

CONSTRUCTION AGREEMENT

CONSTRUCTION AGREEMENT, made this ___ day of _____, 20__ by and between _____, with an address of _____, ("Owner") and ROMAN PROFESSIONAL ENGINEERING PLLC, a New York professional limited liability company, with main offices located at 61 Mott Farm Road, Tomkins Cove, New York 10986 ("Contractor") as follows:

1. DESCRIPTION OF WORK.

1.1 Contractor shall perform the following described work, in accordance with this Agreement, plans and specifications ("Contract Documents") at _____. Contractor will install a remotely-enabled heated driveway system (the "System") in accordance with the attached plan, dated _____, 2019 and the attached specifications, all as contained in Schedule 1.1.

2. CONTRACT SUM OR AGREED PAYMENT TO CONTRACTOR.

2.1 Owner agrees to pay Contractor for the work described the total sum of _____ (\$ _____) Dollars (the "Contract Sum"). Payment of the Contract Sum is subject to additions or deductions in accordance with Section 11, and the other documents to which this Agreement is subject. Owner acknowledges and agrees that the prices set forth on Schedule 1.1 attached hereto are based upon market rates and conditions as of the date of this Agreement. Owner agrees that the Contract Sum may change if the material required for the installation of the System is not ordered on or before _____, 20__. Any price change required as a result of such material costs shall be the subject of additions or deductions in accordance with Section 11 hereof.

2.2 Owner represents that Owner has not sought nor does Owner intend to seek financing of the installation of the System, and Owner further represents that Owner has sufficient funds to meet the financial obligations set forth pursuant to the terms of this Contract.

3. PROGRESS PAYMENTS.

3.1 Upon execution of this Contract, Owner agrees to pay Contractor the sum of _____ (\$ _____) Dollars. Thereafter, Owner shall make progress payments on account of the Contract Sum to Contractor based upon the construction payment schedule attached hereto as Schedule 3.1. Contractor shall provide Owner with a written application for each construction progress payment ("Application for Payment") as each segment of the work is completed as set forth in Schedule 3.1 attached hereto.

3.2 In the event that Contractor does not receive payment within five (5) days of the issuance of the Application for Payment, then in addition to such other remedies available to Contractor herein, Owner agrees to pay Contractor the sum of twelve (12%) percent annual interest on any outstanding disbursement to Contractor which is not received within five (5) days of the subject request.

4. CERTIFICATE OF COMPLETION; FINAL PAYMENT.

4.1 When Contractor has completed the work, Contractor shall so notify Owner. For the purposes of this Agreement, completion of the work shall be defined as Contractor having substantially completed all work agreed to be performed pursuant to this Agreement and the plans attached hereto. Upon completion, the final payment, consisting of the entire balance of the Contract Sum less all sums paid to date, is due to Contractor. Owner shall make the final payment within two (2) days after completion.

4.2 Contractor, by accepting final payment, waives all claims except those which Contractor has previously made in writing and which remain unsettled at the time of acceptance.

5. STARTING AND COMPLETION DATES.

5.1 Construction pursuant to this Agreement shall begin within thirty (30) days of Contractor's receipt of the building permit ("Commencement Date"). Owner agrees to do all acts, pay all fees, modify any plans and provide any and all documents to Contractor (including, but not limited to any bonding requirements) at Owner's sole cost and expense, which are required to obtain the building permit. Provided Owner complies with the provisions hereof, Contractor shall obtain from the building department the appropriate building permit. The work contracted for herein shall be completed within ninety (90) days after the Commencement Date ("Completion Date").

6. DUTIES AND RIGHTS OF OWNER.

6.1 Owner shall furnish all existing surveys and building plans helpful for the work, and shall secure and pay for easements for permanent structures or permanent changes in existing structures or facilities of the work site, or which are necessary for its proper completion. Owner acknowledges that the existence of accurate data will reduce engineering fees.

6.2 Post-completion, Owner shall permit access to Contractor to the heated portion of the driveway and the boiler.

6.3 Owner shall not permit any independent contractor or tradesmen or other person to enter upon the subject driveway prior to the completion without the express written consent of Contractor. Owner assumes the risk for any personal injury or property damage or any other loss sustained by Owner, members of Owner's family, guests, invitees and/or Owner's independent contractors or tradesmen while on the subject premises at any time or from time to time prior to completion.

7. DUTIES AND RIGHTS OF CONTRACTOR.

7.1 Explanation of Functions. Contractor shall provide Owner with a detailed, written explanation of the System's operating functions and the proper usage and maintenance thereof.

7.2 Responsibility for and Supervision of Construction. Contractor shall be solely responsible for all construction pursuant to the terms of this Agreement, including the techniques, sequences, procedures and means, and for coordination of all work. Contractor shall supervise

and direct the work to the best of Contractor's ability, and give it all attention necessary for such proper supervision and direction.

7.3 Furnishing of Labor, Materials, Etc. Contractor shall provide and pay for all labor, materials and equipment, including tools, construction equipment and machinery, transportation and all other facilities and services necessary for the proper completion of work on the project in accordance with the Contract Documents.

7.4 Payment of Taxes; Procurement of Licenses and Permits. The Contract Sum includes and Contractor shall pay, all taxes required by law in connection with work on the project in accordance with this Agreement, including sales, use and similar taxes.

7.5 Compliance with Construction Laws and Regulations. Contractor shall comply with all laws and ordinances and the rules, regulations or orders of all public authorities relating to the performance of the work herein. If any of the Contract Documents are at variance therewith, Contractor shall notify Owner promptly upon discovery of such variance.

7.6 Warranty of Fitness of Equipment and Materials. Contractor represents and warrants to Owner that all equipment and materials used in the work and made a part of the structure thereon, or placed permanently in connection therewith, will be new unless otherwise specified in the Contract Documents, of good quality, free of defects and in conformity with the Contract Documents.

7.7 Clean-up. Contractor agrees to keep the work premises and adjoining ways free of waste material and rubbish caused by Contractor's work or that of Contractor's subcontractors. Contractor further agrees to remove all such waste material and rubbish caused by Contractor's work or that of Contractor's subcontractors upon completion of the project, together with all Contractor's tools, equipment, machinery and surplus materials.

7.8 Modifications. Contractor reserves the right to make non-major and non-substantial changes and substitute materials of substantially similar or better quality and utility. Any major or substantial changes shall require the prior written approval of Owner, said approval not to be unreasonably withheld or delayed. No changes in construction requested by Owner will be made unless authorized in writing by Owner and agreed upon by Contractor in writing.

7.9 Intellectual Property Rights Representation. Contractor represents that it owns all intellectual property rights of the System and that the System does not infringe upon or violate any intellectual property right, including without limitation copyright, trademark, service mark, patent, patent application, trade dress, trade name, trade secret, mask work, mask right or any other proprietary right of any third parties. The System's intellectual property is and shall remain the exclusive property of Contractor, and Owner acknowledges and agrees that Owner shall acquire no right, title or interest in or to any of the System's intellectual property by reason of this Agreement.

7.10 Right to Perform Credit Check. Contractor shall have the right to perform a credit check of Owner, at Contractor's sole discretion, and Owner agrees to provide Contractor with an executed authorization in order to effectuate same.

8. **EXTENSION OF TIME.**

8.1 Contractor shall have the right to extend the time period set forth pursuant to the terms of this Agreement for such reasonable time as Contractor may determine when, in Contractor's opinion, Contractor is delayed in work progress by changes ordered, Owner's defaults, labor disputes, fire, prolonged transportation delays, injuries, subsurface conditions or unforeseen conditions, or other causes beyond Contractor's control or which justify the delay. Owner shall be deemed to have executed a change order for such reasonable extensions as Contractor requests based upon the circumstances set forth in this provision.

9. **INSURANCE.**

9.1 Contractor's Liability Insurance.

9.1.1 Contractor agrees to keep in full force and effect at Contractor's own expense during the entire period of construction on the project such liability insurance as will protect Contractor and Owner from claims pursuant to workers' compensation and other employee benefit laws, for bodily injury and death and for property damage that may arise out of work pursuant to the terms of this Agreement, whether caused directly or indirectly by Contractor or directly or indirectly by a subcontractor. Such insurance shall include liability insurance applicable to Contractor's obligations pursuant to this Agreement. Proof of such insurance shall be provided by Contractor to Owner within a reasonable time after execution of this Agreement.

9.2 Owner's Liability Insurance.

9.2.1 Owner agrees to maintain in force Owner's own liability insurance during the construction of this project and reserves the right to purchase such additional insurance as in Owner's opinion is necessary to protect Owner against claims arising out of Contractor's operation, without diminishing Contractor's obligation to carry the insurance specified herein on Contractor's part to be carried.

9.3 Property Damage Insurance on Work Site.

9.3.1 Owner agrees to maintain at Owner's expense, during construction of the project property, property damage and builder's risk insurance on the work at the site to its full insurable value, covering the interests of Owner and Contractor against fire, vandalism and other perils ordinarily included in extended coverage. Such insurance shall name Contractor as co-insured and loss payee. Losses covered by such insurance will be adjusted with and made payable to Owner and Contractor as their interests appear. Owner shall deliver a copy of all such policies to Contractor within a reasonable time after construction begins herein.

9.4 Waiver of Work Site Property Damage Claims to Extent of Insurance Coverage.

9.4.1 Owner and Contractor hereby waive all claims against each other for fire damage or damages from other perils covered by insurance as provided hereinabove, provided said

insurance is maintained pursuant to this Agreement.

10. CORRECTING WORK.

10.1.1 When it appears to Contractor during the course of construction that any work does not conform to the provisions of the Contract Documents, Contractor shall make necessary corrections so that such work shall so conform and, in addition, shall correct any defects caused by faulty materials, equipment or workmanship in work supervised by Contractor or by a subcontractor, within such period as may be prescribed by law or as may be provided for by applicable guarantees in the Contract Documents.

11. WORK CHANGES.

11.1 Owner reserves the right to order work changes in the nature of additions, deletions or modifications, without invalidating this Agreement and agrees to make corresponding adjustments in the Contract Sum and time of completion. All changes will be authorized by a written change order signed by Owner and Contractor. The change order will include conforming changes in this Agreement, completion time and the cost of said change.

11.2 Except as set forth herein, work shall be changed and the Contract Sum and completion time shall be modified only as set out in the written change order. Any adjustment in the Contract Sum resulting in a credit or a charge to Owner shall be determined by mutual agreement of the parties. If the change order requires additional work or materials, Owner agrees to pay fifty (50%) percent of the increase in the Contract Sum upon signing the change order and the remaining fifty (50%) percent upon completion of the change order work.

11.3 All options, extras and/or standard selections, if offered by Contractor, shall be constructed, obtained and/or purchased through Contractor or Contractor's designated suppliers or subcontractors. Selections shall be made promptly by Owner from Contractor's selections, within ten (10) days' notice by Contractor to Owner. Owner hereby agrees to pay for all options and extras upon selecting or ordering said options and extras. In the event Owner fails to or delays in making selections, options and/or extras, same shall constitute a waiver by Owner to make such selections and Contractor may select same on behalf of Owner. Delay in the payment for such options and/or extras shall entitle Contractor to cancel the order and have standard items installed in lieu thereof or in the event no standard items installed in lieu thereof or in the event no standard item is incorporated, then Contractor shall be entitled to complete installation of the System without anything in place thereof.

12. EARLY TERMINATION FOR BREACH OF CONTRACT.

12.1 Contractor may, on two (2) days' written notice to Owner, terminate this Agreement before the Completion Date hereof when for a period of five (5) days after a progress payment is due, Owner fails to make the payment. Upon such termination, Contractor may recover from Owner payment for all work completed and for any loss sustained by Contractor for materials, equipment, tools or machinery to the extent of actual loss thereon plus loss of a reasonable profit.

13. MATERIALS OWNERSHIP.

13.1 All services and work performed and material delivered to the premises, whether actually incorporated into the building or not, shall remain the property of Contractor until paid for in accordance with the terms hereof and Contractor shall have free access thereto at all reasonable times.

14. COUNSEL FEES, COSTS AND EXPENSES.

14.1 In the event of a dispute between the parties, the substantially prevailing party in any action shall be entitled to an award of reasonable counsel fees, costs and disbursements.

15. WARRANTY.

15.1 The System shall be warranted as set forth in Schedule 15.1 annexed hereto and made a part hereof.

15.2 Contractor represents that the System shall not corrupt or interfere with any of Owner's existing data platforms currently being utilized at the location proposed for the installation of the System.

IN WITNESS WHEREOF, the parties have executed this Agreement at _____ on this ____ day of ____, 20__.

CONTRACTOR:

ROMAN PROFESSIONAL ENGINEERING PLLC

BY: _____

OWNER:

SCHEDULE 1.1
PLANS AND SPECIFICATIONS

Attached.

SCHEDULE 3.1

PROGRESS PAYMENTS

To be determined.

SCHEDULE 15.1

WARRANTY

Contractor shall repair any System failures for two (2) years from the date of the completion of installation. In the event of the System's failure during a snow event exceeding four (4) inches, Contractor shall plow or cause to be plowed the driveway in which the System has been installed until the repair has been completed.