. The work shall begin only after the Contractor receives the Proceed Order, despite any other dates herein.

16. In the event that there are any disagreements between the Contractor and the Owner with regard to any of the requirements of or interpretations of this Contract, the Contractor agrees to defer to the reasonable interpretations of the Owner, as from time to time, may be made by the Owner. Ambiguities in the terms of this Contract, if any, shall not be construed against the Owner.

17. The failure of the Contractor or the Owner to insist upon strict performance of any provision of this Contract shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of this Contract at any subsequent time. Waiver of any breach of the Contract by the Contractor or the Owner shall not constitute waiver of any subsequent breach.

18. This Contract and the written attachments referenced herein comprise the full agreement of the parties. There are no other agreements except those contained herein between the parties. Any amendments or modifications to this Contract must be in writing and signed by an authorized representative of each party.

19. This Contract shall be construed in accordance with the laws of the State of South Carolina.

20. In the event any provision of this Contract is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Prominent Homes, Inc.  
CONTRACTOR

BY: \_\_\_\_\_  
CONTRACTOR'S ACCEPTANCE

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

*Cassi Julian*  
\_\_\_\_\_  
WITNESS

*[Signature]*  
\_\_\_\_\_  
OWNER'S ACCEPTANCE

DATE: 9/23/09

APPROVED BY  
CITY OF COLUMBIA  
*pmb* LEGAL DEPT.

STATE OF SOUTH CAROLINA            )  
  ) CONSTRUCTION CONTRACT  
COUNTY OF RICHLAND                )

This Contract is being made by and between The City of Columbia (hereinafter referred to as "Owner"), and Prominent Homes, Inc. (hereinafter referred to as "Contractor").

The Contractor agrees as set forth below:

1. The Contractor shall perform all of the work shown in the Specification Work Sheet (a copy of which is attached and incorporated herein) dated May 8, 2009 on the property located at 1525 Manning Avenue, Columbia, SC 29204 and owned by The City of Columbia.

Further, the following documents are a part of this Contract as if repeated in full herein:

- A. Specification Work Sheet dated May 8, 2009.
- B. Floor plan dated May 8, 2009.
- C. Proceed Order

**2. The work to be performed under this Contract shall be commenced within 10 days of the starting date of the executed Proceed Order and completed no later than 180 days from the starting date that is shown on the Proceed Order. Should the work outlined in the above-mentioned construction documents 1A-1C not be completed within the time allotted, liquidated damages will be assessed as follows:**

- A. The Contractor will be assessed and pay to the Owner a penalty of \$100 per day commencing on the day following the original completion date of construction.

3. The Owner shall pay the Contractor for performance of the work described in the Specification Work Sheet the sum of One hundred sixty nine thousand one hundred fifty dollars and no cents (\$169,150.00).

4. Said payment shall be made in full to the Contractor no later than seven (7) days from the date of completion of the work, and may be made in installments as follows: Maximum of 6 draws to include final payment. The Owner shall determine payments for draw request(s) in its sole and exclusive discretion. All draws except the final draw will require a 10% holdback for that draw.

5. The Contractor shall be responsible for providing a Builder's Risk Insurance Policy of, or the insurance equivalent to, at least, the balance of any and all loans (liens) secured by the property. Insurance shall be in the amount of the value of the property to include value as a result of improvements.

6. The Contractor shall be responsible for the quality of work performed by him, his employees and any subcontractors and their employees who may perform under this Contract. All work shall be warranted by the Contractor for a period of one (1) year from the date of completion (date of final draw inspection and concurrence of completion by Owner) of the entire job under this Contract, and the Contractor shall timely correct any defects which occur during that period at no additional cost to the Owner.

7. The Contractor shall indemnify, hold harmless, and defend the Owner from and against all claims, damages, losses, expenses, suits, judgments, or any adverse actions brought against Owner for any damages, whether to persons or property, arising from the negligent acts by Contractor or anyone working for or under Contractor to include, but not limited to, subcontractors. The Contractor shall comply with the City's Ordinance regarding Liability insurance and shall provide proof of such insurance to the owner and any such insurance shall be approved by the City prior to commencing work.

8. The Contractor shall furnish to the Owner an executed release of liens or claims of liens by subcontractors in completing this Contract stating that they have been paid in full or will be simultaneously with the disbursement of the proceeds due him under this Contract. Should a lien, suit or action be later filed on the Owner's property with regard to work completed under this Contract, the Contractor shall satisfy or otherwise have removed, said lien within ten (10) days of notice thereof and shall indemnify, hold harmless, and defend the Owner from any damages, potential damages, suits, actions, judgments or costs, including attorneys' fees with relation thereto.

9. LICENSES AND CODES:

A. The Contractor shall obtain and pay for all permits and licenses necessary for the execution and completion of the work and labor to be performed.

B. The Contractor shall perform all work in conformance with applicable local codes and requirements whether or not covered by the specifications and drawings for the work.

10. The Contractor will keep the premises as clean and orderly as is possible during the course of the work and shall remove all trash, rubbish, and debris from the premises and dispose of them in a legal manner. Unless otherwise stated in the Specification Work Sheet, all fixtures, equipment, building units (such as doors, windows, plumbing fixtures, etc.) to be replaced or removed shall become the property of the Contractor.

11. The Contractor will furnish the Owner with all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under the Contract.

12. All utilities necessary to carry out the rehabilitation work such as electricity and water shall be furnished by the Contractor and shall remain on until completion and final inspection.

13. The Contractor will hold the Owner harmless and agrees to indemnify and defend Owner from all claims or liens for labor or materials furnished or used in the performance of the work covered by this Contract, whether furnished or used by the Contractor or any immediate or remote subcontractor.

14. This Contract may be terminated as follows:

A. By the Owner upon ten (10) days written notice to the Contractor if the Contractor defaults, neglects to perform work as prescribed in the Specification Work Sheet, or fails to perform any provision of the Contract.

B. By the Contractor, upon ten (10) days written notice to Owner, if payments are not made as specified herein, or

C. By mutual written consent of all parties, should irreconcilable differences or disputes develop, but such termination does not relieve Contractor from any damages that Owner incurred prior to termination.

D. This Contract can be terminated at the discretion of the Owner under the following conditions:

i. If more than one Contract has been executed with a single Contractor and any one of such Contracts has been terminated under (a) through (c) of Section 14 of the Contract, or

ii. The executed Proceed Order on the Contract to be terminated has not been delivered to the Contractor despite Owner's efforts or if the Proceed Order has been delivered and no work has begun prior to the date of the termination.

15. The work shall begin only after the Contractor receives the Proceed Order, despite any other dates herein.

16. In the event that there are any disagreements between the Contractor and the Owner with regard to any of the requirements of or interpretations of this Contract, the Contractor agrees to defer to the reasonable interpretations of the Owner, as from time to time, may be made by the Owner. Ambiguities in the terms of this Contract, if any, shall not be construed against the Owner.

17. The failure of the Contractor or the Owner to insist upon strict performance of any provision of this Contract shall not be deemed to be a waiver of the right to insist upon strict performance of such provision or of any other provision of this Contract at any subsequent time. Waiver of any breach of the Contract by the Contractor or the Owner shall not constitute waiver of any subsequent breach.

18. This Contract and the written attachments referenced herein comprise the full agreement of the parties. There are no other agreements except those contained herein between the parties. Any amendments or modifications to this Contract must be in writing and signed by an authorized representative of each party.

19. This Contract shall be construed in accordance with the laws of the State of South Carolina.

20. In the event any provision of this Contract is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Prominent Homes, Inc.  
CONTRACTOR

BY: \_\_\_\_\_  
CONTRACTOR'S ACCEPTANCE

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

*Cari Quinn*  
\_\_\_\_\_  
WITNESS

*Steve A. Kent*  
\_\_\_\_\_  
OWNER'S ACCEPTANCE

DATE: 9/23/09

APPROVED BY  
CITY OF COLUMBIA  
LEGAL DEPT.  
*pmg*

STATE OF SOUTH CAROLINA            )  
  ) CONSTRUCTION CONTRACT  
COUNTY OF RICHLAND                )

This Contract is being made by and between The City of Columbia (hereinafter referred to as "Owner"), and Prominent Homes, Inc. (hereinafter referred to as "Contractor").

The Contractor agrees as set forth below:

1. The Contractor shall perform all of the work shown in the Specification Work Sheet (a copy of which is attached and incorporated herein) dated May 15, 2009 on the property located at 1527 Manning Avenue, Columbia, SC 29204 and owned by The City of Columbia.

Further, the following documents are a part of this Contract as if repeated in full herein:

- A. Specification Work Sheet dated May 15, 2009.
- B. Floor plan dated May 15, 2009.
- C. Proceed Order

2. **The work to be performed under this Contract shall be commenced within 10 days of the starting date of the executed Proceed Order and completed no later than 180 days from the starting date that is shown on the Proceed Order. Should the work outlined in the above-mentioned construction documents 1A-1C not be completed within the time allotted, liquidated damages will be assessed as follows:**

- A. The Contractor will be assessed and pay to the Owner a penalty of \$100 per day commencing on the day following the original completion date of construction.

3. The Owner shall pay the Contractor for performance of the work described in the Specification Work Sheet the sum of One hundred sixty nine thousand five hundred sixty dollars and no cents (\$169,560.00).

4. Said payment shall be made in full to the Contractor no later than seven (7) days from the date of completion of the work, and may be made in installments as follows: Maximum of 6 draws to include final payment. The Owner shall determine payments for draw request(s) in its sole and exclusive discretion. All draws except the final draw will require a 10% holdback for that draw.

5. The Contractor shall be responsible for providing a Builder's Risk Insurance Policy of, or the insurance equivalent to, at least, the balance of any and all loans (liens) secured by the property. Insurance shall be in the amount of the value of the property to include value as a result of improvements.

6. The Contractor shall be responsible for the quality of work performed by him, his employees and any subcontractors and their employees who may perform under this Contract. All work shall be warranted by the Contractor for a period of one (1) year from the date of completion (date of final draw inspection and concurrence of completion by Owner) of the entire job under this Contract, and the Contractor shall timely correct any defects which occur during that period at no additional cost to the Owner.

7. The Contractor shall indemnify, hold harmless, and defend the Owner from and against all claims, damages, losses, expenses, suits, judgments, or any adverse actions brought against Owner for any damages, whether to persons or property, arising from the negligent acts by Contractor or anyone working for or under Contractor to include, but not limited to, subcontractors. The Contractor shall comply with the City's Ordinance regarding Liability insurance and shall provide proof of such insurance to the owner and any such insurance shall be approved by the City prior to commencing work.

8. The Contractor shall furnish to the Owner an executed release of liens or claims of liens by subcontractors in completing this Contract stating that they have been paid in full or will be simultaneously with the disbursement of the proceeds due him under this Contract. Should a lien, suit or action be later filed on the Owner's property with regard to work completed under this Contract, the Contractor shall satisfy or otherwise have removed, said lien within ten (10) days of notice thereof and shall indemnify, hold harmless, and defend the Owner from any damages, potential damages, suits, actions, judgments or costs, including attorneys' fees with relation thereto.

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13. The Contractor will hold the Owner harmless and agrees to indemnify and defend Owner from all claims or liens for labor or materials furnished or used in the performance of the work covered by this Contract, whether furnished or used by the Contractor or any immediate or remote subcontractor.

14. This Contract may be terminated as follows:

A. By the Owner upon ten (10) days written notice to the Contractor if the Contractor defaults, neglects to perform work as prescribed in the Specification Work Sheet, or fails to perform any provision of the Contract.

B. By the Contractor, upon ten (10) days written notice to Owner, if payments are not made as specified herein, or

C. By mutual written consent of all parties, should irreconcilable differences or disputes develop, but such termination does not relieve Contractor from any damages that Owner incurred prior to termination.

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- i. If more than one Contract has been executed with a single Contractor and any one of such Contracts has been terminated under (a) through (c) of Section 14 of the Contract, or
- ii. The executed Proceed Order on the Contract to be terminated has not been delivered to the Contractor despite Owner's efforts or if the Proceed Order has been delivered and no work has begun prior to the date of the termination.

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16. In the event that there are any disagreements between the Contractor and the Owner with regard to any of the requirements of or interpretations of this Contract, the Contractor agrees to defer to the reasonable interpretations of the Owner, as from time to time, may be made by the Owner. Ambiguities in the terms of this Contract, if any, shall not be construed against the Owner.

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19. This Contract shall be construed in accordance with the laws of the State of South Carolina.

20. In the event any provision of this Contract is determined to be void or unenforceable, all other provisions shall remain in full force and effect.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Prominent Homes, Inc.  
CONTRACTOR

BY: \_\_\_\_\_  
CONTRACTOR'S ACCEPTANCE

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

*Cami J. Quinn*  
\_\_\_\_\_  
WITNESS

*Steve G. York*  
\_\_\_\_\_  
OWNER'S ACCEPTANCE

DATE: 9/23/09

Const Cont - (City Owned Prop) 8-7-09 pmb

APPROVED BY  
CITY OF COLUMBIA  
LEGAL DEPT.  
*pmb*