

## **CONSTRUCTION JOINT VENTURE AGREEMENT**

THIS AGREEMENT is made this First day of \_\_\_\_\_, 2010, by and between XYZ ENGINEERING, INC., a California Corporation ("XYZ"), whose principal business address is \_\_\_\_\_, California, and QRT, INC., a California Corporation ("QRT"), whose principal business address is \_\_\_\_\_, California. XYZ and QRT are collectively, "the Joint Venturers" and by this agreement mutually agree to engage in, undertake and carry on, as joint venturers, certain public and/or private sector construction projects and any profits derive from and any liability for losses arising out of the performance, be defined by an agreement in writing:

THEREFORE, it is agreed as follows:

### **1. FORMATION OF JOINT VENTURE**

The joint venturers hereby constitute themselves as joint venturers for the purpose of performing and completing the certain public and/or private sector construction projects, ("Construction Contract"), attached hereto as schedule "A" and for no other purpose. From time to time upon written consent of all joint venturers, joint venturers may include new projects to their joint venture.

### **2. NAME OF JOINT VENTURE**

The Construction Contracts shall be entered into the names of the Joint Venturers, and shall be known as JV. JV shall apply and obtain Contractor License under JV, prior to entering into any construction agreement or perform any construction work.

### **3. JOINT AND SEVERAL OBLIGATIONS**

The obligations under the Construction Contract shall be joint and several.

### **4. DURATION AND TERMINATION**

This agreement shall remain in full force and effect until all the purposes for which this venture has been undertaken have been accomplished and completed or until \_\_\_\_\_, 2011, whichever comes first.

### **5. PLACE OF BUSINESS**

The principal place of business of the joint venture shall be at \_\_\_\_\_ California, or at such other place as may from time to time be agreed upon by the Joint Venturer.

### **6. FICTITIOUS BUSINESS NAME STATEMENT**

The joint venture shall comply with applicable laws regarding the filing of notices with respect to the use, continuation of use and discontinuation of use of its fictitious business name.

### **7. INTERESTS OF THE JOINT VENTURERS**

The interest of the Joint Venturers in and to the Construction Contract, and in and to any and all property and equipment acquired in connection with the performance thereof and in and to any and all moneys which may be derived from the performance thereof and the obligations and

liabilities of each of the Joint Venturers hereto as among themselves in connection with the Construction Contract and with respect to any and all liabilities and losses in connection therewith shall be equal. Each Joint Venturer does hereby indemnify the other against any loss or liability exceeding the proportions hereinabove stated by reason of any liability incurred or loss sustained in and about the Construction Contract, or by reason of the execution of any surety company bonds or indemnity agreements executed in connection therewith.

**8. CONTRIBUTIONS AND DIVISION OF PROFITS**

The interest of the parties in and to any profits and assets derived from the performance of the Construction Contract, and in and to any property acquired by the joint venture in connection with the work to be performed under this instrument, and in and to all contributions required, all moneys received, and losses incurred in the performance of the Construction Contract shall be those percentages set opposite their respective names as follows:

<u>Name</u>	<u>Amount</u>	<u>Percentage</u>
XYZ	\$500,000.00	50%
QRT	\$500,000.00	50%

**9. INDEMNITY AGREEMENTS; SURETY BONDS**

Each of the parties agrees to execute all applications and indemnity agreements required by the sureties on any bond or bonds required in connection with the bid and Construction Contract. All financial obligations assumed by the parties, or any of them, in connection with the performance of the Construction Contract, all liabilities assumed by or charged to them, or any of them, as contractors, guarantors, or indemnitors, in connection with any surety bond or other bonds which may be given or executed in connection with the Construction Contract, and all other obligations and liabilities of any kind or character which are assumed or undertaken by the parties, or any of them, in connection with and for the benefit of the performance of the Construction Contract shall be shared by the parties proportionately and in accordance with their respective interest as set forth in Article (8).

**10. CONTRIBUTION OF WORKING CAPITAL**

All necessary working capital when and as required for the performance and prosecution of the Construction Contract shall be furnished by the parties proportionately in accordance with their respective interests as set forth in Article (8).

**11. ADDITIONAL CAPITAL**

Subject to the consent of the joint venturers, additional capital needed by the joint venture to meet its operating needs from time to time during the term of the joint venture shall be obtained from loans to the joint venture or, if such loans are not available, from additional capital contributions from the joint ventures, which shall be made on a 50-50 basis.

**12. WITHDRAWAL OF CAPITAL**

Capital contributed to the joint venture by a joint venturer may not be withdrawn without the consent of the joint venturers.

13. INTEREST ON CAPITAL

No interest shall be paid on any capital contributed to the Joint Venture by a Joint Venturer.

14. BORROWING MONEY; LOAN TO JOINT VENTURE

Neither Joint Venturer shall have the right to borrow money on behalf of the other Joint Venturer or to use the credit of the other Joint Venturer for any purpose.

All loans to the Joint Venture shall be approved by the Joint Venturer. A loan by a Joint Venturer (or an affiliate of a Joint Venturer) to the Joint Venture shall not be regarded as an increase in such Joint Venturer's capital nor entitle such Joint Venturer to any increase of the profits or losses of the Joint Venture.

15. AUTHORIZED REPRESENTATIVES

To facilitate the handling of all matters and questions in connection with the performance of the Construction Contract, each of the Joint Venturers appoints the following representatives to act for it in all such matters, with full and complete authority to act on its behalf in relation to any matters or things in connection with , arising out of, or relative to the Joint Venture and in relation to any matters or things involving the performance of the Construction Contract.

Authorized Representatives of XYZ:

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Authorized Representative of QRT:

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Either Joint Venturer may at any time and from time to time change its representative by filing with the other a notice and duly executed appointment of a new representative or alternate, but until the appointment and filing of such notice the actions of the representative or alternate hereby appointed shall be conclusively binding on such Joint Venturer.

16. MANAGEMENT OF JOINT VENTURE

The representatives of the Joint Venturers shall meet from time to time as required to act on necessary matter pertaining to the Construction contract. All decisions, commitments, agreements, undertakings, understandings, or other matters pertaining to the performance of the Construction Contract shall be mutually agreed upon by such representatives. No representative shall be liable to the Joint Venturers by reason of his acts as such, except in the case of its gross negligence or actual fraudulent or dishonest conduct. In the event the representatives cannot agree on a matter of Joint Venture policy, the matter shall be submitted to informal, but binding, arbitration to a mutually

acceptable third party. If the Joint Venturers cannot agree on an arbitrator, then the matter shall be resolved by binding commercial arbitration as provided in Article (42) below.

#### 17. COST OF CONSTRUCTION

Cost of construction shall consist of the costs of all subcontracts, labor, material, plant, and equipment purchased or rented, bonds, insurance, taxes on labor and material, imports, charges, legal fees, liabilities not secured by insurance, and all other expenses and obligations incurred or suffered in and about the performance of the Construction Contract of a nature which under sound accounting practices would be properly charged as a cost of the performance of the Construction Contract. Such costs shall not include any charges against the Joint Venture for any overhead expenses or charges of the main or branch offices of the Joint Venturers or for the time which may be expended in connection with the work by any of the Joint Venturers or their officers or employees, except as may be approved by the Joint Venturers and except as provided for by this agreement. Equipment rented from either of the Joint Venturers shall be charged as a construction cost at a rate mutually agreed on by the representatives of the parties.

#### 18. RECORDS

(a) Separate books of account for the performance of the Construction Contract and all matters pertaining thereto shall be kept and maintained at the main office of the Joint Venture. All records of the Joint Venture shall be open for inspection of either Joint venturer at all reasonable times.

(b) A periodic audit of such books shall be made by an independent firm of accountants or by such individuals as may be mutually agreed upon by the Joint Venturers, and a like audit shall be made upon completion of the Construction Contract. With respect to the periodic audits there shall be included, if requested by the Joint Venturers, a periodic comparison between the items of cost and the items set up in the estimate of cost. The cost of any such audits shall be a part of the cost of construction.

(c) Upon the completion of the Construction Contract a true and correct accounting shall be had of all costs and expenses and all accounts, vouchers, and other data relating to the Construction Contract and its performance.

(d) To the extent that the records of the Joint Venture must be kept subsequent to the completion of the Construction Contract, pursuant to the provisions of law, the same shall be kept at such place or places as the Joint Venturers may from time to time determine, and the cost thereof shall be borne equally by the Joint Venturers.

#### 19. PROFITS

Upon the completion of the Construction Contract, after providing for and paying (a) all costs disbursed or incurred in the performance of the Construction Contract; (b) all other costs and charges ordinarily and usually charged as costs in the performance of such a contract; (c) any and all claims not secured by insurance; (d) proper reserves for any claims which shall have either been brought against the Joint venturers or which the Joint Venturers may reasonably anticipate will be brought against them; and (e) reserves for contingencies, if any, that shall be determined by the Joint Venturers in their discretion to be necessary, and after repaying all sums advanced by the Joint

Venturers for working capital, any profits thereafter remaining, resulting from the performance of the Construction Contract, shall be distributed and divided equally between the Joint Venturers. Any reserves, when no longer required, or so much thereof as shall remain, shall be similarly distributed.

20. LOSSES

If the performance of the Construction Contract results in a loss, the Joint Venturers shall be obligated equally for any such loss. Such equal liability of the Joint Venturers for the bearing of losses shall continue with respect to any claims which at any time, either before or after the completion of the Construction Contract, shall be made against them or either of them by reason of this Joint Venture or any matter or thing in connection therewith.

21. METHOD OF ACCOUNTING

The books of account of the Joint Venture shall be kept in accordance with generally accepted accounting principles which shall be applied on a consistent basis.

22. ACCOUNTING YEAR

The accounting year of the Joint Venture shall end on the 31st day of December of each year.

23. ANNUAL REPORT/ACCOUNTING

Within 90 days after the end of each accounting year of the Joint Venture, a report and accounting shall be made of the financial affairs of the Joint Venture as of the close of the said year. Upon such accounting being made, the net profit or net loss sustained by the Joint Venture during said year shall be ascertained and credited or debited, as the case may be, in the books of account of the Joint Venture to the respective Joint Venturer in the proportions specified in Article (8) above.

24. DELIVERY OF TAX INFORMATION

Within 90 days after the end of each taxable year of the Joint Venture, the information necessary for the Joint Venturers to complete their federal and state income tax or information returns shall be made available to the Joint Venturers, and there shall be included with such information a copy of the Joint Venture's federal and state income tax or information returns for the year.

25. TAX RETURNS

The Joint Venture shall prepare and file all required income tax returns for the Joint Venture on a timely basis. QRT shall be the "tax matters Joint Venturer".

26. BANK ACCOUNTS

All funds of the Joint Venture shall be deposited in accounts in the name of the Joint Venture at such bank or banks as may be selected by the Joint Venturers. All withdrawals therefrom or drafts written thereon in excess of \$5,000.00 shall be signed by a signatory/representative of each of the Joint Venturers. The aggregate monthly withdrawals or drafts by anyone of Joint Venturers, shall not exceed \$10,000.00.

27. TIME/EFFORTS DEVOTED TO JOINT VENTURE

In general, each Joint Venturer shall cooperate in whatever manner is reasonably necessary to carry out the purposes of the Joint Venture, including, but not limited, to making joint applications (with the other Joint Venturer) for and obtaining construction related bonds. Neither of the Joint Venturers shall be required to spend any fixed amount of time in Joint Venture business, and each of the Joint Venturers may engage in any other outside business or activity of any type, including, but not limited to, the business regularly conducted by it apart from this Joint Venture; provided, however, that each of the Joint Venturers shall spend a sufficient amount of time to adequately perform such Joint Venturer's respective duties and obligations under this Agreement. Neither of the Joint Venturers shall have the duty to disclose to the other Joint Venturer or the Joint Venture any business opportunities of which it becomes aware, and either Joint Venturer may take such opportunities for itself without being in breach of its duties or obligations hereunder.

28. SALARIES

Salaries shall be paid to the Joint Venture representatives as agreed between the Joint Venturers from time to time.

29. PAYMENT OF JOINT VENTURE EXPENSES

The Joint Venture shall pay all reasonable and necessary expenses of the Joint Venture, including, but not limited to, reasonable rent for tools, machinery, personnel, etc., provided by one of the Joint Venturers to the Joint Venture, as agreed by the Joint Venturers in advance. In addition, the Joint Venture shall reimburse each Joint Venturer for other reasonable and necessary expenses incurred by it in the ordinary and proper conduct of the Joint Venture business and/or for the preservation of the Joint Venture business or property.

30. DRAW

Neither Joint Venturer shall be entitled to withdraw funds of the Joint Venture from time to time for its own use, without the consent of the other Joint Venturer.

31. PROHIBITED ACTS

Neither Joint Venturer shall take any action in the name of the Joint Venture except in the ordinary course of the Joint Venture business, without the consent of the other Joint Venturer.

32. LIMITATION OF JOINT VENTURE

It is specifically understood and agreed between the parties that this Joint Venture agreement extends only to the performance of the Construction Contract, together with any changes or additions to this agreement or extra work under it, and in no event shall this agreement extend to or cover any different work.

The term "Construction Contract" as used in this agreement is intended to and shall include the changes, additions, or extra work in this agreement mentioned.

33. LEASING OF MACHINERY AND EQUIPMENT

The parties shall lease to the joint venture, and the Joint Venture shall lease from the parties,

for the terms respectively commencing when the Joint Venture shall require them for use in performing the Construction Contract without delay and continuing subsequently whenever and for as long as the same shall be required in such performance, such machinery and equipment as the parties may have available for use on the project, at and for the unit rental rates mutually agreed on by the representatives of the parties.

Schedules of the mutually agreed rental rates shall be signed by each Venturer and attached to this agreement. The sponsoring Joint Venturer will consult with the other Venturers before committing the Joint Venture to a purchase agreement or lease with option agreement for the acquisition or leasing of major equipment items, such as: truck cranes, side boom cats, trucks, welding machines, compressors, tractors and loaders.

#### 34. PURCHASE OF EQUIPMENT ON COMPLETION

On completion of the Construction Contract, the parties will secure a bona fide bid for each item or group of items of equipment purchased by the Joint Venture, or held by it under a lease with option agreement, from one or more reputable equipment dealers. Each of the parties shall have the right to purchase any item or group of items, at the highest price bid for such item or items, by such dealers, provided that no party shall be entitled to purchase a greater percentage of the equipment than the percentage of its interest in the Joint Venture.

If more than one party shall desire to purchase the same items or items of equipment, at a price or prices so determined, and mutually satisfactory adjustment is not effected by agreement between or among them, then such item or items of equipment, in like manner as items not desired by the parties, shall be disposed of by sale, for the best price obtainable, to outsiders.

All hand tools will be purchased for the Construction Contract from suppliers or from members of the Joint Venture, provided their prices are considered equitable by the Joint Venture participants. At the completion of the Construction Contract the tools shall be divided by value according to each Joint Venturer's participation.

#### 35. BANKRUPTCY OR DISSOLUTION OF PARTY

In the event of the bankruptcy or dissolution of any of the parties, this Joint Venture shall immediately cease and terminate on its occurrence. Then, the successors, receivers, trustees, or other legal representatives, in this agreement called "representatives" of any party so affected shall cease to have any interest in the performance of the Construction Contract and shall cease to have any interest in and to the Joint Venture or its assets. In any such case the remaining party shall have the right to wind up the affairs of the joint venture and to carry out and complete the performance of the Construction Contract. On such completion or sooner termination and receipt of payment of all amounts due under the Construction Contract, the remaining Joint Venturer shall account to the representatives of the party or parties so affected and such representative shall then be entitled to receive from the remaining Joint Venturer an amount equal to the sums advanced by the party represented, plus such party's proportionate share of the profits, or less such party's proportionate share of the losses resulting from the performance of the Construction Contract to the date of the termination of the Joint Venture. Provided, however, that the profit or loss computed as of the day of the termination shall be in the same proportion to the whole profit or loss resulting from the performance of the Construction Contract as the amount of work done under it at such time bears to

all of the work which is done under it.

In the event the share of the losses chargeable to the parties so represented exceeds the sum advanced by such party, the representative shall promptly pay to the remaining Joint Venturer any such excess. The books of the Joint Venture shall be conclusive in establishing whether a profit has been realized or a loss sustained, the amount, and the proportionate amount of work done as of any given time or date.

### 36. ASSIGNMENTS AND TRANSFERS

Neither this agreement nor the interest of the parties or any of them in this agreement, including its respective interest in any moneys belonging to or which may accrue to the Joint Venture in connection with the Construction Contract, may be assigned, pledged, transferred or hypothecated, except that in the event a party desires to obtain banking accommodations, such party may assign, pledge, or hypothecate to the lending institution as security for such banking accommodation, its interest in the moneys to be received by such party under this agreement when distributed to it in accordance with its terms, if the other parties to this agreement give their written consent to it in advance.

### 37. ADJUSTMENT OF ACCOUNTS

On completion of the performance of the Construction Contract, the parties shall render a true and correct account, each to the others, of all expenses incurred on account of and all moneys received as result of, such performance. The parties mutually agree, on completion of the performance of the Construction Contract, to settle and adjust all accounts in connection with the performance of the Construction Contract, and to pay, each to the others, such sums as well result in reach of the parties receiving that portion of all profits arising from the performance of the Construction Contract, or bearing that proportion of all losses arising from it in accordance with Articles (8), and (35).

### 38. TRUST FUNDS

All moneys contributed by the Joint Venturers to this Joint Venture and all moneys received as payments under the Construction Contract or otherwise received shall be treated and regarded as, and are hereby declared to be, trust funds for the performance of the Construction Contract and for no other purpose until the Construction Contract shall have been fully completed and accepted by owner and until all obligations of the Joint Venturers hereto shall have been paid, otherwise discharged, or provided for adequate reserves. such reserves shall likewise be treated as trust funds until they shall have served the purposes for which they were created. Proper fidelity bond coverage shall be maintained on all persons who are directly connected with performance of the Construction Contract, and the cost of such fidelity bond premiums shall be part of the construction cost.

### 39. DISSOLUTION OF JOINT VENTURE

Upon dissolution of the Joint Venture, except as otherwise provided herein, the operation of the Joint Venture's business shall be confined to those activities necessary to wind up the Joint Venture's affairs, discharge its obligations, and preserve and distribute its assets. Any gains or losses of the Joint Venture arising out of the liquidation of the Joint Venture's assets shall be allocated, and the cash and other property of the Joint Venture remaining after satisfaction of Joint Venture



obligations shall be distributed, to the Joint Venturers in accordance with the provisions of Article (8) above. Promptly on dissolution, a Notice of Dissolution of Joint Venture shall be published pursuant to Section 15035.5 of the California Corporations Code or any equivalent successor statute then applicable.

40. BINDING EFFECT

Except as otherwise provided in this agreement, this agreement shall inure to the benefit of, and be binding on the parties, their successors, trustees, assigns, receivers and legal representatives, but shall not inure to the benefit of any other person, firm, or corporation.

41. GOVERNING LAW

All questions relative to the execution, validity, interpretation, and performance of this agreement shall be governed by the laws of the State of California.

42. DISPUTE RESOLUTION

If a dispute arises that cannot be resolved through direct discussions, Joint Venturers shall participate in mediation before recourse to any other form of binding dispute resolution. The location of the mediation shall be Los Angeles County, California. Joint Venturers hereby appoint RAFIK AYVAZI as the sole mediator. Joint Venturers acknowledge that RAFIK AYVAZI is the attorney of Joint Venturer and consent to RAFIK AYVAZI being the sole mediator and waive to any disclaimer required of a mediator, if any, as to potential conflict of interest or bias. If for any reason RAFIK AYVAZI refuses to act as the mediator, or disqualified, the joint venturers shall participate in mediation under the Construction Industry Mediation Rules of the American Arbitration Association. Once one party provides written notice of mediation to the American Arbitration Association, the parties agree to commence such mediation within sixty (60) days of the notice of the request. Engaging in mediation is a condition precedent to any other form of binding dispute resolution. Agreements reached in mediation shall be binding and enforceable as any other settlement agreement. If the Joint Venturers are not able to resolve the dispute in Mediation, then such disputes shall be resolved through binding arbitration carried out in accordance with the rules and regulations of the American Arbitration Association. Each of the Joint Venturers shall be entitled to conduct full discovery under the applicable provisions of the California Code of Civil Procedure in any such proceeding. The decision of the arbitrator in any such proceeding shall be fully enforceable in any court of competent jurisdiction.

43. ATTORNEY'S FEES

Should any litigation or arbitration be commenced between the parties concerning any provision of this Agreement, the party prevailing in such litigation shall be granted, to recover their costs and reasonable attorney's fees incurred in such litigation.

44. ENTIRE AGREEMENT

This agreement contains the sole and only agreement of the parties hereto relating to the Joint Venture. Any prior agreement, promises, negotiations or representations not expressly set forth in this Agreement are of no force and effect.

IN WITNESS WHEREOF, the undersigned have executed this Joint Venture Agreement as of the day and year set forth above.

XYZ ENGINEERING, INC.

QRT, INC.

BY:

BY:

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