

ADVERTISEMENT FOR REQUEST FOR QUALIFICATIONS
COBB COUNTY PURCHASING DEPARTMENT

BID OPENING DATE: DECEMBER 10, 2009

Cobb County will receive Sealed Bids before 12:00 NOON, December 10, 2009 in the Cobb County Purchasing Department, 1772 County Services Parkway, Marietta, GA 30008 for:

**SEALED BID # 10 – 5456
PREQUALIFIED GENERAL CONTRACTING SERVICES – GROUP 2
NON-BUILDING, SPORTS OR RECREATIONAL FACILITY
CONSTRUCTION / RENOVATION PROJECTS
COBB COUNTY PARKS RECREATION AND CULTURAL AFFAIRS DEPARTMENT**

No bids will be accepted after the 12:00 noon deadline.

Proposals are opened at 2:00 p.m. at Cobb County Purchasing Department, 1772 County Services Parkway, 2nd Floor, Bid/Meeting Room, Marietta, GA 30008.

No proposal may be withdrawn for a period of ninety (90) days after date of Bid Opening, unless otherwise specified in the bid documents. Cobb County will consider the competency and responsibility of bidders in making the award. Cobb County reserves the right to reject any and all proposals, to waive informalities and technicalities, to reject portions of the proposals, and to award contracts in a manner consistent with the County and the laws governing the State of Georgia.

This solicitation and any addenda are available for download in PDF format on the Cobb County purchasing website. www.purchasing.cobbcountyga.gov
To request a copy of the proposal documents, **FAX** the following information to the Purchasing Department @ 770-528-1154 or **e-mail** requests to purchasing@cobbcounty.org:

Company name, contact name, company address, phone number and fax number.

Please reference the proposal number and the title of the proposal in the request.

Advertise: November 13, 20, 27, 2009
December 4, 2009

BIDDING INSTRUCTIONS – TERMS AND CONDITIONS

1. PREPARATION OF BID:

- (A) Bidders are expected to examine the drawings, specifications, schedules, and all instructions. Failure to do so will be at the bidder's risk.
- (B) Each bidder shall furnish the information required by the bid form. The bidder shall sign and print or type his/her name where designated. The person signing the bid must initial erasures or other changes.
- (C) Unit price for each quotation shall be shown and such price shall include packing unless otherwise specified, along with a total and grand total where applicable. In case of discrepancy between a unit price and extended price, the unit price will be presumed correct.
- (D) Where not otherwise specified, bidders must definitely state DATE OF DELIVERY.

2. EXPLANATION TO BIDDERS:

Any explanation desired by a bidder regarding the meaning or interpretation of Invitation to Bids, Request for Proposals or Qualifications, drawings, specifications, etc., must be in writing. All questions must be received within seven (7) business days prior to the bid opening date for a response to be generated by the County to all bidders in the form of an addendum. If any statement in the bidding documents, specifications, etc., appears ambiguous to the bidder, the bidder is specifically instructed to make a written request to the Purchasing Department, unless otherwise outlined in the specifications. Any information given to a prospective bidder concerning an Invitation for Bid will be furnished to all prospective bidders, as an addendum to the invitation, if such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. Receipt of the addendum by a bidder must be acknowledged on the bid or by letter received before the date and time specified for the bid opening. **ORAL EXPLANATION OR INSTRUCTIONS GIVEN BEFORE THE AWARD OF THE CONTRACT WILL NOT BE BINDING.**

3. SUBMISSION OF BIDS: FACSIMILE BIDS WILL NOT BE CONSIDERED.

- (A) Any Bid Package and modifications thereof shall be enclosed in a sealed envelope, addressed to the office specified in the Invitation to Bid, with the name and address of the bidder, the date and hour of bid opening, and name of bid. A bid reply label will be included in most bid packages stating the above referenced information. Any bid package NOT having bid information on outside of package could be opened as regular mail, and bid could be disqualified.
- (B) Samples of items, when required, must be submitted within the time specified, unless otherwise specified by the County, and at no expense to the County
- (C) An item offered must at least meet specifications called for and must be of quality which will adequately service the purpose and use for which it was intended.
- (D) Full identification of each item bid upon, including brand name, make, model, and catalog number, must be furnished according to the bid specifications if requested to identify exactly what the bidder is proposing. Supporting literature may be furnished to further substantiate the proposal.
- (E) The bidder represents that the article(s) to be furnished under this Invitation to Bid is (are) new and that the quality has not deteriorated so as to impair its usefulness.
- (F) Bids cannot be withdrawn or corrected after the bid opening (except reductions or changes by the successful bidder which would be beneficial or advantageous to the County). The County as deemed necessary may reject changes.
- (G) Cobb County is exempt from Federal Excise Tax and Georgia Sales Tax.
- (H) Cobb County does not accept conditional bids.

4. DEFAULT:

The Award as a result of bids received under this invitation may be in part based on the delivery factor. Accordingly, should delivery fail to be performed within the time specified by the bidder, the bid may then be declared in default of the contract. In such event, the County may then proceed to purchase in the open market the items from another source.

5. F.O.B. POINT:

Unless otherwise stated in the Invitation to Bid and any resulting contract, all articles will be F.O.B. Destination. This means delivered, unloaded, and placed in the designated place.

6. AWARD OF CONTRACT:

The Contract will be awarded to the responsible bidder whose bid will be the most advantageous to the County, price, and other factors considered. The County will make the determination. The County reserves the right at any time to reject any and all bids, to waive informalities and technicalities, to award portions of the bid, and to award contracts consistent with the County and the laws governing the State of Georgia. Normal payment terms are net thirty (30) days after receipt of invoice by the Finance Department.



COBB COUNTY
PURCHASING DEPARTMENT
1772 County Services Parkway
Marietta, Georgia 30008-4012
(770) 528-8400/FAX (770) 528-1154
www.cobbcounty.org

IMPORTANT NOTICE – PLEASE READ CAREFULLY!!

All vendors are required to submit the ORIGINAL AND AT LEAST one (1) duplicated copy of any bid submitted to Cobb County. Please refer to your bid specifications to determine if more than one (1) copy is required. Non-submission of a duplicate copy may disqualify your bid/proposal.

A “**SEALED BID LABEL**” has been enclosed to affix to your bid. This label ***MUST*** be affixed to the outside of the envelope or package, **even if it is a “NO BID” response**. Failure to attach the label may result in your bid being opened in error or not being routed to the proper location for consideration. No bid will be accepted after the date and time specified. **IT IS THE VENDOR’S RESPONSIBILITY TO ENSURE THAT EACH BID HAS BEEN RECEIVED IN A TIMELY MANNER.**

BIDS MUST BE RECEIVED BEFORE 12:00 (NOON) ON BID OPENING DAY

Bids must be received at the Cobb County Purchasing Department. **Any bids received later than 12:00 (noon) will not be accepted.** The County accepts no responsibility for delays in the mail. Bids are to be mailed or hand delivered to:

COBB COUNTY PURCHASING DEPARTMENT
1772 COUNTY SERVICES PARKWAY
MARIETTA, GA 30008-4012

Bids will be opened at 2:00 P.M. in the Cobb County Purchasing Department, 1772 County Services Parkway, 2nd Floor, Conference/Bid Room, Marietta, GA 30008.

Thank you in advance for your cooperation.

SEALED BID LABEL

SEALED BID ENCLOSED

DELIVER TO:
COBB COUNTY PURCHASING
1772 County Services Parkway
Marietta, GA 30008-4012

SEALED BID # 10-5456 DATE: December 10, 2009

BIDS MUST BE RECEIVED BEFORE 12:00 NOON

DESCRIPTION: Request for Qualifications
Prequalified General Contracting Services – Group 2
Non-Building, Sports Or Recreational Facility
Construction / Renovation Projects

PLEASE ATTACH LABEL TO OUTSIDE OF BID PACKAGE



Cobb County...Expect the Best!

REQUEST FOR QUALIFICATIONS

**SEALED BID #10 – 5456
PREQUALIFIED GENERAL CONTRACTING SERVICES – GROUP 2
NON-BUILDING, SPORTS OR RECREATIONAL FACILITY
CONSTRUCTION / RENOVATION PROJECTS
COBB COUNTY PARKS RECREATION AND CULTURAL AFFAIRS DEPARTMENT**

BID OPENING DATE: DECEMBER 10, 2009

BIDS ARE RECEIVED IN THE
COBB COUNTY PURCHASING DEPARTMENT
1772 COUNTY SERVICES PARKWAY
MARIETTA, GEORGIA 30008
BEFORE 12:00 (NOON) BY THE BID OPENING DATE

BIDS WILL BE OPENED IN THE COBB COUNTY PURCHASING DEPARTMENT
BID/MEETING ROOM AT 2:00 P.M.

**VENDORS ARE REQUIRED TO SUBMIT THE ORIGINAL AND 8 COPIES OF BID
(UNLESS OTHERWISE SPECIFIED IN BID SPECIFICATIONS)**

NAME: _____

ADDRESS: _____

REPRESENTATIVE: _____

PHONE: _____ FAX: _____

E-MAIL _____

NOTE: The Cobb County Purchasing Department will not be responsible for the accuracy or completeness of the content of any Cobb County Invitation to Bid or Request for Proposal or subsequent addenda thereto received from a source other than the Cobb County Purchasing Department.



Cobb County...Expect the Best!

"STATEMENT OF NO BID"

COBB COUNTY PURCHASING DEPARTMENT
1772 COUNTY SERVICES PARKWAY
MARIETTA, GA 30008

TO ALL PROSPECTIVE BIDDERS:

Because of the many requests to be placed on our vendors' list, we are continuously updating the list. While we want to include all bona fide vendors, we do not want to mail bids to those vendors who may no longer be interested in participating in our bidding process.

If you do not choose to respond to the attached Invitation to Bid/Request for Proposal, please fill out the form below indicating whether or not you want to be retained on our current vendor list.

Vendors who do not respond in any way (by either submitting a bid or by returning this form) over a period of one year may be removed from the current vendor list.

Vendors who do not wish to bid often return the entire bid package, sometimes at considerable postage expense. Returning the entire bid package is not necessary. Simply return this form.

Thank you for your cooperation.
Cobb County Purchasing Department

"STATEMENT OF NO BID"

SEALED BID NUMBER 10-5456
REQUEST FOR QUALIFICATIONS
PREQUALIFIED GENERAL CONTRACTING SERVICES – GROUP 2
NON-BUILDING, SPORTS OR RECREATIONAL FACILITY
CONSTRUCTION / RENOVATION PROJECTS
COBB COUNTY PARKS RECREATION AND CULTURAL AFFAIRS DEPARTMENT

If you do not wish to respond to the attached Invitation to Bid/Request for Proposal, please complete this form and mail/fax to: **Cobb County Purchasing Department, Attention: Sealed Bid Department, 1772 County Services Parkway, Marietta, GA. Fax # 770-528-1154**

I do not wish to submit a bid/proposal on this solicitation.

I wish to be retained on the vendor list for this commodity or service: Yes_____ No _____

Please PRINT the following:

Company

Representative

You are invited to list reasons for your decision not to bid: _____



APPLICATION FOR PREQUALIFICATION

PREQUALIFIED GENERAL CONTRACTING SERVICES

GROUP #2

NON BUILDING, SPORTS OR RECREATIONAL FACILITY CONSTRUCTION
AND/OR RENOVATION PROJECTS
COBB COUNTY PARKS, RECREATION AND CULTURAL AFFAIRS DEPARTMENT

FOR THE PERIOD OF JANUARY 1, 2010 TO DECEMBER 31, 2011

**APPLICATIONS MUST BE RECEIVED BEFORE 12:00 p.m. (NOON)
ON DECEMBER 10, 2009**

SEALED BID #10-5456

COMPANY NAME: _____

ADDRESS: _____

REPRESENTATIVE: _____

PHONE: _____ FAX: _____

E-MAIL: _____

COBB COUNTY APPLICATION FOR PREQUALIFICATION

PREQUALIFIED GENERAL CONTRACTING SERVICES

GROUP #2

NON BUILDING, SPORTS OR RECREATIONAL FACILITY CONSTRUCTION
AND/OR RENOVATION PROJECTS
COBB COUNTY PARKS, RECREATION AND CULTURAL AFFAIRS DEPARTMENT

FOR THE PERIOD OF JANUARY 1, 2010 TO DECEMBER 31, 2011

COBB COUNTY PARKS, RECREATION AND CULTURAL AFFAIRS DEPARTMENT

SEALED BID #10-5456

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NCLC Construction Contract (Attachment "B")	24 Pages
Standard Cobb County Contract (Attachment "C")	9 Pages

**COBB COUNTY APPLICATION FOR QUALIFICATION
FOR PREQUALIFIED GENERAL CONTRACTING SERVICES**

**GROUP #2
NON-BUILDING, SPORTS OR RECREATIONAL FACILITY CONSTRUCTION
AND/OR RENOVATION PROJECTS THROUGHOUT COBB COUNTY**

COBB COUNTY PARKS, RECREATION AND CULTURAL AFFAIRS DEPARTMENT

SEALED BID # 10-5456

The Cobb County Board of Commissioners is soliciting qualifications from experienced firms for prequalified General Contracting services work. Qualifications will be evaluated quarterly with the intention of selecting the most qualified and responsible construction firms for the period of **January 1, 2010 to December 31, 2011**. **Contractors will be required to select one or more of the following Tiers within the pre-qualification application to indicate the size of projects for which the contractor is seeking pre-qualification:**

Tier A – Covered projects valued at greater than \$250,000 but less than \$1,000,000

Tier B – Covered projects valued at greater than \$1,000,000 but less than \$10,000,000

Tier C – Covered projects valued at greater than \$10,000,000

Only those contractors receiving approval to be placed upon the Group #2 – Cobb County Parks, Recreational and Cultural Affairs Department, Tier A, Tier B or Tier C pre-qualified lists will be solicited for bids on projects valued within their respective Tier. Such values shall be determined by engineering estimates by the County or its' designated engineering firm. The County will not restrict bidding to the pre-qualified list for projects valued at \$250,000 or less.

Qualifications will be received at the Cobb County Purchasing Department located at 1772 County Services Parkway, Marietta, GA 30008 before 12:00 (noon), December 10, 2009. Applicants must identify their application on outside of envelope as "Application for Pre-Qualification Group #2 – Non-Building, Sports or Recreational Facility Construction and/or Renovation Projects."

The competency and responsibility of submitters will be considered by the Owner in making the award. The Cobb County Board of Commissioners reserves the right to reject any and all applications, to waive any informality, to reject portions of the applications, to waive technicalities and to award contracts in a manner consistent with the interest of the Owner and the laws of the State of Georgia.

*Cobb County Request for Qualifications
General Contracting Services for Cobb County Parks, Recreation and
Cultural Affairs Department*

I. Introduction

An evaluation committee will determine the construction companies believed to be most qualified to provide full general contracting services for potential future construction projects for the **period of January 1, 2010 to December 31, 2011. After this period the lists will be abandoned and the pre-qualifying process will begin anew for a two-year period beginning January 1, 2012, and ending December 31, 2013**

Interviews may then be conducted with those companies; an evaluation committee will recommend additions to the list of prequalified contractors to the Board of Commissioners. Three pre-qualified list will be maintained based upon contractors more capable of completing projects valued within the following Tiers of project estimated value:

Tier A – Covered projects valued at greater than \$250,000 but less than \$1,000,000

Tier B – Covered projects valued at greater than \$1,000,000 but less than \$10,000,000

Tier C – Covered projects valued at greater than \$10,000,000

Contractors will be evaluated by work performed at the end of each project. Contractors may be removed from the list if they perform unsatisfactorily, become financially unstable, regularly fails to submit bids on County projects, or for any other reason deemed to be in the best interest of the County. Additionally, upon the recommendation of the Agency Director of Cobb County Community Development, a firm may be removed from any approved list by the Board of Commissioners which has a pending citation for violating any provision of the Official Code of Cobb County, Georgia (including any member, officer, partner, subsidiary, or affiliate thereof).

Each company is to prepare their application according to the format provided. Cobb County reserves the right to reject any application not submitted within the required time frame; reject any incomplete application submitted; contact client references; require further information; and/or require interviews with any responding company. All costs related to the preparation, submittal, and/or presentation of this application are the responsibility of the respondent and will not be assumed in full or part by Cobb County.

Written inquiries regarding this application should be addressed to:

Cobb County Purchasing Department
Rick Brun, Purchasing Director
1772 County Services Parkway
Marietta, GA 30008-4012
Fax: 770-528-1154
Email: purchasing@cobbcounty.org

Written inquiries must be received no later than Tuesday, December 1, 2009 at 5:00 pm.

An original and eight (8) copies of this application are to be submitted to:

Cobb County Purchasing Department
1772 County Services Parkway
Marietta, GA 30008-4012

Applications must be submitted before 12:00 (NOON) on December 10, 2009. Late applications will not be accepted

The Cobb County Board of Commissioners reserve the right to pre-qualify contractors on a project by project basis, for large, complex and/or special nature specific particularly where related experience with such projects is more important than price.

*Cobb County Request for Qualifications
General Contracting Services for Cobb County Parks, Recreation and
Cultural Affairs Department*

II. Background

Cobb County Board of Commissioners historically approves an undetermined amount of construction projects in any given year. The county wishes to maintain a list of prequalified contractors **every two (2) years** to achieve several goals. Some of which are expediting construction schedules and the enhancement of individualized service, and greater potential for higher quality construction services. This process will allow Cobb County to review contractor's qualifications prior to bidding and award and predetermine a contractor's capability to perform a certain job as related to past experience and particular expertise of the prequalified contractors.

III. Scope of Services

This application requires full general contracting construction services for **future Cobb County construction projects.** The successful construction company will be responsible for Plan Review according to development regulations of Cobb County.

All Local, County, State, and Federal codes and regulations must be followed, especially in regard to Building codes, Life Safety codes, and the Americans with Disabilities Act.

The successful construction company will be required to submit a sealed bid when asked to participate. Contractor will then sign an Owner/Contractor Agreement. The Agreement could be one of three separate contracts used by Cobb County. The Cobb County Board of Commissioners, Builder's Agreement (Attachment "A"), "National construction Law Center" NCLC Owner/Contractor Agreement (Attachment "B"), or the Cobb County Standard Contract (Attachment "C"). The successful contractor must accept the modifications to or conditions of whichever agreement is deemed appropriate by the County to be signed in any given project.

Once a contract is executed between the County and the successful bidder, the successful bidder will be required to provide the services as required by this application by the members of the proposed project team, including project managers, superintendents, or subcontractors. Any change in or substitution of project team members must first be approved in writing by Cobb County.

*Cobb County Request for Qualifications
General Contracting Services for Cobb County Parks, Recreation and
Cultural Affairs Department*

The successful proposer will provide full general contracting services including, but not limited to:

- Site Work
- Project schedules and program activities
- Compliance of all specifications and bid documents
- Evaluation and recommendation/of proposed construction means and methods
- Preparation of construction contracts if requested, and all other contracts
- Provide detailed information for all change order requests
- Construction Administration
- Provide all project documentation and daily reports
- Provide as built drawings and specifications to Owner
- Provide names of proposed subcontractors with whom you intend to affiliate
- Information as to the percentage of work which will be performed by in-house resources
- Provide appropriate insurance coverage required by Cobb County
- Provide appropriate bonds where required



**Application for Prequalification
Group #2 – Non-Building, Sports or Recreational Facility Construction
and/or Renovation Contracting Services for Cobb County Parks,
Recreation and Cultural Affairs Department**

Company Local Name _____
(As Registered with the Secretary of State)

Company Local Address _____

City _____ **State** _____ **Zip Code** _____

Telephone _____ **Fax** _____

Email _____

Company Business Information: ___ Corporation ___ Partnership ___ Sole Proprietorship

If Corporation, Date of Incorporation: _____, _____ **State Incorporated** _____

If Partnership, Date of Organization: _____, _____ **State Organized** _____

If Sole Proprietorship, Date of Organization: _____, _____ **State Organized** _____

Current Corporate Officers, General Partners, Owners or Primary Local Contact (s):

Name _____ **Title** _____ **Telephone** _____

Name _____ **Title** _____ **Telephone** _____

Name _____ **Title** _____ **Telephone** _____

Group #1 General Building Construction/ Renovation Projects – Property Management

Application is being submitted for pre-qualification for projects within the following Tier(s):

____ Tier A – Covered projects valued at greater than \$250,000, but less than \$1,000,000

____ Tier B-Covered projects valued at greater than \$1,000,000, but less than \$10,000,000

____ Tier C – Covered projects valued at greater than \$10,000,000

A. Total number of company's local full-time employees _____

B. Year local company established _____

C. Local company currently outstanding contracts: Number of Contracts _____

Outstanding Balance \$ _____

D. Local company total billings for the last three completed fiscal years:

Amount Year

Amount Year

Amount Year

E. List and describe all current litigation involving the local company. (Attach documents in any format that will provide requested information.)

F. Provide a listing and description of all litigation history for the local company since and including 2000. (You may attach documents in any format that will provide requested information.)

G. Provide a copy of the most recent complete year's financial statements (Income Statement and Balance Sheet) for the local company. (These documents may be marked as confidential and will be disclosed for evaluation purposes only).

H. **Currently active contract projects under construction by local metro Atlanta office** (List in order from most recent to oldest project. Use one sheet per project.)

SCHEDULE B - CURRENTLY ACTIVE PROJECTS (LOCAL METRO ATLANTA OFFICE PROJECTS ONLY)

Project Name: _____ **Location:** _____

Owner: _____ **Owner Contact/Representative:** _____ **Phone No.** _____
Current Owner Contact: _____ **Phone No.** _____

Design Engineer: _____ **Principal Engineer Name:** _____

1. **Size(Square Footage):** _____ **Site Acreage:** _____

2. **Original Contract Duration:** _____ **Days** 2b. **Project Start Date:** _____
Final Project Duration: _____ **Days** **Project Completion Date:** _____
Difference (+/-) _____ **Days**

3. **Original Contract Amount:** \$ _____
Change Order Amount: \$ _____ **Number** _____
Final Contract Amount: \$ _____

4. **Project Type:** **New Construction** _____ **Renovation** _____ 5. **Public** _____ **Private** _____

5. **Project Construction Method:** **Design/Bid/Build** _____ **Design/Build** _____ **Other(Describe):** _____

6. **Special Project Features:** _____

7. **Brief statement of current project status:** _____

I. **Projects completed by local metro Atlanta office in the last five (5) years** (List in order from most recent to oldest project. Use one sheet per project.)

SCHEDULE A - RECENTLY COMPLETED PROJECTS (LOCAL METRO ATLANTA OFFICE PROJECTS ONLY)

Project Name: _____ **Location:** _____

Owner: _____ **Owner Contact/Representative:** _____ **Phone No.** _____
Current Owner Contact: _____ **Phone No.** _____

Design Engineer: _____ **Principal Engineer Name:** _____

1. **Size(Square Footage):** _____ **Site Acreage:** _____

2. **Original Contract Duration:** _____ **Days** 2b. **Project Start Date:** _____
Final Project Duration: _____ **Days** **Project Completion Date:** _____
Difference (+/-) _____ **Days**

3. **Original Contract Amount:** \$ _____
Change Order Amount: \$ _____ **Number** _____
Final Contract Amount: \$ _____

4. **Project Type:** **New Construction** _____ **Renovation** _____ 5. **Public** _____ **Private** _____

6. **Project Construction Method:** **Design/Bid/Build** _____ **Design/Build** _____ **Other(Describe):** _____

8. **Special Project Features:** _____

9. **Awards Received:** _____

Application for Prequalification
Group #2 – Non-Building, Sports or Recreational Facility Construction and/or
Renovation Contracting Services for Cobb County Parks, Recreation and Cultural
Affairs Department

- J. Provide a description of the company's special capabilities, techniques or resources that can be contributed to this RFQ.

- K. Describe the company's qualifications to complete the work. The planning and/or related construction expertise required to accomplish the complete scope-of-work must be represented either within the company's in-house staff, or by a team of subcontractors.

- L. Identify and provide resume information for each Project Manager and Project Superintendent and other key personnel who will be responsible for the project and anticipated to be available for assignment to Cobb County building projects during the next two year pre-qualification period. (List Names – Attach Resume Information)

Application for Prequalification
Group #2 – Non-Building, Sports or Recreational Facility Construction and/or
Renovation Contracting Services for Cobb County Parks, Recreation and Cultural
Affairs Department

M. Indicate the general type of work performed by your own work force and work which will be performed by subcontractors to your company:

N. Provide a description of the company's experience in getting projects constructed within Cobb County. Include a listing of any projects planned within Cobb County. State the designated Project Manager's and other key personnel's experience on those listed projects.

O. Provide a statement of local company's capability to absorb workload, availability of personnel, and commitment to provide construction services on a timely basis.

P. Provide a proposed Owner/Project Manager organizational chart which identifies individual names and areas of responsibility (Attach).

**Application for Prequalification
Group #2 – Non-Building, Sports or Recreational Facility Construction and/or
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Affairs Department**

- Q. Provide a comprehensive outline of the steps you propose to order to meet the service required in this RFQ. This detail should indicate what is to be done, who individually and by name is responsible for completion of projects through punch lists. (Attach).

- R. At your option, you may provide any additional supporting documentation or information which would be helpful in evaluating your company's qualifications and commitment. (Attach)

S. SURETY/BONDING INFORMATION

Surety Company Name: _____

Address: _____

Letter from Surety Company must be attached certifying the following amounts and stating the willingness of the Surety Company to provide bid, performance and payment bonds for projects in amounts within the Tier (project value range) for which this application is made:

Total Bonding Capacity: \$ _____

Available Outstanding Bonding Capacity \$ _____

- T. Has your organization ever failed to complete any construction contract awarded to it?

Yes _____ No _____

If yes, describe the circumstances:

Application for Prequalification
Group #2 – Non-Building, Sports or Recreational Facility Construction and/or
Renovation Contracting Services for Cobb County Parks, Recreation and Cultural
Affairs Department

U. Has any Corporate officer, partner, proprietor or joint venture participant ever failed to complete a construction contract awarded to him or her in their own name or when acting as a principal of another organization?

Yes _____ No _____

If yes, describe the circumstances:

V. In the last five years, has your organization ever failed to substantially complete a project on time per the original schedule?

Yes _____ No _____

If yes, describe the circumstances:

W. Describe the permanent safety program maintained within your organization. Include your organization's EMR (Experience Modification Rating) for the current and past two years, particularly for operations within the State of Georgia. Has your organization received any citations for Federal or State OSHA violations in the last three (3) years? If, yes, explain each. (Attach information as necessary)

Application for Prequalification
Group #2 – Non-Building, Sports or Recreational Facility Construction and/or
Renovation Contracting Services for Cobb County Parks, Recreation and Cultural
Affairs Department

X. Does your organization (including any member, officer, partner, subsidiary, or affiliate thereof) currently have any pending citation for violating any provision of the Official Code of Cobb County, Georgia? If yes, please list and explain below:

Y. Conflict of Interest Statement

As a duly authorized representative of the company

I, _____, with the title _____, certify that to the best of my knowledge that no circumstances exist which will cause a conflict of interest in performing services for Cobb County Government, that no employee of Cobb County, nor any public agency official or employee affected by this company, associates or consultants of this company, or the company's parent operation, subsidiary, or other legal entity of which this company is a part, and that no person associated with or employed by this company has any interest that would conflict in any way manner or degree with performance of services for Cobb County Government.

Company Name _____ Date _____

Authorized Representative Name _____

Title _____

Signature _____

Application for Prequalification
Group #2 – Non-Building, Sports or Recreational Facility Construction and/or
Renovation Contracting Services for Cobb County Parks, Recreation and Cultural
Affairs Department

Z. CERTIFICATION:

I hereby certify that the information submitted herewith, including any attachment is true and correct to the best of my knowledge and belief.

Signature

Title

Dated

**Prequalified General Contracting Services
Group 2
Non-Building, Sports or Recreational Facility
Construction and/ or Renovation Projects
Cobb County Parks, Recreations and Cultural Affaires
Department**

“ATTACHMENT “A”

**COBB COUNTY
BOARD OF COMMISSIONERS**

**CONTRACT FOR CONSTRUCTION
(Builder's Fixed Price Form)
CHAPTER 1
BUILDER'S AGREEMENT**

This Contract For Construction is entered into between:

“OWNER”

And

“BUILDER”

This Contract For Construction is executed under seal, and shall be effective on the date signed by the Owner.

ADDRESSES AND AUTHORIZED REPRESENTATIVES

The authorized representatives and addresses of the Owner, the Builder and the Professional are:

OWNER:

Representative:
Address:
City, State, Zip:
Office: Mobile: Fax:
E-mail:

BUILDER:

Representative:
Address:
City, State, Zip:
Office: Mobile: Fax:
E-mail:

Builder's License #: FEIN / SSN #:

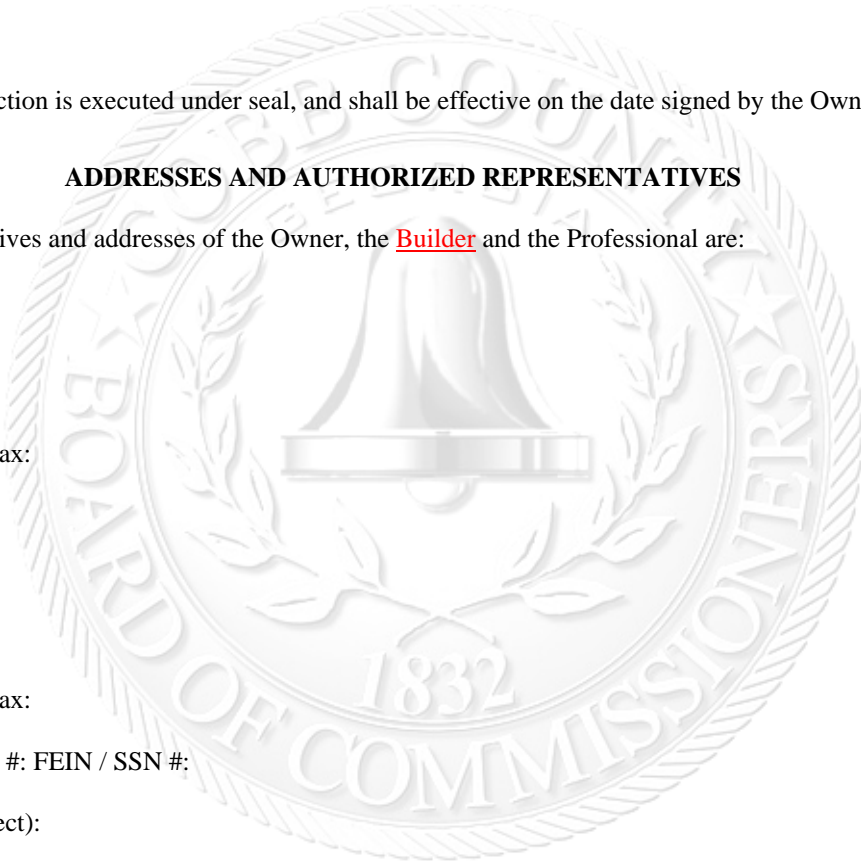
PROFESSIONAL (Architect):

Representative:
Address:
City, State, Zip:
Office: Mobile: Fax:
E-mail:

Whenever this Contract For Construction refers to “Professional” in the singular, such reference shall mean the Owner’s designated representative.

OWNER’S PROJECT IDENTIFICATION INFORMATION:

Project Title:
Project Location
Address:
City, State, Zip:
Project ID Number:



General Project Description:

TIME FOR PERFORMANCE:

A. Commencement of Construction:

The **Builder** shall commence construction of its scope of the Work within 10 days from receipt of the Notice to Proceed.

B. Substantial Completion:

The **Builder** shall accomplish Substantial Completion of its scope of the Work as set forth in the Notice to Proceed (the "required date of Substantial Completion").

C. Final Completion:

The **Builder** shall accomplish Final Completion of its scope of the Work within 60 days from the required date of Substantial Completion (the "required date of Final Completion").

RECITALS

A. The Owner intends to construct the Project and is engaging the **Builder** to perform certain labor, supervision and services and provide certain equipment, goods and materials for the Project.

B. The Owner and **Builder** each acknowledges that it will act in good faith in carrying out its duties and obligations.

C. The Owner's engagement of the **Builder** is based upon the **Builder's** representations to the Owner that it (i) is experienced in the type of labor and services the Owner is engaging the **Builder** to perform; (ii) is authorized and licensed to perform the type of labor and services for which it is being engaged in the State and locality in which the Project is located; (iii) is qualified, willing and able to perform general construction services for the Project; and (iv) has the expertise and ability to provide general construction services which will meet the Owner's objectives and requirements, and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.

D. The Owner and **Builder** each acknowledges that it has reviewed and familiarized itself with this Contract For Construction, including the documents enumerated in Article 1, and agrees to be bound by the terms and conditions contained therein.

E. The Owner has engaged one or more Professionals to perform architectural and/or engineering services for the Project, including preparation of Site-specific Construction Documents.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

**ARTICLE 1
CONTRACT DOCUMENTS**

1.1 The "Contract For Construction" is comprised of the following documents:

This "Chapter 1 - Builder's Agreement (**Builder's** Form)" (hereafter "Chapter 1"), including the foregoing recitals A. through E., and all attached documents, appendices and addenda;

"Chapter 2 - Builder's Required Services (**Builder's** Form)" (hereafter "Chapter 2"), and all attached documents, appendices and addenda;

"Chapter 3 – General Terms and Conditions of Builder's Contracts" (hereafter "Chapter 3") and all attached documents, appendices and addenda;

Special conditions, if any;

Proposal(s) submitted by the **Builder** and accepted by the Owner, if any;

Proposed modifications, if any, dated _____;

The Construction Documents, now existing or issued hereafter, including but not limited to;

Any amendments or addenda executed by the Owner and the **Builder** hereafter;

Approved Change Order(s) or field orders; and

Additional documents listed hereafter, if any:

[Identify with specificity all additional documents, or check that there are none]

None

Additional Documents: _____

1.2 Documents not included or expressly contemplated in this Article 1 do not, and shall not, form any part of this Contract For Construction.

1.3 The Owner shall: [Select and complete as appropriate]

furnish the **Builder** with one reproducible copy of the Construction Documents.

furnish the **Builder** electronically formatted Construction Documents.

ARTICLE 2 NOTICES

2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if original is (i) hand delivered; (ii) delivered by facsimile with facsimile transmission receipt, or telecopy; or (iii) sent by U.S. Mail, postage prepaid. All notices shall be given to the addresses set forth above. Notices hand delivered or delivered by facsimile, shall be deemed given the next business day following the date of delivery. Notices given by U.S. Mail shall be deemed given as of the second business day following the date of posting.

ARTICLE 3 SCOPE OF **BUILDER'S** WORK

3.1 The **Builder** shall furnish or cause to be furnished, and pay for out of the Construction Price, all management, supervision, financing, goods, products, materials, equipment, systems, labor, services, permits, licenses, construction machinery, water, heat, utilities, transportation and other facilities necessary for proper execution and completion of its scope of the Work in accordance with all of the terms and conditions of this Contract For Construction intended language; responsible for all; owner's faces at same time.

[Briefly describe **Builder's** portion of the Project, or indicate that **Builder** is responsible for the entire Project]

ARTICLE 4 COMPENSATION OF **BUILDER**

4.1 **Construction Price.** The Owner shall pay and the **Builder** shall accept, as full and complete payment for the **Builder's** timely, complete, and acceptable performance of its obligations hereunder the fixed price of: _____ (\$_____) Dollars. The amount set forth above is the Construction Price and includes the aggregate amount of all allowances and any unit price items to be furnished or installed pursuant to those shown on plats and specifications.

4.2 **Compensation Schedule.** Within 10 calendar days after receipt of Notice to Proceed, the **Builder** shall prepare and present to the Owner and the designated Professional, as Appendix A, the **Builder's** Compensation Schedule which includes, as applicable: *[Check applicable items]*

- A. Schedule Of Values for payment of the Construction Price on a lump sum basis;
- B. Time Schedule for payment of the Construction Price on a lump sum basis;
- C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit-price basis; and
- D. Rates for compensation for services rendered on a time and material basis.
- E. Compensation for goods furnished on a time and material basis.
- F. Allowances.

4.3 **Payment.**

4.4 **Compensation For Change Orders.**

4.4.1 For change orders directed by a Professional to be performed by the **Builder** on a time and materials basis pursuant to Subparagraph 9.5.1 of Chapter 3, the **Builder** shall be reimbursed the actual incurred cost and expense plus a markup of fifteen percent (_____) for the change order Work performed by its forces.

4.4.2 When additional Work by the **Builder's** subcontractors and suppliers is required and approved pursuant to Subparagraph 9.5.3 of Chapter 3, the **Builder** shall be reimbursed the actual incurred costs and expenses paid to those subcontractors and suppliers, plus a markup of _____ percent (_____).

4.4.3 If the **Builder** disputes a change order decision pursuant to Paragraph 9.7 of Chapter 3, it must give the Owner its written notice of dispute, including the reasons therefore, within two (2) business days of the disputed decision.

4.5 **Liquidated Damages.** If liquidated damages are assessed pursuant to Chapter 3, Article 17, damages shall be calculated at the rate of _____ (\$_____) Dollars per calendar day for failure to meet the required date of Substantial Completion. If both the Substantial Completion and Final Completion dates have not been achieved, liquidated damages for default on the Substantial Completion and the Final Completion dates shall be added and shall be: _____ (\$_____) per calendar day until Substantial Completion is achieved; after which, the amount for failure to achieve Final Completion will continue to be paid as liquidated damages to the Owner until Final Completion.

ARTICLE 5 SPECIFIC INSURANCE REQUIREMENTS

5.1 The **Builder** shall purchase and maintain, at its expense, from a company or companies authorized to do business in the state in which the Project is located, insurance policies containing the following selected types of coverage's and minimum limits of liability protecting from claims which may arise out of or result from the performance or non-performance of services under this Contract For Construction by the **Builder** or by anyone directly or indirectly employed by it, or by anyone for whose acts it may be liable:

- (i) Workers' Compensation, Disability Benefit, or similar employee benefit act coverage, and employer's liability coverage, as required by the state in which the Project is located.
- (ii) Commercial General Liability which (i) includes premises/operations, product/completed operations, contractual liability, independent contractors, broad-form property damage, underground, explosion and collapse hazard, and personal / advertising injury; and (ii) names the Owner and the Owner's Related Parties as additional insureds, with per-occurrence limits of not less than One Million _____ (\$1,000,000) Dollars.
- (iii) Commercial Comprehensive Automobile Liability which includes contractual liability coverage and coverage for all owned, hired and non-owned vehicles with limits of not less than One Million _____ (\$1,000,000) Dollars. per accident for bodily injury and property damage, or One Million _____ (\$1,000,000) Dollars combined single limit.

- (iv) Builder's Risk Insurance which (i) includes without duplication, but is not limited to, fire (with extended coverage), theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal; and (ii) names the Owner and the Owner's Related Parties, with coverage for one hundred (100%) percent of the insurable value of the **Builder's** scope of the Work, and a per-claim deductible of _____ (\$_____,000) Dollars.
- (v) Other Insurance:
[Describe type, limits, extent of coverage, insureds and other pertinent information for additional insurance requirements, or state that there are none]

ARTICLE 6 PERSONNEL, SUBCONTRACTOR, SUPPLIER AND CONSULTANT CHARTS

- 6.1 The **Builder** shall prepare and attach as Appendix B to this Chapter the **Builder's** Personnel Chart which lists by name, job category and responsibility the **Builder's** primary employees who will work on the Project, including a 24-hour contact number for each primary employee. The **Builder** shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.
- 6.2 The **Builder** (i) shall prepare and attach as Appendix C to this Chapter the **Builder's** Subcontractors And Suppliers Chart which lists by name and general Project responsibility each subcontractor and supplier who will be utilized by the **Builder** to provide goods or services with respect to the Project, including a 24-hour contact number for each Subcontractor and Supplier; (ii) shall not enter into any agreement with any subcontractor or supplier to which the Owner raises a reasonable, timely objection; and (iii) shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner shall have the right to reject any proposed replacement.
- 6.3 The Owner shall prepare and attach as Appendix D to this Chapter the Owner's Consultants Chart which lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project. The Owner reserves the right to engage any other consultants which it may deem necessary or desirable.

ARTICLE 7 CONSTRUCTION SCHEDULE AND SPECIFIC BOND REQUIREMENTS

7.1 Time For Performance.

- 7.1.1 **Commencement Of Construction.** The **Builder** shall commence construction of its scope of the Work on or before _____ (the "Commencement Date").
- 7.1.2. **Substantial Completion.** The **Builder** shall accomplish Substantial Completion of its scope of the Work on or before _____ (the "required date of Substantial Completion").
- 7.1.3. **Final Completion.** The **Builder** shall accomplish Final Completion of its scope of the Work on or before _____ (the "required date of Final Completion").

7.2 **Construction Schedule.** The **Builder** shall prepare and submit a final Construction Schedule to the Owner and the Professional for their review and acceptance pursuant to Chapter 3, Paragraph 16.1 of this Contract For Construction no later than 10 days from receipt of the Notice to Proceed

7.3 Bond Requirements. *[Check one box in each paragraph]*

- 7.3.1 The **Builder** (shall) (shall not) be required to provide payment and performance bonds. The amount of the premiums for such bonds shall be included in the Construction Price.

ARTICLE 8 AMENDMENTS TO CHAPTER 3

- 8.1 The following additions to, deletions from and/or modifications to the specifically referenced articles and paragraphs of Chapter 3 shall take precedence over the provisions of those referenced articles and paragraphs as follows:

[State the reference to each such article and paragraph and how the language is to be added to, deleted from or modified, or state "None"]

_____	_____
("Owner")	("Builder")
By: _____	By: _____
Its: _____	Its: _____
Date: _____	Date: _____

APPENDIX A
BUILDER'S COMPENSATION SCHEDULE

[Insert information as appropriate based on payment method selected]

- A. Schedule of Values for payment of the Construction Price on a lump sum basis
- B. Time schedule for payment of the Construction Price on a lump sum basis
- C. Unit prices and estimated number of units for compensation for services rendered and goods supplied on a unit price basis
- D. Rates for compensation for services rendered on a time and material basis
- E. Compensation for goods furnished on a time and material basis
- F. Allowances

APPENDIX B
BUILDER'S PERSONNEL CHART

[Insert information as required]

| For each of the **Builder**'s primary employees working on the Project, list:

- A. Name
- B. Job Category
- C. Responsibility
- D. 24-hour contact number

APPENDIX C
BUILDER'S
SUBCONTRACTORS AND SUPPLIERS CHART

[Insert information as required]

**APPENDIX D
OWNER'S CONSULTANTS CHART**

[Insert information as required]

Lists by name and general duties each consultant retained by the Owner to provide services with respect to the Project.

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COBB COUNTY
BOARD OF COMMISSIONERS

CONTRACT FOR CONSTRUCTION
(**Builder's** Fixed Price Form)

CHAPTER 2

BUILDER'S REQUIRED SERVICES

ARTICLE 1

GENERAL PROJECT SERVICES

- 1.1 **Essential Services.** The **Builder** agrees to provide all services required to professionally complete its scope of the Work in an expeditious and economical manner consistent with this Contract For Construction and the best interests of the Owner.
- 1.2 **Compliance With Contractual Requirements.** At all times the **Builder** is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2 and Chapter 3 of this Contract For Construction.
- 1.3 **Cooperative Effort.** The **Builder** shall, in consultation with the Owner, Professional(s), and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 1.4 **Relationship To Professional.** The Owner's designated professional will be the Owner's representative in dealing with the **Builder** on all design and technical matters, and will administer this Contract For Construction. Unless otherwise directed by the Owner, the Owner and the **Builder** shall communicate with each other in the first instance through the designated Professional. The Owner's instructions to the **Builder** will be issued through the designated Professional.
- 1.5.1 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 2

PRE-CONSTRUCTION SERVICES

- 2.1 **Construction Documents Review.**
- 2.1.1 Prior to commencement of construction activities the **Builder** shall review the Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness to identify:
- (i) conflicts, omissions or overlaps, and unusual design details affecting construction cost and schedules; and
 - (ii) factors with the potential to impact the Construction Schedule such as materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives.
- 2.1.2 Upon completion of its review of the Construction Documents, the **Builder** shall:
- (i) notify the Professional in writing of all problems, conflicts, defects, omissions, overlaps or deficiencies of which it became aware; and
 - (ii) assist the Professional with the resolution of the identified problems, conflicts, defects, omissions, overlaps and deficiencies.
- 2.2 **Scheduling.** The **Builder** understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The **Builder** shall timely prepare and submit the Construction Schedule for the Owner's review and approval.
- 2.3. **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Pre-Construction Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 3

CONSTRUCTION SERVICES

- 3.1 **Construction Supervision.**
- 3.1.1 The **Builder** shall supervise and direct its scope of the Work at the Site. The **Builder** shall, at a minimum, staff the Project Site with personnel who shall:
- (i) supervise and coordinate the **Builder's** personnel and act as its primary liaison with the Owner and the Owner's Consultant(s).
 - (ii) coordinate trade contractors and suppliers, and supervise Site construction services.

- (iii) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract For Construction.
 - (iv) check and review shop drawings and materials delivered to the Site, regularly review the Work to determine its compliance with the Construction Documents and this Contract For Construction, periodically confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality; and
 - (v) prepare and maintain Project records, process documents, and staff the Site field office.
- 3.1.2 The **Builder** shall promptly reject any Work (a) which does not conform to the Construction Documents; or (b) which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware.
- 3.1.3 The **Builder** shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The **Builder** shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with all applicable schedules to insure timely completion of the Work. If at any time a Project is delayed, the **Builder** shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense to the Owner.
- 3.1.4 The Professional will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.
- 3.2 **Builder's On-Site Facilities.** Commencing at the Date of Commencement and terminating on the Date Of Final Completion, the **Builder** shall provide a Site field office and toilet facilities at the Project Site.
- 3.2.1 The field office facilities shall be large enough to accommodate required meetings and shall include office furnishings and equipment such as desks, telephones, computers, copiers and other similar office equipment.
- 3.2.2 The **Builder** shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.
- 3.2.3 The **Builder** shall provide temporary toilets at the Site for all workers for the duration of the construction period.
- 3.3 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 4 EXTRA SERVICES

- 4.1 **Initiation Of Extra Services.** The **Builder** shall provide such Extra Services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 4 are not included in Required Services unless identified as an "Additional Or Modified Required Service".
- 4.2 **Definition Of Extra Services.** Extra services include, but are not limited to:
- (i) services performed after the Date Of Final Completion, except when required as Basic Services.
 - (ii) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the **Builder**, or its agents, employees, or consultants.
 - (iii) other services not included in Required Services mutually agreed to by the Owner and the **Builder** in writing.
- 4.3 Payment of the **Builder** for Extra Services shall be in accordance with applicable provisions of Chapter 1.

**APPENDIX 1
ADDITIONAL OR MODIFIED REQUIRED SERVICES**

GENERAL PROJECT SERVICES [¶ 1.5]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state “None”]

PRE-CONSTRUCTION SERVICES [¶ 2.3]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state “None”]

CONSTRUCTION SERVICES [¶ 3.3]

[Insert and identify with specificity all Additional Required Services, Modified Required Services, or state “None”]

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**COBB COUNTY
BOARD OF COMMISSIONERS**

**CONTRACT FOR CONSTRUCTION
CHAPTER 3
GENERAL TERMS AND CONDITIONS
ARTICLE 1
CONTRACT DOCUMENTS**

- 1.1 **Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the Builder for execution of the Work shall be made by the Builder at its cost and expense from the reproducible set(s) furnished by the Owner.
- 1.2 **Return Of Documents To Owner.** The Builder shall return to the Owner the reproducible set(s), and all copies, of the Construction Documents upon Final Completion of the Work or termination of this Contract For Construction.
- 1.3 **Electronic Media.** Unless otherwise specified in this Contract For Construction, the Builder may request that the Construction Documents required by the Builder for the Work be furnished to it on electronic media. To the extent that such documents are available on electronic media, the Builder will be furnished one set of the requested information on electronic media. Any additional electronic copies of Construction Documents required by the Builder for execution of the Work shall be made by the Builder at the Builder's cost and expense. The Builder shall return one copy of electronic Construction Documents to the Owner upon final acceptance of the Work or termination of this Contract For Construction, whichever occurs first, and shall destroy all remaining electronic copies of the documents within its possession.
- 1.4 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.
- 1.5 **Owner Disclaimer Of Warranty.** The Owner has requested that its Professional(s) prepare documents for the Project, including the plans and specifications for the Project, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Work. However, the Owner makes no representation or warranty of any nature whatsoever to the Builder concerning such documents. The Builder hereby acknowledges and represents that it has not relied, and does not and will not rely, upon any representations or warranties by the Owner concerning such documents, as no such representations or warranties have been or are hereby made.
- 1.6 **Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract For Construction, the following shall control:
- 1.6.1 As between figures given on plans and scaled measurements, the figures shall govern;
 - 1.6.2 As between large-scale plans and small-scale plans, the large-scale plans shall govern;
 - 1.6.3 As between plans and specifications, the requirements of the specifications shall govern;
 - 1.6.4 As between this document and the plans, specifications, general conditions or general requirements, this document shall govern.
- 1.7 **Shop Drawings And Submittals.** Shop drawings and other submittals from the Builder or its subcontractors and suppliers do not constitute a part of this Contract For Construction.
- 1.8 **Contract Changes.** The Builder understands and agrees that this Contract For Construction cannot be changed except as provided herein. No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract For Construction can be accomplished only by written documents signed by the parties.

**ARTICLE 2
BUILDER'S REVIEWS AND EVALUATIONS**

- 2.1 **Sufficiency Of Construction Documents And Drawings.** The Builder acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional(s) about any (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 2.1.1 If the Builder performs any Work which it knows or should have known involves (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Professional(s) and prior to receiving written authorization from the

appropriate Professional(s) to proceed, the Builder shall be responsible for the consequences of such performance.

2.1.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Builder and subcontractors shall verify all measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Professional prior to proceeding with the Work. No extra charge or compensation will be entertained due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional failed to receive written notice before the Work was performed.

2.2 **Sufficiency Of Site.** Prior to signing this Contract For Construction, the Builder has

- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated; and
- (i) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.

In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Builder has also

- (iii) reviewed all available as-built and record drawings, plans and specifications; and
- (iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled prior to submission of bid, if any, but in all events prior to signing this Contract For Construction.

Claims resulting from the Builder's failure to familiarize itself with the Site or pertinent documents shall be deemed waived.

ARTICLE 3 BUILDER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

3.1 **Performance Of Work.** The Builder shall perform and complete its obligations under this Contract For Construction using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives; (ii) which comply with the Construction Documents and this Contract For Construction; and (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.

3.1.1 The Builder shall not be required to provide professional services which constitute the practice of architecture or engineering.

3.1.2 All services rendered by the Builder for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.

3.1.3 The Builder shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.

3.1.4 The Builder understands and acknowledges that the Work referred to in this Contract For Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Builder shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.

3.1.5 The Builder shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Builder damage, compromise or destroy any part of the Project or the Site, the Builder shall be fully and exclusively responsible for and bear all costs associated therewith.

3.2 **Compliance With Governmental Requirements.** The Builder shall:

- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
- (ii) prepare and file documents required to obtain, and shall obtain, all necessary approvals and permits, including building permit(s), of all governmental authorities having jurisdiction over the Work; and
- (iii) give all notices required of it by governmental authorities relating to the Project.

3.3 **Safety.** Safety shall be a prime concern of the Builder at all times. The Builder shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work,

including Site safety and safety precautions and programs.

- 3.4 **Concurrent Records.** The Builder shall, concurrently with performance, maintain detailed records of activities on the Site. The Builder shall keep full and accurate records of all costs incurred and items billed in connection with the performance of the Work, which records shall be open to audit by the County or its authorized representatives during the performance of the Work and until three (3) years after Final Payment. In addition the Builder shall make it a condition of all subcontracts relating to the Work that any and all Subcontractors will keep accurate records of costs incurred and items billed in connection with their work and that such records shall be open to audit by the County or its authorized representatives during performance of the Work and until two (2) years after its completion.
- 3.5 **As-Built Drawings.** The Builder shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Professional(s), the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Builder shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.
- 3.6 **Bribes And Kick-Backs.** The Builder shall not by any means:
- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
 - (ii) confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;
 - (iii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
 - (iv) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Builder has a direct or indirect proprietary or other pecuniary interest.
- 3.7 **Quality Control And Testing.** The Builder shall develop and implement a quality management program to insure quality construction. Unless otherwise specified in this Contract For Construction, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The Builder shall coordinate all tests and inspections required by the Construction Documents, and the Builder shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.
- 3.8 **Incident Reporting.** The Builder shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.
- 3.9 **Hazardous Substances.** The Builder shall immediately notify the Owner and the Professional(s), both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the Builder encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the Builder shall (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination; (ii) secure the contaminated area against intrusion; (iii) not disturb or remove the contamination; (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner; and (v) take any other steps necessary to protect life and health.
- 3.10 **Owner's Use Of And Access To The Site.** The Builder shall perform the Work so as not to interrupt any operations of the Owner on the Site.
- 3.10.1 The Builder understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Builder's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work.
 - 3.10.2 The Builder shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Builder understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.
 - 3.10.3 The Builder shall afford the Owner's own forces, and other consultants, trade contractors, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.
- 3.11 **Commissioning.** The Builder shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.

- 3.11.1 The Builder shall provide the Owner with operation and maintenance manuals and other operational documentation not less than twenty-eight calendar days prior to the required date of Substantial Completion to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.
- 3.11.2 The Builder shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.

**ARTICLE 4
BUILDER'S PERSONNEL, SUBCONTRACTORS, SUPPLIERS
AND SITE FACILITIES**

- 4.1 **Project Staffing.** The Builder shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.
- 4.1.1 The Builder shall name a representative (the "Builder's Representative") to serve as its primary communication contact with the Owner and the Professional(s).
- 4.1.2 The Builder shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Builder shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 4.1.3 The Builder shall immediately remove from the Site, for the duration of the Project, any person making an inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.
- 4.1.4 The Builder shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.
- 4.1.5 The Builder shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.
- 4.2 **Subcontractor/Supplier Contracts.** The Builder shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract For Construction. It is the intent of the Owner and the Builder that the obligations of the Builder's subcontractors and suppliers inure to the benefit of the Owner and the Builder, and that the Owner be a third-party beneficiary of the Builder's agreements with its subcontractors and suppliers.
- 4.2.1 The Builder shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract For Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.
- 4.2.2 The Builder shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract For Construction that are included by reference in its written contract with the Builder, and that it will abide by those terms, conditions and requirements.
- 4.2.3 The Builder's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Builder's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract For Construction, and upon request of the Owner, the Builder's subcontractors and suppliers will perform services for the Owner.
- 4.3 **Resolution Of Trade Disputes.** The Builder shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

**ARTICLE 5
GOODS, PRODUCTS AND MATERIALS**

- 5.1 **Quality Of Materials.** The Builder shall furnish goods, products, materials, equipment and systems which:
- (i) comply with this Contract For Construction;
 - (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
 - (iii) are new (unless otherwise specified or permitted) and without apparent damage;
 - (iv) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;

- (v) are merchantable;
- (vi) are free from defects; and
- (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

5.2 **Installation And Use Of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Builder shall so inform the Owner and the appropriate Professional and shall proceed as directed by that Professional, unless otherwise directed by the Owner. The Builder shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

5.3 **Unsuitable Materials.** The Builder shall inform the Owner of goods, products, materials, equipment or systems which the Builder knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Builder, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and a Professional of substitute goods, products, materials, equipment or

systems does not mean or imply final acceptance by the Owner and Professional if such items should be defective or not as previously represented. Should the Builder furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Builder shall provide such at no increased cost to the Owner.

5.4 **Security For The Project.** The Builder shall provide security for the Project, including but not limited to security for its Work in progress and for the goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for its scope of the Work.

ARTICLE 6 DOCUMENTS AND INFORMATION

6.1 **Information From Owner.** The Owner shall provide the Builder with information reasonably necessary to assist the Builder in performing its services including, if applicable:

- (i) the Site legal description and any required survey;
- (ii) all written and tangible material in its possession concerning conditions below ground at the Site;
- (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
- (iv) the Owner's pertinent Project dates and key milestone dates.

6.2 **Resolution Of Questions.** The Builder shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents.

6.3 **Processing Of Documents.** When requested to do so by the Owner, the Builder shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to (i) obtain financing or insurance for the Project; (ii) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by Builder; and (iii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.

6.4 **Sufficiency Of Owner Information.** The furnishing of information by the Owner to the Builder shall not relieve the Builder of responsibilities contained elsewhere in this Contract For Construction to evaluate information and documents provided by the Owner and the Builder shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Builder to perform the Work.

ARTICLE 7 SUBMITTALS

7.1 **Submittal Schedule.** The Builder shall timely prepare and transmit to the designated Professional a schedule for provision of all anticipated submittals. The schedule shall (i) include submittals required by the specifications; (ii) be in a format acceptable to the Professional; and (iii) set forth specific dates for submission of the listed submittals. The Builder shall review and approve all submittals prior to submission to a Professional.

- 7.2 **Processing Of Submittals.** The Builder shall in timely fashion review, approve if appropriate and forward submittals to the Professional(s) for review and approval along with such detail and information as the Professional requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.
- 7.2.1 A Professional is responsible to the Owner, but not to the Builder, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract For Construction.
- 7.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by a Professional shall not relieve the Builder from complying with this Contract For Construction, including all plans and specifications, except as changed by Change Order.

ARTICLE 8 BUILDER'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 8.1 **Rejection And Correction Of Work In Progress.** During the course of Project, the Builder shall inspect and promptly reject any Work (i) which does not conform to the Construction Documents; or (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 8.1.1 The Builder shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Builder shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.
- 8.1.2 The Builder shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade contractors or subcontractors caused by the Builder's correction or removal of rejected Work.
- 8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the Builder shall, if notified to do so by the Owner or a Professional, uncover the designated portion for observation and then replace it.
- 8.2.1 If the designated portion of the Work was covered contrary to the request of the Owner or the Professional, or to requirements specifically expressed in the Construction Documents, the Builder shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.
- 8.2.2 If the designated portion of the Work was covered prior to a specific request by the Owner or the Professional that it remain uncovered or continuing to the requirements of the Contract Documents, the Builder shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

ARTICLE 9 CHANGE ORDERS AND CHANGES TO THE WORK

- 9.1 **Change Order Requests.** Any party to the construction process may request changes to the Work, compensation or applicable schedules.
- 9.1.1 With respect to such requests for changes by the Builder, the Builder shall prepare and submit change order requests to the designated Professional.
- 9.1.2 With respect to requests for changes by parties other than the Builder, the Builder shall promptly review and respond to change order requests submitted by a Professional.
- 9.1.3 When requested to do so, the Builder shall prepare and submit to a Professional drawings, specifications or other data in support of a change order request.
- 9.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone, or with all other changes during the course of the Project.
- 9.2 **Owner-Directed Changes.** The Owner may unilaterally direct the Builder to implement changes in the Work so long as the Work the Owner is requiring is not outside of the general scope of this Contract For Construction, and the Builder, upon written direction from the Owner, shall proceed with such change.
- 9.3 **Professional-Directed Changes.** The Professional, without the Owner's prior approval, may authorize or direct the Builder to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Builder shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Builder.
- 9.3A **Construction Change Directives.**

9.4A.1 A Construction Change Directive is a writing prepared by the Professional and signed by the Owner and Professional, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. Without invalidating the Contract, the Owner may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions by way of a Construction Change Directive, the Contract Sum and Contract Time being adjusted accordingly.

9.3A.2 A Construction Change Directive shall be used when there is an absence of total agreement on the terms of a Change Order.

9.3A.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data;
2. unit prices stated in the Contract Documents or subsequently agreed upon;
3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. as provided in Subparagraph 9.4A6.

9.3A.4 Upon receipt of a Construction Change Directive, the Builder shall promptly proceed with the change in the Work involved and advise the Professional of the Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract for Construction Sum or Contract Time.

9.3A.5 A Construction Change Directive by the Builder indicates the agreement of the Builder to its terms. Such agreement shall be effective immediately and shall be recorded as a Change Order.

9.3A.6 If the Builder does not respond promptly or disagrees with or rejects the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Professional on the basis of reasonable expenditures and savings of those performing the Work related to the change, including, a reasonable allowance for overhead and profit if applicable. The Builder shall keep and present, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Construction Contract Documents, costs for the purposes of this section shall be limited to the following:

1. costs of labor;
2. costs of materials, supplies and equipment;
3. rental costs of machinery and equipment;
4. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
5. additional costs of supervision and field office personnel directly attributable to the change.

9.3A.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Professional. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

9.4 **Administration Of Changes.** The Professional will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests, change directives, and change orders.

9.5 **Compensation For Changes.** With respect to all change order requests and change directives involving credit to the Owner or additional compensation to the Builder, the Builder shall (i) obtain from subcontractors and suppliers the best possible price quotations; (ii) review such quotations to ascertain whether they are reasonable; (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and (iv) provide a reasonable price quotation to the Professional.

9.5.1 If price quotations for change order requests are determined by the Professional to be unreasonable, the Builder shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information the Professional determines the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.

9.5.2 The Builder and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract For Construction, and shall not be

entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.

- 9.5.3 It is the responsibility of the Builder to review and approve all pricing of additional work required of its subcontractors and suppliers.
- 9.6 **Performance Of Changes.** Upon receipt of a field order or change order or change directive, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.
- 9.7 **Disputes Regarding Changes.**
- 9.7.1 Regardless if there is a dispute (i) that a change has occurred; (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.
- 9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the appropriate Professional will (i) receive and maintain all documentation pertaining thereto; (ii) examine such documentation on the Owner's behalf; (iii) take such other action as may be reasonably necessary or as the Owner may request; and (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.
- 9.8 **Necessity For Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Builder understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

ARTICLE 10 FINANCIAL CLAIMS AND LIENS

- 10.1 **Notification Regarding Liens.** The Builder shall immediately notify the Owner and Professional(s), both orally and in writing, of the nature and details of any mechanics' liens, construction liens, builder's trust fund claims, or claims of any type made by anyone against the Owner, the Professional(s), the Builder or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.
- 10.2 **Discharge Of Liens.** The Builder shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant, the Builder shall, within a reasonable period of time, but in no event more than fourteen calendar days after request and at its own cost, promptly obtain discharge and release of, or indemnity for, such lien or claim by providing or filing, as appropriate, the requisite bond. If the Builder fails to have any such lien or claim discharged and released, or fails to provide or file the requisite bond, the Owner shall have the right to pay all sums necessary to obtain such a discharge and release, and the Builder shall bear all expenses incurred by the Owner in so doing.

ARTICLE 11 OWNER'S CONSULTANT(S), PROFESSIONAL(S) AND CONSTRUCTION ADMINISTRATION

- 11.1 **Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, one designated Professional shall act as the Owner's representative from the effective date of this Contract For Construction until one year from the date of achievement of Substantial Completion.
- 11.1.1 The Professional so designated will be the Owner's design representative during performance of the Work and will consult with and advise the Owner on all design and technical matters.
- 11.1.2 The designated Professional will act as initial interpreter of the requirements of this Contract For Construction and as the Owner's advisor on claims.
- 11.2 **Professional Site Visits.** The Architect shall visit the Site at intervals appropriate to the stage of construction to become fully aware of the progress and quality of the completed Work and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. On the basis of on-site observations as an Architect, the Architect shall keep the County informed of progress of the Work, and shall guard the County against defects and deficiencies in the Work.

- 11.3 **Professional Rejection Of Work.** The Professional(s) may in accordance with the Professional's Contract disapprove or reject Work which does not comply with (i) this Contract For Construction including approved shop drawings and other submittals; or (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 11.4 **Professional Evaluations.**
- 11.4.1 The Professional(s) will review and evaluate the results of all inspections, tests and written reports required by this Contract For Construction and by any governmental entity having or asserting jurisdiction over the Project. The Professional(s) will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional(s) will promptly reject Work which does not conform to and comply with testing requirements.
- 11.4.2 The Professional(s) may require inspection or testing of any Work in addition to that required by this Contract For Construction or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional(s) will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s).
- 11.5 **Professional Submittal Activities.** The Professional(s) will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen calendar days, and will not approve any submittals unless such submittals conform with (i) the Project design concept; (ii) this Contract For Construction; and (iii) the Owner's budgeted Total Project Construction Cost. A Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Builder remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 11.6 **Professional Interpretations.** A Professional will, when requested to do so in writing by the Builder, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. A Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract For Construction.
- 11.7 **Professional Change Order Activities.** The Professional(s) will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders and directives on behalf of the Owner.
- 11.8 **Professional Pay Application Activities.** The Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Builder and shall authorize payment by the Owner to the Builder in writing. After the Work is determined to be finally complete and the Professional determines that the Builder has completed the Work, the Professional will determine whether the Builder is entitled to final payment, and if so will so certify to the Owner in writing.
- 11.9 **Professional Relationship To Builder.** The duties, obligations and responsibilities of the Builder under this Contract For Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The Builder shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the Builder to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the Owner.

ARTICLE 12 INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

- 12.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.
- 12.1.1 When the Builder believes that the Work is substantially complete, it shall notify the Owner and the appropriate Professional that its Work is ready for a Substantial Completion inspection.
- 12.1.2 At or prior to the Substantial Completion inspection, the Builder will prepare and furnish to the Professional a Declaration of Substantial Completion, which at a minimum must:
- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the Builder responsibility for security, utilities, damage to the Work and insurance;

- (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
 - (iii) contain signature lines for the Owner, the Builder and the Professional.
- 12.1.3 Upon receipt of notification from the Builder, the Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is substantially complete.
- 12.1.4 At inspection(s) to determine whether the Work is substantially complete, the Professional will:
- (i) inspect the Work;
 - (ii) list additional items to be completed or corrected; and
 - (iii) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.
- 12.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete.
- 12.1.6 On or prior to the required date of Substantial Completion, the Builder shall deliver to the appropriate Professional keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Professional will obtain and review Substantial Completion documentation and items, and will inform the Builder of any deficiencies.
- 12.1.7 When the Owner, the Builder and the appropriate Professional agree that the Work has passed the Substantial Completion inspection and the Builder has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction which shall be set no longer than 60 calendar days between Substantial Completion and Final Completion (to reach Final Completion).
- 12.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that the Builder has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the Builder or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the Builder.
- 12.2.1 When the Builder believes the Work is finally complete, the Builder shall notify the Owner and the appropriate Professional that the Work is ready for Final Completion inspection.
- 12.2.2 Upon receipt of such notification from the Builder, the Professional will coordinate with the Owner and the Builder a date for inspection of the Work to determine whether the Work is finally complete.
- 12.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Professional will:
- (i) inspect the Work;
 - (ii) determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
 - (iii) determine whether the Work complies with (a) this Contract For Construction; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;
 - (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
 - (v) determine, in consultation with the Owner, whether the Work is finally complete.
- 12.2.4 If the Work is not finally complete, the Builder shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.
- 12.2.5 On or prior to the date of Final Completion, the Builder shall deliver to the appropriate Professional the following Final Completion close-out documentation and items:
- (i) all operating and instruction manuals not previously produced during commissioning and required maintenance stocks;
 - (ii) two (2) sets of as-built drawings and markups;
 - (iii) certification and affidavit that all insurance required of the Builder beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
 - (iv) written consent of the surety(ies), if any, to final payment;
 - (v) full, final and unconditional waivers of mechanics or construction liens, releases of builder's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;

- (vi) full, final and unconditional certification and affidavit that all of the Builder's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
- (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
- (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
- (x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work.
- (xi) all documentation evidencing completion of required demonstrations and training.

12.2.6 The appropriate Professional will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Builder, and will immediately inform the Builder about any deficiencies and omissions.

ARTICLE 13 BUILDER'S WARRANTIES AND GUARANTEES

- 13.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract For Construction, the Builder, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion.
- 13.1.1 The Builder shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner, the appropriate Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The purpose of the walk-through inspection will be to determine if there are defects or failures which require correction.
- 13.1.2 Should the Builder fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Builder shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Builder's failure to correct the failure or defect.
- 13.2 **Express Warranties And Guarantees – Builder.** In addition to the warranties and guarantees set forth elsewhere herein, the Builder expressly warrants and guarantees to the Owner:
- (i) that the Work complies with (a) the Construction Documents; and (b) all applicable laws including by not limited to the American with Disabilities Act, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
 - (ii) that all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and
 - (iii) that all management, supervision, labor and services required for the Work shall comply with this Contract For Construction and shall be and are performed in a workmanlike manner.
- 13.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The Builder shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Builder in a form identical to the warranties, guarantees and other undertakings set forth in this Contract For Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Builder.
- 13.4 **Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.
- 13.5 **Non-Limitation.** Nothing contained in Paragraph 13.1, shall be construed to establish a period of limitation with respect to the Builder's obligations under this Contract For Construction. Paragraph 13.1 relates only to the Builder's specific obligations with respect to the Work, and has no relationship to the time within which the Builder's contractual obligations under this Contract For Construction may be enforced, nor to the time within which proceedings may be commenced to establish the Builder's liability with respect to any contractual obligations pursuant to Paragraph 13.1 or contained elsewhere herein.
- 13.6 **Commencement Of Obligations.** Unless otherwise specified, all of the Builder's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by

the Construction Documents, shall begin on the actual date of Substantial Completion [or the date of acceptance by the Owner, whichever is later.]?

- 13.7 12.1.10 The Contractor for itself and for its Subcontractors, laborers and materialmen and all others directly or indirectly acting for, through or under it or any of them covenants and agrees that no mechanics' liens or claims will be filed or maintained against the Project, the Premises, or any part thereof, or any interest therein or any improvements thereon, or the County or against any monies due or to become due from the County to the Contractor, for or on account of any work, labor, services, materials, equipment or other items and its Subcontractors, laborers and materialmen and all others above mentioned does hereby expressly waive, release and relinquish all rights to file or maintain such liens and claims and agrees further that this waiver of the right to file or maintain mechanics' liens and claims shall be an independent covenant and shall apply as well to work, labor and services performed and materials, equipment and other items furnished under any change order or supplemental agreement for extra or additional work in connection with the Project as to the original Work covered by the Contract Documents. If any Subcontractor, laborer or materialman of the Contractor or any other person directly or indirectly acting for, through or under it or any of them files or maintains a mechanics' lien or claim as aforesaid the Contractor agrees to cause such liens and claims to be satisfied, removed or discharged at its own expense by bond, payment or otherwise within ten (10) days from the date of the filing thereof, and upon its failure so to do, the County shall have the right, in addition to all other rights and remedies provided under the Contract Documents or by law, to cause such liens or claims to be satisfied, removed or discharged by whatever means the County chooses, at the entire cost and expense of the Contractor (such cost and expense to include reasonable attorney's fees and disbursements). The Contractor agrees to indemnify, protect and save harmless the County from and against any and all such liens and claims and actions brought or judgments rendered thereon, and from and against any and all loss, damages, liability, costs and expenses, including reasonable attorney's fees and disbursements, which the County may sustain or incur in connection therewith.

ARTICLE 14 OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES

- 14.1 **Timely Compensation Of Builder.** The Owner shall timely compensate the Builder in accordance with this Contract For Construction.
- 14.2 **Payment For Testing.** Unless otherwise required to be provided by the Builder in its scope of services, Owner shall secure and pay for all Project testing.
- 14.3 **Owner Review Of Documents.** The Owner shall review documents prepared by the Builder in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Builder of any of its responsibilities.
- 14.4 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Builder, for any of the foregoing purposes, be deemed the agent of the Owner.
- 14.5 **Owner's Utilities.** The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The Builder shall be responsible to provide and pay for connections to, extensions from and means of using these utilities.
- 14.5.1 The Owner will pay utility company bills for water, gas and electrical energy which is required for the Project and which passes through the Owner's meters. However, the Owner shall not pay for (i) water which is expended without proper regard for ecological and conservation considerations; (ii) electrical energy expended in electric heating devices; or (iii) utilities for Builder's field offices.
- 14.5.2 Acceptance by the Builder of the use of the Owner's water, gas and electrical energy constitutes a release from the Builder to the Owner of all claims and liability for any damages or losses which may be incurred by the Builder as a result of water, gas and electrical energy outages or voltage variations or surges.
- 14.6 **Statements Of Owner's Capacity.** The Owner, upon reasonable written request, shall furnish to the Builder in writing statements of the record legal title to the Site on which the Project is located and the Owner's interest therein at the time of execution of this Contract For Construction.

ARTICLE 15 BUILDER'S COMPENSATION

- 15.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Builder's Compensation Schedule is an estimate only, and the compensation to the Builder shall be determined by the actual number of units incorporated in, or required by, the Work.

- 15.2 **Schedule Of Values.** The Builder shall prepare and present to the Owner and the designated Professional the Builder's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Builder's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Builder shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Builder's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner.
- 15.3 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the Builder shall invoice the Owner and the Owner shall pay the Builder the Construction Price for Work performed in accordance with the Contract Documents.
- 15.3.1 The Builder shall submit invoices once a month on or before the 25th day of the month to the Professional requesting payment for labor and services rendered during the preceding thirty calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or a Professional requests and shall at a minimum state:
- (i) the total Construction Price;
 - (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
 - (iii) a breakdown of the various phases or parts of the Work as related to the Construction Price;
 - (iv) the value of the various phases or parts of the Work actually performed;
 - (v) previously invoiced amounts and credit payments made;
 - (vi) the total amount due, less any agreed retainage;
- and shall also have attached such lien waiver and other documentation verifying the Builder's payment to subcontractors and suppliers as the Owner or a Professional may request.
- 15.4 **Payment Procedures.**
- 15.4.1 The Professional will review the Builder's applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Builder and, based upon such review, together with its inspections of the Work, may authorize payment by the Owner to the Builder in writing. Such authorization will constitute the Professional's certification to the Owner that
- (i) the Work described in the Builder's invoice has progressed to the level indicated and has been performed in accordance with the Contract For Construction;
 - (ii) all necessary and appropriate lien waivers have been submitted; and
 - (iii) the amount requested is currently due and owing to the Builder.
- 15.4.2 In the case of unit price work, the Professional's recommendations for payment will constitute a final determination of quantities and classifications of such work.
- 15.5 **Owner's Right To Refuse Payment/Retainage.** A Professional's approval of the Builder's invoice shall not preclude the Owner from exercising any of its remedies under this Contract For Construction. In the event of a dispute, payment shall be made for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Builder due to:
- (i) the Builder's failure to perform the Work in compliance with the requirements of this Contract For Construction or any other agreement between the parties;
 - (ii) the Builder's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
 - (iii) the Builder's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;
 - (iv) the Builder's failure to use funds previously paid the Builder by the Owner, to pay the Builder's Project-related obligations including, but not limited to, the Builder's subcontractors, materialmen, and suppliers;
 - (v) claims made, or likely to be made, against the Owner or its property;
 - (vi) loss caused by the Builder or the Builder's subcontractors, or suppliers; or
 - (vii) the Builder's failure or refusal to perform any of its obligations to the Owner.

If the County chooses to make payments to the Builder, less retainage, it shall do so within a reasonable period of time after receipt of the Payment Application. Payments that are not unreasonably delayed will bear no interest penalties. The terms of this paragraph and the entire Contract Documents are intended to supercede all provisions of the Prompt Pay Act, O.C.G.A. § 13-11-1 through § 13-11-11.

Until the Work is fifty (50%) percent complete, the County shall pay ninety (90%) percent of the amount due the Builder on account of progress payments. At the time the Work, including change orders and other additions to the contract value provided for by the Contract Documents, is fifty (50%) percent complete and thereafter, the Professional may authorize remaining partial payments to be paid in full. Notwithstanding the foregoing, in the event the Professional determines the Builder is not reasonably following the schedule, or is failing to adequately perform the Work (all to be determined in the reasonable judgement of the Professional), the County shall continue to make progress payments at the rate of ninety (90%) percent of the amount due the Builder for each payment. If the County discontinues the retention, and after doing so the Professional determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at ten (10%) percent.

- 15.6 **Builder's Right To Refuse Performance For Non-Payment.** If the Owner, without cause or basis hereunder, fails to pay the Builder any amounts then due and payable to the Builder, the Builder shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the Work until receipt of proper payment excluding amounts disputed by the Owner, after first providing thirty calendar days written notice to the Owner of its intent to cease work.
- 15.7 **Correction Of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent timely payment, the Owner shall notify the Builder in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Builder shall be due thirty calendar days from the date the dispute is resolved.
- 15.8 **No Interest On Outstanding Amounts Due.** No interest shall accrue on amounts owed by the Owner to the Builder; nor shall interest accrue on retainage which is withheld to assure performance of this Contract For Construction.
- 15.9 **Invoice Warranties And Guarantees.** The Builder expressly warrants and guarantees to the Owner that:
- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Builder, whichever occurs first;
 - (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and
 - (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Builder, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Builder, or its subcontractors or suppliers.
- Notwithstanding the above, the Builder shall be responsible for 1) Maintenance and protection of Work until final completion and acceptance, including, but not limited to, the storage of materials and equipment, erection of temporary structures and provisions for drainage as necessary to protect Work from injury, damage or loss. 2) Any injury, damage, or loss to Work resulting from the action of the elements or any other cause, irrespective of fault or negligence, accepting only such injury, damage, or loss as is caused solely by the negligence of willful misconduct of the County or the Architect. 3) Protection of its Work and materials and the Work and materials of his Subcontractors from damage or injury from the weather. Any portion of Work suffering injury, damage, or loss for which Contractor is responsible under 1, 2, or 3 above will be considered defective and shall be corrected or replaced without additional cost to County.
- 15.10 **Builder's Signature.** The signature of the Builder on any invoice constitutes the Builder's certification to the Owner that (i) the Builder's services listed in the invoice have progressed to the level indicated and have been performed as required by this Contract For Construction; (ii) the Builder has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and (iii) the amount requested is currently due and owing.
- 15.11 **Taxes.** The Builder shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Contract For Construction, whether or not yet effective or merely scheduled to go into effect. The Builder shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes. The Builder shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Builder on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.
- 15.12 **Compensation Of Builder's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the Builder shall pay each of its subcontractors and suppliers out of the amount received by the Builder on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Builder on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Builder's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Builder and to any of its subcontractors or

suppliers in the event that the Owner becomes aware that the Builder fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

- 15.13 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the Builder must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Builder within a reasonable amount of time of Professional's execution of a final approval for payment.

ARTICLE 16 SCHEDULE REQUIREMENTS

- 16.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.
- 16.1.1 Unless otherwise directed and approved by the Owner, the Builder shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.
- 16.1.2 The Construction Schedule shall include (i) the required Commencement Date, the required dates of Substantial Completion and Final Completion; (ii) any guideline and milestone dates required by the Owner; (iii) any applicable subcontractor and supplier subschedules; (iv) a submittal schedule which allows sufficient time for review of documents and submittals; (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and (vi) required decision dates.
- 16.1.3 By reviewing the Construction Schedule, the Owner and a Professional do not assume any of the Builder's responsibility (i) that the Construction Schedule be coordinated or complete; or (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.
- 16.1.4 The Builder shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Builder shall discuss the status of the Work weekly with the designated Professional, so that proper overall management may be provided.
- 16.1.5 The Builder shall periodically and in all instances when the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which (i) states and explains any modifications of the critical path schedule, including any changes in logic; (ii) defines problem areas and lists areas of anticipated delays; (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities; (iv) reports corrective action taken or proposed; and (v) states how problems anticipated by projections shown on the schedule will be resolved to avoid delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.
- 16.2 **Delay In Performance.** If at any time the Builder anticipates that performance of the Work will be delayed or in fact has been delayed, the Builder shall (i) immediately notify the designated Professional of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and (ii) take all corrective actions reasonably necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.
- 16.3 **Modifications To Time For Performance.** The Builder shall determine and promptly notify the Owner and the Professional(s) in writing when it believes adjustments to the required dates of Substantial Completion or Final Completion, or other milestone dates required by the Owner, if any, are necessary, but no such adjustments shall be effective unless approved in writing by the Owner and Professional(s). The Owner shall have the right to require the Builder to accelerate the work, including providing additional forces and working extended schedules in order to maintain the approved Construction Schedule.
- 16.4 **Early Completion.** The Builder may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Builder's sole convenience and shall not create any additional Builder rights or Owner obligations under this Contract For Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Builder any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Builder any compensation should the Owner cause the Builder not to achieve Substantial Completion

earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.

- 16.5 **Modification Dates Of Substantial Completion Or Final Completion.** The Builder may propose modifications to the required dates of Substantial Completion or Final Completion. The Owner may, but is not required to, accept the Builder's proposal. Modification(s) of the required dates of Substantial Completion or Final Completion shall be accomplished only by duly authorized and accepted change order(s) stating the new date(s) with specificity and reciting that all references in this Contract For Construction to the required dates of Substantial Completion or Final Completion shall thereafter refer to the date(s) as modified, and all rights and obligations, including the Builder's liability for actual damages, delay damages and liquidated damages, shall be determined in relation to the date(s) as modified.
- 16.6 **Document Review.** The Builder shall provide documents to the Owner and Professional(s) for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional(s) reasonable time for review.

ARTICLE 17 LIQUIDATED DAMAGES

- 17.1 **Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Contract For Construction and that the Owner will incur damages if the Work is not completed on time. The Builder shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that (i) the Work progresses in accordance with the Construction Schedule; (ii) the Work is substantially completed by the required date of Substantial Completion; and (iii) the Work is finally complete by the date of Final Completion.
- 17.2 **Failure To Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the Builder in the completion of the Work. If the Builder inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract For Construction, the Builder shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified in Chapter 1 for each and every day after the required date of Substantial Completion until Substantial Completion. This liquidated damages provision shall apply and remain in full force and effect in the event that the Builder is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing builder, including Owner. If the Builder fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this Contract For Construction, the Builder shall pay to the Owner, as liquidated damages for delay and not as a penalty, fifty (50%) percent of the daily amount stated for failure to timely achieve Substantial Completion, even if not actually imposed, for each calendar day of unexcused delay in achieving Final Completion. These damages shall be calculated cumulatively, so that, by way of example, if substantial completion continues not to be achieved after the date for Final Completion, damages may be assessed for both delay in Substantial Completion and delay in Final Completion for so long as that situation remains.
- 17.3 **Extension of Time For Delay.** If the Builder is delayed at any time in the progress or performance of the Work without any fault or neglect on its own part, and whether caused by the fault or neglect of the Owner or by any act of God or such other cause beyond the control of the Builder, the Builder shall be entitled to a reasonable extension of time only.
- 17.4 **Excusable Delay.** If the Builder is delayed at any time in the progress or performance of the Work by (i) acts or omissions of the Owner or Professional(s); (ii) major changes ordered by the Owner in the scope of Work; (iii) fire; (iv) unusual delays in transportation; (v) adverse unusual weather conditions; (vi) unavoidable casualties; (vii) causes beyond the Builder's control which the Owner agrees in writing are justifiable; or (viii) any other cause which the Owner determines may justify the delay, the Construction Schedule shall be extended for a period equal to the length of such delay, but only if (a) such delay is not in any way caused by default or collusion on the part of the Builder or by any cause which the Builder could reasonably control or circumvent; (b) the Builder would have otherwise been able to timely perform all of its obligations under this Contract For Construction but for such delay; and (c) immediately but not later than seven calendar days after the beginning of any such delay the Builder gives notice of its delay claim to the Owner. The Contract Time will not be extended due to normal inclement weather. The time for performance of this Contract as stated in the Contract documents, includes an allowance for calendar days which, according to historical data obtainable from the National Oceanic and Atmospheric Administration in the latest edition, prior to bid, for the area in which the Project is located, may not be suitable for construction work. For purposes of the contract schedule, the Contractor agrees that he may expect inclement weather in accordance with the following table of calendar days:

January 22	July 8
February 16	August 6
March 11	September 4
April 7	October 5
May 4	November 9
June 6	December 15

If the Contractor believes that the progress of the Work has been adversely affected by the abnormal inclement weather, he shall submit a written request for extension of time to the Architect, pursuant to Paragraph 4.4. Such a request for extension of Contract Time shall be substantiated by actual records of the weather on the specific days concerned, as recorded at the official weather station nearest to the Project site. Furthermore, unless the Contractor can substantiate to the satisfaction of the Architect that activities affected during these time of abnormal inclement weather were being performed within fourteen calendar days of their scheduled performance on the Contractor's progress schedule, he will not be entitled to an extension of time therefore.

Extensions of time will not be granted for delays caused by normal inclement weather, unsuitable ground conditions, inadequate construction force, or the failure of the Contractor to place orders for equipment or materials sufficiently in advance to insure delivery when needed.

- 17.5 **Owner's Right To Withhold Payment.** When it reasonably believes (i) that Substantial Completion will be inexcusably delayed; or (ii) that the Builder will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Builder the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.
- 17.5.1 If and when the Builder overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Builder those funds withheld, but no longer applicable, as liquidated damages.
- 17.5.2 Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Builder or its subcontractors and suppliers is not the responsibility of the Owner and will result in time extensions only if agreed to in writing by the Owner at the time such events arise.

ARTICLE 18 CONCEALED AND UNFORESEEN CONDITIONS

- 18.1 **Notification Regarding Unusual Conditions.** If (i) the Builder encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or (ii) the conditions vary from those indicated by the Construction Documents; and (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Builder, the Builder shall immediately, but in no event later than one calendar day after first observance of the conditions, notify the appropriate Professional(s) and the Owner before conditions are disturbed and give the Professional(s) or the Owner opportunity to observe the condition in its undisturbed state.
- 18.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Builder's cost of, or time required for, performance of the Work, compensation or time for performance or both will be equitably adjusted in the discretion of the Owner. The Builder shall provide a lump sum price, or a not to exceed price based on a unit of work to be performed, within one calendar day from the date of Owner's/Professional on-site observation. In the event the Owner and the Builder fail to agree as regards compensation and/or extension of time.
- 18.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within five calendar days from the date of observation of the changed conditions.
- 18.1.3 The Builder's failure to notify the Professional(s) and Owner as provided in this Article or to perform any Work prior to receiving a signed Change Directive or Order shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

ARTICLE 19 BUILDER'S RECORDS

- 19.1 **Preparation Of Records.** The Builder shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished.

- 19.2 **Retention Of Records.** The Builder shall retain in its records copies of all (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) change order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and (xii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.
- 19.2.1 The Builder shall maintain substantiating records for five years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Builder receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the Builder shall continue to maintain all Project records until final resolution of the dispute or litigation.
- 19.2.2 The Builder shall, upon seven days' request from the Owner, secure from its subcontractors and suppliers copies of (i) written communications; (ii) memoranda of verbal communications; (iii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices); (iv) job site notes; (v) daily logs; (vi) reports; (vii) notices; (viii) all subcontract files (including proposals of successful and unsuccessful bidders); (ix) Change Order files (including documentation covering negotiated settlements); (x) written policies and procedures, (xi) records necessary to evaluate and verify direct and indirect costs (including overhead allocations), and (xii) other documents generated with respect to the Project.
- 19.3 **Access To Records.** Upon the request of the Owner, the Builder shall make its records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Builder's records at the copying party's reasonable expense, within adequate work space at the Builder 's facilities. Failure by the Builder to supply substantiating records from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Contract For Construction.

ARTICLE 20 PROPRIETARY DOCUMENTS AND CONFIDENTIALITY

- 20.1 **Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the Builder (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Builder; and (v) shall not be used by the Builder on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance or is required by any applicable law. The Owner hereby grants to the Builder a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.
- 20.2 **Ownership Of Information.** All information, documents, and electronic media prepared by or on behalf of the Builder for the Project are the sole property of the Owner free of any retention rights of the Builder. The Builder hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Builder for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 20.3 **Disclosure Of Information.** The Builder shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Construction.
- 20.4 **Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Builder shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.
- 20.5 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

ARTICLE 21 GENERAL INSURANCE REQUIREMENTS

- 21.1 **General Insurance Requirements.** Unless otherwise required, each insurance policy:
- (i) shall be issued by an insurance carrier acceptable to the Owner;

- (ii) shall be kept in force throughout performance of the Builder's services and for one year after the end of such performance;
 - (iii) shall be an occurrence policy; and
 - (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without twenty-eight calendar days' prior written notice to the Owner.
- 21.2 **Certificates Of Insurance.** Prior to performance of services on the Project, the Builder shall (i) have all required insurance coverage in effect; and (ii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage. The Builder shall (i) require that its subcontractors, and suppliers have similar coverage in effect, and prior to the performance of any services on the Project by the Builder's subcontractors and suppliers, and (ii) shall ensure that all required insurance coverages of its subcontractors and suppliers is in effect. The Owner shall have no responsibility to verify compliance by the Builder or its subcontractors and suppliers. Upon the request of the Owner, the Builder shall deliver to the Owner certificates of insurance and/or copies of policies for all required insurance coverage.
- 21.3 **Effect Of Insurance.** Compliance with insurance requirements shall not relieve the Builder of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract For Construction, and the Owner shall be entitled to pursue any remedy in law or equity if the Builder fails to comply with the contractual provisions of this Contract For Construction. Indemnity obligations specified elsewhere in this Contract For Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.
- 21.4 **Waiver Of Subrogation.** The Builder hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Builder, and to anyone claiming by, through or under the Builder, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

ARTICLE 22 GENERAL BOND REQUIREMENTS

- 22.1 **General Bond Requirements.** The Builder shall be required to provide separate performance and payment bond(s), the penal sum of each bond to be in an amount not less than the Construction Price, as adjusted by any change order(s), and each bond shall:
- (i) be in a form approved by the Owner;
 - (ii) incorporate by reference the terms of this Contract For Construction;
 - (iii) be issued by a surety reasonably acceptable to the Owner that shall be on the Department of Treasury Listing of Acceptable Sureties and Underwriting Limitations, having a Best Rating of A:VII or better;
 - (iv) be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so.
- 22.2 **Delivery Of Bonds.** The Builder shall deliver any required bond(s) and power(s) of attorney to the Owner within 10 calendar days after receipt of Notice of Award.

ARTICLE 23 OWNER'S RIGHT TO STOP WORK

- 23.1 **Cease And Desist Order .** If the Builder fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2, or persistently fails to carry out Work in accordance with the Contract Documents, or there are actual or potential third-party claims, or there is failure to make timely payments for labor or materials, damage to other entities connected with the Project, or reasonable evidence that the Contract cannot be completed for the Contract Price, or the Builder fails to supply labor or materials in accordance with the Contract Documents, the Owner, by written order signed personally or by the Professional, may order the Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated.
- 23.1.1 The Builder shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Builder.
- 23.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Builder or others.
- 23.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Builder fails and refuses within seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another builder, and the Builder shall be responsible for the cost of performing such Work by the Owner.

- 23.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Builder.

**ARTICLE 24
TERMINATION OR SUSPENSION OF
CONTRACT FOR CONSTRUCTION**

24.1 Termination For Cause By Owner.

24.1.1 The Owner may terminate this Contract For Construction for cause if the Builder materially breaches this Contract For Construction by:

- (i) refusing, failing or being unable to properly manage or perform on any requirement of the Project;
- (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;
- (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
- (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
- (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein, or
- (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Builder.

24.1.2 Upon the occurrence of any of the events described in Paragraph 24.1.1, the Owner may give written notice to the Builder setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Builder fails to initiate the cure or if the Builder fails to expeditiously continue such cure until complete, the Owner may give written notice to the Builder of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:

- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
- (iii) take such other action as is necessary to correct such failure;
- (vi) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Builder;
- (v) directly pay the Builder's subcontractors and suppliers compensation due to them from the Builder;
- (vi) finish the Work by whatever method the Owner may deem expedient; and
- (vii) require the Builder to assign the Builder's right, title and interest in any or all of Builder's subcontracts or orders to the Owner.

24.1.3 If the Owner terminates the Contract For Construction for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Builder, the Builder's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Builder the Owner's damages resulting from the termination.

24.1.4 If the Owner terminates this Contract For Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 24.3.

24.2 Termination For Cause By Builder.

24.2.1 The Builder may terminate this Contract For Construction for cause if the Owner materially breaches this Contract For Construction by:

- (i) refusing, failing or being unable to make prompt payment to the Builder without cause;
- (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of this Contract For Construction or any other agreement between the Owner and the Builder.

24.2.2 Upon the occurrence of any of the events described in Paragraph 24.2.1, the Builder may give written notice to the Owner setting forth the nature of the default and requesting cure within thirty calendar days from the date of notice. If the Owner fails to cure the default within seven calendar days, the Builder, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

- 24.3 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the Builder terminating this Contract For Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Builder shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.
- 24.4 **Builder's Compensation When Builder Terminates For Cause Or Owner Terminates For Convenience.** If this Contract For Construction is (i) terminated by the Builder pursuant to Paragraph 24.2; (ii) terminated by the Owner pursuant to Paragraph 24.3; or (iii) suspended more than three months by the Owner pursuant to Paragraph 24.3, the Owner shall Reimburse the Builder for, an equitable portion of the Builder's fee based on the portion of the Work completed, excluding any allowance for overhead or profit, prior to the effective date of termination.
- 24.5 **Builder's Compensation When Owner Terminates For Cause.** If this Contract For Construction is terminated by the Owner for cause pursuant to Paragraph 24.1, no further payment shall be made to the Builder until Final Completion of the Project. At such time, the Builder shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Builder, including liquidated damages applicable thereto. The Builder shall additionally reimburse the Owner for any additional costs or expenses incurred.
- 24.6 **Limitation On Termination Compensation.** Regardless of the reason for termination or the party terminating, the total sum paid to the Builder shall not exceed the Contract Construction Price (and any payment for line items appearing in the Schedule of Values shall be limited to the scheduled amount), as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract For Construction, and shall in no event include duplication of payment.
- 24.7 **Builder's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if this Contract For Construction is terminated, the Builder shall, unless notified otherwise by the Owner,
- (i) immediately stop work;
 - (ii) terminate outstanding orders and subcontracts;
 - (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
 - (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Builder has.
- 24.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Builder to exercise that right for the benefit of the Owner, the Builder or any other persons or entities.
- 24.9 **Limitation On Termination Claim.** If the Builder fails to file a claim within 90 calendar days from the effective date of termination, the Owner shall pay the Builder only for services actually performed and expenses actually incurred prior to the effective termination date.

ARTICLE 25 APPLICABLE LAW AND DISPUTE RESOLUTION

- 25.1 **Applicable State Law.** This Contract For Construction shall be deemed to be entered into in and shall be interpreted under the laws of the state in which the Project is located.
- 25.2 **Court Actions.** Except as expressly prohibited by law:
- (i) all legal actions hereunder shall be conducted only in the superior court or federal court districts where the Project is located and having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
 - (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
 - (iii) the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue; and
 - (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.
- 25.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 25.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.
- 25.4.1 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings,

but shall each be responsible for their own expenses otherwise incurred.

- 25.4.2 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.
- 25.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.
- 25.4.5 The Owner, the Professional(s), the Builder, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract For Construction or an agreement that incorporates this Contract For Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.
- 25.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract For Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.
- 25.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract For Construction, no party to this Contract For Construction shall be required to participate in or be bound by, any arbitration proceedings.
- 25.7 **Performance During Dispute Resolution.** The Owner and the Builder agree that pending the resolution of any dispute, controversy, or question, the Owner and the Builder shall each continue to perform their respective obligations without interruption or delay, and the Builder shall not stop or delay the performance of the Work. Notwithstanding the above, the Owner shall not be required to make any payments to the Builder that Owner contends are in dispute.

ARTICLE 26 DAMAGES AND REMEDIES

- 26.1 **Builder's Repair.** The Builder shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract For Construction, or any other applicable warranty or guarantee.
- 26.2 **Builder's Reimbursement.** The Builder shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of (i) the Builder's failure to substantially perform in accordance with the terms of this Contract For Construction; (ii) deficiencies or conflicts in the Construction Documents attributable to the Builder or of which the Builder was or should have been aware; (iii) breach of the warranties and guarantees set forth in this Contract For Construction or any other applicable warranty or guarantee; or (iv) other acts or omissions of the Builder.
- 26.3 **General Indemnity.** To the fullest extent permitted by law the Builder shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the Builder's services, including without limitation any breach of contract or negligent act or omission (i) of the Builder; or (ii) of the Builder's subcontractors or suppliers, or (iii) of the agents, employees or servants of the Builder or its subcontractors or suppliers.
- 26.3.1 To the fullest extent permitted by law, the Builder, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner or the Owner's Related Parties pursuant to the indemnification provision contained in the paragraph above.
- 26.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Builder shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing. If the Builder has reason to believe the use of a required design, process or

product is an infringement of a patent, the Builder shall be responsible for such loss unless such information is promptly given to the Owner.

27.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Contract For Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract For Construction or by law.

27.6 **Waiver Of Damages.** The Builder shall not be entitled to, under any circumstance, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

ARTICLE 27 MISCELLANEOUS PROVISIONS

27.1 **Integration.** This Contract For Construction represents the entire and integrated agreement between the Owner and the Builder, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract For Construction may be amended only by written instruments signed by both the Owner and the Builder, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.

27.2 **Severability.** If any provision of this Contract For Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.

27.3 **Waiver.** No provision of this Contract For Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Construction.

27.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Builder with any provision of this Contract For Construction shall operate to release, discharge, modify, change or affect any of the Builder's obligations.

27.5 **Third-Party Beneficiaries.** This Contract For Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Contract For Construction, nothing contained in this Contract For Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Builder.

27.6 **Survival.** All provisions of this Contract For Construction which contain continuing obligations shall survive its expiration or termination.

27.7 **Assignment.** Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Contract For Construction without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner, or except as otherwise specifically provided for in this Contract For Construction in case of default. The Owner and the Builder bind their successors and assigns to the other party to this Contract For Construction.

27.8 **Execution Of Documents.** Upon the request of the Owner, the Builder shall execute documents required by the Owner's lender whereby the Builder agrees that in the event of the Owner's default under, or the termination of, any construction loan agreement, the Builder will complete the services required by this Contract For Construction under the terms and conditions contained herein so long as the lender fulfills the obligations of the Owner toward the Builder as set forth in this Contract For Construction.

27.9 Separate contracts may be awarded for, but not necessarily limited to, telephone cabling, computer cabling, furniture and equipment, landscaping, signage and graphics.

ARTICLE 28 DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

Builder: An entity, including but not limited to a **Builder**, a trade contractor or a construction manager, engaged directly by the Owner pursuant to a Contract For Construction.

Construction Price: The dollar amount for which a Builder agrees to perform the Work set forth in a Contract For Construction.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Contract For Construction: A written agreement between the Owner and a Builder for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

Contract For Professional Services: A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

Declaration Of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

Final Completion: The stage of construction when the Work has been completed in accordance with the Contract For Construction and the Owner has received all documents and items necessary for closeout of the Work.

Hazardous Substances: The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Owner's Related Parties: Any elected officials, agents, officers, trustees, office holders, directors, and employees of each.

Professional: An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

Project: A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of a Contract For Professional Services or in a Contract For Construction.

Project Design Schedule: The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

Site: The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

Work: Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Construction Manager.

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**Prequalified General Contracting Services
Group 2
Non-Building, Sports or Recreational Facility
Construction and/ or Renovation Projects
Cobb County Parks, Recreations and Cultural
Affaires Department**

“ATTACHMENT “B”

STANDARD FIXED PRICE AGREEMENT BETWEEN OWNER AND CONTRACTOR

NCLC DOCUMENT I 1992 EDITION

These contract documents should be used only after consultation with counsel. The documents are not intended as legal advice appropriate to any specific situation, nor do they purport to address all issues, which may arise between the contracting parties. The documents should be amended or supplemented where appropriate in order to address specific contractual concerns.

STANDARD FIXED PRICE AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made by and between _____

(hereinafter referred to as the "Owner") and _____

(hereinafter referred to as the "Contractor") under seal for construction of _____

(hereinafter referred to as the "Project"), the Owner and the contractor hereby agreeing as follows:

(This page has been left blank intentionally)

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 THE CONTRACT

1.1.1 The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract Documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2 THE CONTRACT DOCUMENTS

1.2.1 The Contract Documents consist of this Agreement, the Specifications, the Drawings, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

(List here any additional Contract Documents such as addenda, special conditions, supplemental conditions. etc.)

Documents not enumerated in this Paragraph 1.2.1 are not Contract Documents and do not form part of this Contract.

1.3 ENTIRE AGREEMENT

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor.

1.4 NO PRIVACY WITH OTHERS

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

1.5 INTENT AND INTERPRETATION

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work. Any Work that may be required implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or

construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation"

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Architect of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

1.5.8 As between numbers and scaled measurements on the Drawings and in the Design, the numbers shall govern; as between larger scale and smaller scale drawings, the larger scale shall govern.

1.5.9 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

ARTICLE II

THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project; furnishing of any required surety bonds and insurance; and the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:

ARTICLE III

CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work upon receipt of the Owner's written Notice to Proceed and shall achieve Substantial Completion of the Work no later than _____

The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time".

3.1.2 The Contractor shall pay the Owner the sum of \$ 250.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be Inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.2 SUBSTANTIAL COMPLETION

3.2.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose.

3.3 TIME IS OF THE ESSENCE

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE IV

CONTRACT PRICE

4.1 THE CONTRACT PRICE

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work required herein, the fixed sum of _____ \$ _____ and the sum set forth in this Paragraph 4.1 shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract.

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

5.1.1 Within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Architect a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Architect and the Owner.

5.2 PAYMENT PROCEDURE

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

5.2.2 **PROGRESS PAYMENTS** - Based upon the Contractor's Applications for Payment submitted to the Architect and upon Certificates for Payment subsequently issued to the Owner by the Architect, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.3 On or before the 25TH day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 30TH day of the month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment properly stored onsite (or elsewhere if approved in advance in writing by the Owner) for subsequent incorporation in

the Work, less the total amount of previous payments received from the Owner. Payment for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Architect shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect's receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 herein below.

5.2.4 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.5 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

5.2.6 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 WITHHELD PAYMENT

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;

- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand.

5.4 UNEXCUSED FAILURE TO PAY

5.4.1 If within ten (10) days after the date established herein for payment to the Contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may after seven (7) additional days' written notice to the Owner and the Architect, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Any payment not made within ten (10) days after the date due shall bear interest at the rate of percent (0 %) per annum.

5.5 SUBSTANTIAL COMPLETION

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Architect a list of items to be completed or corrected. When the Architect on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. Guarantees required by the Contract shall commence on the date of Substantial Completion of the Work. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less three hundred percent (300%) of the reasonable cost as determined by the Owner and the Architect for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. If the Architect is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefore by the Architect in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum of \$250.00 per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Architect or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the Architect's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

ARTICLE VI

THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

6.1.3 The Owner shall furnish the Contractor, free of charge, ONE copy of the Contract Documents for execution of the Work. The Contractor will be charged, and shall pay the Owner, \$_____ per additional set of Contract Documents which it may require.

6.2 RIGHT TO STOP WORK

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 OWNER'S RIGHT TO PERFORM WORK

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII

THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or

Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.4 WARRANTY

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.5 The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.6 SUPERVISION

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect.

7.6.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

NAME	FUNCTION
_____	_____
_____	_____
_____	_____

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assume one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to

the Owner and the Architect for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

7.8 The Contractor shall continuously maintain at the site, for the benefit of the Owner and the Architect, one record copy of this Contract marked to record on a current basis changes, selections and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and Architect the approved Shop Drawings, Product Data, Samples and other similar required submittals. Upon final completion of the Work, all of these record documents shall be delivered to the Owner.

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.9.1 Shop Drawings, Product Data, Samples and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data or Samples unless and until such submittal shall have been approved by the Architect. Approval by the Architect, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.10 CLEANING THE SITE AND THE PROJECT

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

7.II ACCESS TO WORK

7.11.1 The Owner and the Architect shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.12 INDEMNITY

7.12.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss or expense is caused in

part by a party indemnified hereunder.

7.12.2 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 THE ARCHITECT

8.1.1 The Architect for this project is _____
_____.

In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement Architect and the status of the replacement Architect shall be that of the former Architect.

8.2 ARCHITECT'S ADMINISTRATION

8.2.1 The Architect, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Architect as set forth in this Contract. The Architect shall be the Owner's representative from the effective date of this Contract until final payment has been made. The Architect shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Architect.

8.2.3 The Architect shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance hereunder by the Contractor. The Architect shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Architect will review the Contractor's Applications for Payment and will certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect shall have authority to reject Work, which is defective or does not conform to the requirements of this Contract. If the Architect deems it necessary or advisable, the Architect shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Architect will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the

Contract Documents.

8.2.7 The Architect will prepare Change Orders and may authorize minor changes in the Work by field Order as provided elsewhere herein.

8.2.8 The Architect shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2.9 The Architect's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.3 CLAIMS BY THE CONTRACTOR

8.3.1 All Contractor claims shall be initiated by written notice and claim to the Owner and the Architect. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Paragraph 8.3 shall be reflected by a Change Order executed by the Owner, the Architect and the Contractor.

8.3.3 CLAIMS FOR CONCEALED AND UNKNOWN CONDITIONS -- Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 CLAIMS FOR ADDITIONAL COSTS -- If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall give the Architect written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the

Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

8.3.5 CLAIMS FOR ADDITIONAL TIME -- If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect, for such reasonable time as the Architect may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.4 FIELD ORDERS

8.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or in Contract Time and not inconsistent with the intent of the Contract. Such changes shall be effected by field Order and shall be binding upon the Contractor. The Contractor shall carry out such Field Orders promptly.

ARTICLE IX

SUBCONTRACTORS

9.1 DEFINITION

9.1.1 A Subcontractor is an entity, which has a direct contract with the Contractor to perform a portion of the Work.

9.2 AWARD OF SUBCONTRACTS

9.2.1 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as a Subcontractor on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to such proposed Subcontractor. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below.

ARTICLE X

CHANGES IN THE WORK

10.1 CHANCES PERMITTED 10.1

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 CHANCE ORDER DEFINED

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

10.3 CHANCES IN THE CONTRACT PRICE

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph above, the change in the Contract Price, if any, shall then be determined by the Architect on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Architect requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 MINOR CHANGES

10.4.1 The Architect shall have authority to order minor changes in the Work not involving a change in the Contract Price or an extension of the Contract Time and not inconsistent with the intent of this Contract. Such minor changes shall be made by written Field Order, and shall be binding upon the Owner and the Contractor. The Contractor shall promptly carry out such written Field Orders.

10.5 EFFECT OF EXECUTED CHANGE ORDER

10.5.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.6 NOTICE TO SURETY: CONSENT

10.6.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE XI

UNCOVERING AND CORRECTING WORK

11.1 UNCOVERING WORK

11.1.1 If any of the Work is covered contrary to the Architect's request or to any provisions of this Contract, it shall, if required by the Architect or the Owner, be uncovered for the Architect's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Architect or Owner, be uncovered for the Architect's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 CORRECTING WORK

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Substantial Completion of the Work any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time, which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations, which the Contractor has under this Contract. Establishment of the one year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

II.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE XII

CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Architect, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

- 12.2.1.4
- (a) The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.
 - (b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
 - (c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
 - (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or

would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

- (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 **FOR CAUSE**

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the Architect's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such cost exceeds the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII

INSURANCE

11. INSURANCE: Contractors shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in Contractor's bid.

A. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage including products/completed operations coverage.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, when applicable.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor code of the State of Georgia and Employers Liability limits of \$100,000 per accident.
4. Owner's and Contractor's Protective Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

B. DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. OTHER INSURANCE PROVISIONS

1. General Liability and Automobile Coverage's
 - a. The County, its officers, officials, employees and volunteers are to be covered as insured's as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; Premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the County, its officers, officials, employees or volunteers.
 - b. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies shall

not affect coverage provided to the County, its officers, officials, employees or volunteers.

- d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the County, its officers, officials, employees and volunteers for losses arising from the work performed by the Contractor for the County.

3. All coverage's

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given the County.

D. ACCEPTABILITY

Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or otherwise acceptable to County.

E. VERIFICATION OF COVERAGE

Contractor shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

F. SUBCONTRACTORS

Contractor shall include all subcontractors as insured's under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to all of the requirements stated herein.

ARTICLE XIV

MISCELLANEOUS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

13.3 SURETY BONDS

13.3.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

OWNER

CONTRACTOR

(TYPED NAME)

(TYPED NAME)

By: _____
(SIGNATURE)

By: _____
(SIGNATURE)

(PRINTED NAME, TITLE AND ADDRESS)

(PRINTED NAME, TITLE, AND ADDRESS)

(DATE OF EXECUTION)

(DATE OF EXECUTION)

**Prequalified General Contracting Services
Group 2
Non-Building, Sports or Recreational Facility
Construction and/ or Renovation Projects
Cobb County Parks, Recreations and Cultural
Affaires Department**

“ATTACHMENT “C”



P.O. _____ #: _____ PC

{PRIVATE }

CONTRACT

Date: / /03

OWNER: COBB COUNTY BOARD OF COMMISSIONERS ("Owner")
COBB COUNTY, GEORGIA
c/o Property Management Department
57 Waddell Street
Marietta, Georgia 30060-1940

CONTRACTOR: ("Contractor")

WORK: ("Work")
(General caption only)

PROJECT: ("Project")

ARCHITECT-ENGINEER: N/A ("Architect")

CONTRACT PRICE: ("Price")
and 00/100 (\$.00)

MONTHLY BILLING DATE: To be received at the ("Monthly Billing Date")
Cobb County Property Management office by the 25th of each month.

RETAINED PERCENTAGE: Ten (10%) Percent, ("Retained Percentage")
adjusted per paragraphs 3 & 4

CHANGE ORDER COMBINED OVERHEAD AND PROFIT: ("Profit Percentage")
Fifteen (15%) Percent

PAYMENT AND PERFORMANCE BONDS: Required___ Not Required

(The above terms are incorporated by reference and are more fully explained below.)

Owner, and Contractor, with offices at the addresses shown above, agree for themselves, their successors and assigns as follows:

1 . WORK: Contractor shall perform and furnish all labor, supervision, services, materials, equipment, tools, scaffolds, hoisting, transportation, storage and all other things necessary to prosecute and complete the work identified and described in, or which can be reasonably inferred from, Schedule A attached hereto (the "Work"). The Work shall be performed by Contractor in a good and workmanlike manner strictly in accordance with the Contract Documents, consisting of the plans, specifications (including, but not limited to, general, special and supplemental conditions), addenda and other documents identified in Schedule B attached hereto, and all subsequently and duly issued modifications thereto.

Contractor represents and agrees that it has carefully examined and understands the Contract Documents relevant to the Work; has adequately investigated the nature and conditions of the project site and locality; has familiarized itself with conditions affecting the difficulty of the Work and the condition of any equipment to be maintained and/or repaired; and has entered into this Contract based on its own examination, investigation and evaluation and not in reliance upon any opinions or representations of Owner.

2. PRICE: Owner shall pay to Contractor for the satisfactory performance and completion of the Work and performance of all the duties, obligations and responsibilities of Contractor under this Contract, the sum set forth herein as the Price, subject only to additions and deductions as expressly provided in this Contract. To the extent that the Work is to be performed on a unit price basis, the Price shall be computed in accordance with the unit prices set forth in Schedule C, based on actual quantities determined in accordance with the Contract Documents and this Contract. The Price and all unit prices shown in Schedule C shall be deemed to include all costs of Contractor's performance of the Work as set forth in the Contract Documents, including, but not limited to, the costs of labor, supervision, services, materials, equipment, replacement parts/equipment, tools, scaffolds, hoisting, transportation, storage, insurance and taxes, and all overhead and profit.

3. PROGRESS PAYMENTS: Within ten (10) days after the date of transmission of this Contract to Contractor, Contractor shall submit to Owner for Owner's approval a detailed schedule showing a proper cost breakdown (with a proper share of associated overhead and profit) of the Price according to the various line items or parts, of the Work, for use only as a basis for verifying Contractor's applications for payment.

The Contractor shall submit an Application for Payment on the 25th of each month. The Contractor will provide with the Payment Application, a line item breakdown of all previous costs to date plus the amount being applied for. The Owner will make payments to the Contractor within a reasonable period of time after receipt of the Payment Application equal to the value of the Completed Work and Stored Work as of the corresponding Monthly Billing Date, to the extent approved by Owner and Architect, and after deducting (a) all previous payments, (b) current retainage (to a maximum of 10 percent of each progress payment; provided, however, that, when 50 percent of the contract value including change orders and other additions to the Contract value provided for by the Contract Documents is due and the manner of completion of the Contract Work and its progress are reasonably satisfactory to the Owner's authorized Contract Representative, the Owner shall withhold no more retainage. If, after discontinuing the retention, the Owner's authorized Contract Representative determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level.), (c) all charges or backcharges for services, materials, equipment, or other items furnished or otherwise chargeable to Contractor, and (d) withheld payments if the Owner determines there is unsatisfactory job progress, defective work, disputed work, actual or potential third party claims, failure to make timely payments for labor or materials, damage to other entities connected with the project or reasonable evidence that the contract cannot be completed for the balance of the contract price. Payments that are not unreasonably delayed will bear no interest penalties. The terms of this paragraph and the entire Contract Documents are intended to supersede all provisions of the Prompt Pay Act, O.C.G.A. 13-11-1 through 13-11-11.

Owner reserves the right to advance the date of any payment (including final payment) due or to become due under this Contract if, in its sole judgment, it becomes desirable to do so. The Owner shall not thereby incur any obligation to do so in the future or waive his right to strict compliance with the Contract terms.

Contractor shall not be entitled to any payment until this Contract has been properly executed and all documents and information to be furnished by Contractor have been supplied to Owner. If Owner has a dispute over a portion of the invoices, the undisputed portion will be paid.

4. FINAL RETAINAGE PAYMENT: At substantial completion of the Work and as the Owner's authorized Contract Representative determines the Work to be reasonably satisfactory, the Owner shall within 30 days after the last of the following to occur: (a) delivery of a final application for payment, (b) furnishing of evidence satisfactory to Owner that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished or incurred in connection with the Work, (c) delivery of all guaranties, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items required of Contractor or its suppliers or subcontractors and (d) delivery of a general release, in a form satisfactory to Owner, executed by Contractor running to and in favor of Owner, and such other parties as Owner may require; pay the retainage to the Contractor. If at that time there are any remaining incomplete minor items, an amount equal to 200 percent of the value of each item as determined by the Owner's authorized Contract Representative shall be withheld until such item or items are completed to the Owner's satisfaction.

5. PAYMENT CONDITIONS: Contractor will receive the payments made by Owner and Contractor will hold such payments as a trust fund to be applied first to the payment of laborers, suppliers, subcontractors, and others responsible for the Work for which such payments are made, including sufficient funds so that all taxes and insurance applicable thereto are also paid and shall comply with all laws applicable thereto.

Contractor shall, as often as requested by Owner, furnish such information, evidence and substantiation as Owner may require with respect to the extent and value of current progress and the nature and extent of all obligations incurred by Contractor in connection with the Work and all payments made by Contractor on account thereof. Contractor shall also furnish, as required by Owner in its sole discretion, such partial or final lien waivers or releases as Owner deems necessary to ensure that Contractor has paid all persons furnishing any labor, material, or services in furtherance of any Work furnished hereunder. If required by Owner, the furnishing of such lien waivers and releases shall be a condition precedent to any payment hereunder. Nothing herein shall constitute any requirement that Owner exercise its discretionary option to require such releases and waivers. Moreover, no prior failure of Owner to require such releases and waivers shall limit Owner's right to require them subsequently.

Owner reserves the right to withhold, as a reserve and without limiting its other rights and remedies, an amount sufficient: (a) to defend, satisfy and discharge any asserted claim that Contractor (or anyone providing any of the Work hereunder) has failed to make payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Work or has caused damage to the Work or to any other work on the Project; (b) to complete the Work if it appears that funds remaining in the Contract, including retainage and exclusive of backcharges, are insufficient to complete the Work;

(c) to reimburse Owner for any backcharges incurred as a result of any act or omission by Contractor hereunder; (d) to protect Owner from the possible consequences of any other breach or default by Contractor hereunder; or (e) to secure Owner with respect to any breach or default by Contractor or its affiliates, parent company and subsidiaries under any other agreement. Payment hereunder shall not be evidence of the proper performance or progress of the Work and no payment shall be construed to be acceptance of defective, faulty or improper work or materials.

6. TIME: Time is of the essence. Therefore, Contractor shall: (a) submit, with its proposed schedule, information showing the time required to prepare and approve shop drawings, to fabricate and deliver materials and equipment, and to install the Work; (b) order (for manufacture or purchase and delivery) all materials required for performance of the Work as soon as possible in order to avoid delays caused by strikes, transportation or unavailability; (c) furnish Owner within thirty (30) days a list of major materials and equipment required for the Work, showing the name, address and telephone number of the supplier and the date on which such material and equipment is expected to be delivered to the Project site; (d) furnish Owner, upon issuance, a copy of each major purchase order and subcontract (with price information deleted); (e) cause a qualified home office supervisory representative (while Contractor has forces at the Project site and for two weeks prior thereto) to attend weekly progress meetings; and (f) notify Owner immediately by telephone and confirm in writing within ninety-six (96) hours, if Contractor finds that any item cannot be delivered as required to maintain Owner's progress schedule. Contractor also agrees to be bound by such modifications to the Project schedule as are discussed at the weekly job progress meetings and are contained in the minutes of those meetings unless written objection is made by Contractor within seventy-two (72) hours of the occurrence of such meeting.

7. EXTENSIONS OF TIME: Should Contractor, without any fault or neglect on its own part, be delayed in the completion of the Work by the fault or neglect of Owner, Contractor, as its sole remedy, shall be entitled to a reasonable extension of time only. Should Contractor, without any fault or neglect on its own part, be delayed in the completion of the Work by an act of God or such other cause beyond the control of the Contractor, Contractor shall be entitled to a reasonable extension of time to be determined in accordance with this Contract and the Contract Documents. In no event shall Contractor be entitled to compensation or damages for any delay in the commencement, prosecution, or completion of the Work or for any schedule adjustments resulting therefrom.

Notwithstanding anything to the contrary in the Contract Documents or this Contract, Contractor shall not be entitled to an extension of time unless a written notice of delay shall have been delivered to Owner within ninety-six (96) hours after commencement of the claimed delay.

8. CHANGE ORDERS: Without notice to any surety and without invalidating this Contract, Owner may from time to time, solicit an offer by written order to Contractor to make changes in the Work under the Contract Documents.

Upon request of Owner, and in a timely manner, Contractor shall submit a written offer and proposal for any applicable Price and time adjustment attributable to the changed Work, detailed as Owner may require, supported and conforming to the requirements of the Contract Documents.

Where a change is issued pursuant to a change required by the Owner, the Price shall be adjusted by the net amount of any direct savings and direct cost plus Profit Percentage, attributable to the Change Order, and the time for performance of the Work may be adjusted according to the Contract Documents, subject, however, in each case to the following limitations: (a) where the Work affected by Change Order is the subject of unit prices under Exhibit C, the Price adjustment shall be limited to the amounts obtained by applying such unit prices to the actual increase or decrease in the quantity of units due to the change, and (b) the amount allowable for all overhead and profit shall be limited to the product obtained by multiplying the Profit Percentage by the net amount of the Contractor's direct savings and direct cost.

As used in this contract, Contractor's direct savings and direct cost shall mean and be limited to the actual amount of the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; bond premiums if and to the extent actually increased; and actual rent not greater than the rent charged in the locale, or reasonable value of Contractor-owned equipment and machinery.

If the parties are able to agree upon the amount of the Price adjustment and the extent of any time adjustment, such adjustment shall be set forth and memorialized in a Change Order which shall be accepted by Contractor. If the parties are unable to agree upon such adjustments, Owner may elect to issue the Change Order to Contractor directing such work to be performed by Contractor, and any adjustments to Price or time shall be subject to ultimate determination in accordance with this contract; and Contractor shall, nonetheless, proceed immediately with the changed Work. Contractor shall keep a detailed account of the direct savings and direct cost due to the changed Work separately from its other accounting records and shall make such records available to the Owner at Owner's request. Failure to keep adequate and separate cost records of the changed Work, and to furnish same to Owner upon its request, shall constitute an acceptance on Contractor's part of the Owner's determination of the direct savings and direct cost of such changed Work. In no event shall Contractor proceed with changed Work without a Change Order issued pursuant to this paragraph 8 and Owner shall not be liable for any additional costs incurred or delays encountered in the performance of such changed Work without such a written Change Order.

9. NOTICES: All Written notices provided for in this contract or in the Contract Documents shall be deemed given if delivered personally to a responsible representative of the party, sent by telegram, fax with fax acknowledgment, or by regular mail to the party at its address specified herein. Either party may from time to time, by notice to the other as herein provided, designate a different address to which notices to it should be sent.

10. BONDS: If so indicated on page 1 hereof, Contractor shall furnish, within ten (10) days of date of transmission of this contract to Contractor, which is included in the Price, a performance bond and a payment bond, each in an amount equal to the Price, on standard AIA A311 forms and Contractor agrees to notify its surety or sureties of increases in the Price and to take such action as is required to have the penal amount of the bonds furnished pursuant to this paragraph increased correspondingly. PERFORMANCE BOND: SUBSTITUTION OF LETTER OF CREDIT MAY BE ACCEPTED FOR CONTRACTS UP TO \$300,000. PAYMENT BOND: SUBSTITUTION OF CASHIERS CHECK, CERTIFIED CHECK, OR CASH MAY BE ACCEPTED AND WILL BE RETAINED BY THE OWNER FOR NINETY (90) CALENDAR DAYS AFTER FINAL COMPLETION IS CERTIFIED.

11. INSURANCE: Contractors shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage including products/completed operations coverage.
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage, when applicable.
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor code of the State of Georgia and Employers Liability limits of \$100,000 per accident.
4. Owner's and Contractor's Protective Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

B. DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

C. OTHER INSURANCE PROVISIONS

1. General Liability and Automobile Coverages

- a. The County, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; Premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the County, its officers, officials, employees or volunteers.
- b. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- d. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the County, its officers, officials, employees and volunteers for losses arising from the work performed by the Contractor for the County.

3. All coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given the County.

D. ACCEPTABILITY

Insurance is to be placed with insurers with a Best's rating of no less than A:VII, or otherwise acceptable to County.

E. VERIFICATION OF COVERAGE

Contractor shall furnish the County with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the County before work commences. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

F. SUBCONTRACTORS

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

12. INDEMNITY: To the full extent permitted by law, Contractor agrees to defend, indemnify and save harmless Owner, and their agents, servants and employees, from and against any claim, cost, expense, or liability (including legal fees, including but not limited to attorney's fees), attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with the performance of the Work by Contractor, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder, to the extent allowed by law; provided, however, Contractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage, or destruction is caused by the sole negligence of a party indemnified hereunder. Contractor's obligation hereunder shall not be limited by the provisions of any worker's compensation or similar act. Contractor hereby agrees that One Hundred Dollars and No/Cents (\$100.00) of the Price constitutes the separate consideration for Contractor's indemnity hereunder. Such amount shall be deemed paid out of the first application for payment paid hereunder.

Should any person or entity assert a claim or institute a suit, action, or proceeding against Owner involving the manner or sufficiency of the performance of the Work, Contractor shall upon request of Owner promptly assume the defense of such claim, suit, action or proceeding, at Contractor's expense, and Contractor shall indemnify and save harmless Owner as well as anyone to be defended, indemnified and held harmless by Owner and its or their agents, servants, and employees, from and against any liability, loss, damage, or expense arising out of or related to such claim, suit, action, or proceeding.

13. ASSIGNMENT: Contractor shall not assign this contract or any monies due or to become due hereunder without the prior written consent of Owner. No assignment by Contractor of any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Contractor under this contract. If Owner gives written consent to an assignment of this contract, in whole or in part, Contractor shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Contractor from engaging subcontractors to perform a portion of the Work hereunder. However, Contractor shall be and remain as fully responsible for all persons directly or indirectly employed by such subcontractors, as Contractor is for its own acts and omissions and those of its agents, servants, and employees. Additionally, nothing herein shall prevent any guarantor or surety of Contractor from enforcing any right hereunder after acknowledgment of its obligation as guarantor or surety. Any attempted enforcement of such rights in the absence of an express acknowledgment shall constitute an admission by any guarantor or surety of its obligations under its agreement of guarantee or suretyship.

14. COMPLIANCE: Contractor shall, at its own expense, obtain all necessary licenses and permits pertaining to the Work and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof, including, but not limited to, those relating to safety, wages, discrimination and equal employment opportunity. Contractor shall promptly correct any violations of such statutes, ordinances, rules, regulations and orders committed by Contractor, its agents, servants and employees; and Contractor shall receive and respond to, and shall defend, indemnify and save harmless Owner, as well as anyone to whom Owner is obligated, and their agents, servants and employees from and against any loss, liability, or expense arising from, any such violations and any citations, assessments, fines, or penalties resulting therefrom.

15. SAFETY: Contractor agrees that the prevention of accidents to persons engaged upon or in the vicinity of the Work is its responsibility. Contractor shall establish and implement safety measures, policies and standards conforming to those required or recommended by governmental or quasi-governmental authorities having jurisdiction.

16. CLEANING UP: Contractor shall, at its own expense: (a) keep the premises at all times free from waste materials, packaging and other debris accumulated in connection with the Work by collecting and removing such debris from the job site on a daily or other basis requested by Owner; (b) at the completion of the Work in each area, sweep and otherwise make the Work in its immediate vicinity "broom-clean;" (c) remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Owner at the completion of the Work; and (d) at final inspection clean and prepare the Work for acceptance by Owner. Contractor agrees to provide all cleaning and cleanup required under the Contract Documents pertaining to the Work to the extent such requirements are in excess of those contained in this paragraph.

17. TEMPORARY FACILITIES: All temporary site facilities, such as storage, sheds, water, heat, light, power, toilets, hoists, elevators, scaffolding, cold weather protection, ventilating, pumps, watchman service, etc., required in performing the Work shall be furnished by Contractor.

18. QUALITY: Contractor shall at all times provide first-quality, new materials (unless otherwise specified in the Contract Documents) and workmanship conforming to the Contract requirements. Contractor shall at all times provide proper facilities and an opportunity for the inspection of the Work by Architect and Owner and their representatives. Contractor shall, within forty-eight (48) hours after receiving written notice from Owner, proceed to take down and remove all portions of the Work which Owner shall have condemned as unsound, improper, or in any way failing to conform to the Contract Documents or this Contract and shall replace the same with proper and satisfactory Work and make good all work damaged or destroyed thereby. Owner's failure to discover or notify Contractor of defective or nonconforming Work at the time the Work, or any portion thereof, is performed or completed shall not relieve Contractor of full responsibility for replacement of the defective or nonconforming Work and all damages resulting therefrom.

19. GUARANTEES: Contractor warrants and guarantees the Work to the full extent provided for in and required by the Contract Documents. Without limiting the foregoing or any other liability or obligation with respect to the Work, Contractor shall, at its expense and by reason of its express warranty, make good any faulty, defective, or improper parts of the Work discovered within one year from the date of acceptance of the Project by the Architect and Owner or within such longer period as may be provided in the Contract Documents. Contractor warrants that all materials furnished hereunder meet the requirements of the Contract Documents and impliedly warrants that they are both merchantable and fit for the purposes for which they are to be used under the Contract Documents.

20. SUBMITTALS: Contractor shall immediately prepare or obtain and promptly submit to Owner shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports and engineering calculations, all as may be required by the Contract Documents or as may be necessary or appropriate to describe the details of the Work. Approval of drawings or other submittals by Owner or Architect shall not relieve Contractor of its obligation to perform the Work in strict accordance with the Contract Documents or its responsibility for proper matching of the Work to contiguous work.

21. LIENS: Contractor shall defend, indemnify and save harmless Owner from any lien or claim of lien filed or maintained by any laborer, materialman, subcontractor, or other person or entity directly or indirectly acting for, through, or under Contractor, against the Project or any part thereof or any interest therein or against any monies due or to become due from Owner to Contractor. Without limiting the foregoing, Contractor shall cause any such lien or claim of lien to be satisfied, removed, or discharged by bond, payment, or otherwise within such time as provided under the Contract Documents or ten (10) days from the date of receipt by the Owner, whichever is shorter.

22. PATENTS: Contractor shall defend, indemnify and save harmless Owner, from and against any claim, cost, expense, or liability (including attorneys' fees) arising out of or resulting from infringement or alleged infringement of any patent rights attributable to the Work.

23. LABOR: Contractor agrees that where its Work is stopped, delayed, or interfered with by strikes, slow-downs, or similar interruptions or disturbances (including cases where the Contractor's employees are engaged in a work-stoppage solely as a result of a labor dispute involving Owner or others and not in any manner involving Contractor,) Owner shall have the rights and remedies provided for herein. Contractor shall maintain and exercise control over all employees engaged in the performance of the Work, and Contractor shall, to the extent permitted by law, remove or cause to be removed from the Project any employee whose presence is detrimental to the orderly prosecution of the Work. Contractor shall take all necessary steps to restrain and enjoin any illegal picketing, demonstrating, violence, or similar activity against the Contractor at the Project.

24. DAMAGE: Owner shall not be liable or responsible for loss or damage to the equipment, tools, facilities, or other personal property owned, rented, or used by Contractor, or anyone employed by or through Contractor, in the performance of the Work; and Contractor shall maintain such insurance and take such protective action as Contractor deems desirable with respect to such property. Owner shall not be liable or responsible for any loss or damage to the Work, and Contractor shall be responsible for the correction or restoration of any such loss or damage to the Work, or to the work of Owner or any other contractor, resulting from the operations of Contractor, or its subcontractors, agents, servants, or employees hereunder. Contractor shall take all reasonable precautions to protect the Work from loss or damage prior to acceptance by Owner.

25. DEFAULT: Should Contractor at any time: (a) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder; (b) cause interference, stoppage, or delay to the Project or any activity necessary to complete the Project; (c) become insolvent; or (d) fail in the performance or observance of any of the covenants, conditions, or other terms of this Contract, then in any such event, each of which shall constitute a default hereunder by Contractor, Owner shall, after giving Contractor notice of default and seventy-two (72) hours within which to cure, have the right to exercise any one or more of the following remedies:

(i) require that Contractor utilize, at its own expense, overtime labor (including Saturday and Sunday work) and additional shifts as necessary to overcome the consequences of any delay attributable to Contractor's default;

(ii) attempt to remedy the default by whatever means Owner may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing, or otherwise completing the Work, or any part thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Contractor) and deducting the cost thereof (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) from any monies due or to become due to Contractor hereunder;

(iii) after giving Contractor an additional seventy-two (72) hours notice (at any time following the expiration of the initial seventy-two (72) hour notice and curative period), terminate the Contract, without thereby waiving or releasing any rights or remedies against Contractor or its sureties, and by itself or through others take possession of the Work, and all materials, equipment, facilities, plant, tools, scaffolds and appliances of Contractor related to the Work, for purposes of completing the Work and securing to Owner the payment of its costs (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) and other damages under the Contract and for the breach thereof, it being intended that Owner shall, for the stated purposes, be the assignee of and have a security interest in the property described above to the extent located on the Project site; or

(iv) call upon the surety, if applicable, to perform in accordance with the performance bond.

(v) recover from Contractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential (including without limitation any increase in Owner's cost of insurance resulting from Contractor's failure to maintain insurance coverages required hereunder), and all reasonable attorneys' fees suffered or incurred by Owner by reason of or as a result of Contractor's default.

After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by Owner, Owner shall promptly pay Contractor any undisbursed balance of the Price, if any. If the cost of completion of the Work plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Owner, shall exceed the undisbursed balance of the Price, Contractor and its guarantors, surety, or sureties shall pay the difference within fifteen (15) days of written demand from Owner.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents, or now or hereafter existing at law or in equity. Contractor's guarantors, surety, or sureties agree to be bound to Owner with respect to such remedies notwithstanding any provision of the bonds as described herein.

Except as limited by this Contract, Contractor shall have the rights and remedies available at law or in equity for a breach of this Contract by Owner. Any default shall be deemed waived unless Contractor shall have given Owner written notice thereof within five (5) days after the occurrence of such default. Contractor shall not be entitled to stop the Work or terminate this Contract on account of Owner's failure to pay an amount claimed due hereunder (including payment for claimed changed Work) so long as Contractor shall not have adequately substantiated the amount due or so long as a good faith dispute exists as to the amount due. Contractor shall not be entitled to stop the Work on account of a default by Owner unless such default shall have continued for more than ten (10) days after Owner's receipt of written notice of such default from Contractor, specifying in detail the nature of the default and the steps necessary to cure the claimed default.

Contractor shall not be entitled to terminate this Contract except for a substantial and material breach by Owner which shall have continued, uncured, for at least an additional thirty (30) days after (a) Contractor shall have stopped working in accordance with this paragraph and (b) Owner shall have received thirty (30) days written notice of Contractor's intention to terminate this Contract.

Should any termination for default under paragraph 25 (iii) be determined to be invalid, improper or wrongful, such termination shall be deemed to have been a termination for convenience as provided in paragraph 27 below.

26. DISPUTES: If a dispute should arise between Owner and Contractor under or related to the Contract, or the breach thereof, then either party may seek redress of its grievances as to such disputes at law or in equity or by arbitration if both parties agree after default or breach to arbitrate. The award rendered by arbitrators shall not be final or binding. Contractor agrees to continue to perform its Work despite the existence of disputes. The existence of a dispute shall not be grounds for any failure to perform by Contractor nor limit the right of Owner to proceed, in good faith, to remedy any default by Contractor.

27. EARLY TERMINATION: Should this Contract be terminated based on default, Contractor shall assign all purchase orders and subcontracts to Owner if Owner, in its sole discretion, requests such assignments. Contractor agrees to incorporate such provisions in its agreements with suppliers and subcontractors to effectuate this provision. Nothing herein shall create any duty on the part of Owner to accept the assignment of any purchase order or subcontract hereunder.

Further, in its sole discretion and without notice to any guarantors, surety, or sureties, Owner may terminate this Contract for its convenience upon the giving of written notice to Contractor. In no event shall Contractor be entitled to consequential damages or loss of profits on portions of the Work not yet performed. If terminated for convenience, Contractor shall be entitled to be paid all costs of all Work provided hereunder including reasonable and necessary costs of termination, as determined in accordance with the method set forth in paragraph 8 above, together with the Profit Percentage attributable to the costs so determined. Payment shall be made in accordance with and subject to the requirements of paragraph 4.

28. SETOFF: If Contractor is, or hereafter begins, performing any other work for Owner other than the Work under this Contract and the unpaid balance of the Price becomes insufficient to complete such Work or compensate Owner for any damages or deficiencies by the Contractor in the performance of the other work, Contractor hereby consents and agrees to allow Owner, in its sole discretion and judgment, to setoff any of Owner's claims against any funds due, or which may become due, Contractor under any other agreement with Owner, or any contract on any other project. No refusal or failure of Owner to exercise its rights hereunder shall constitute the basis of any right or claim against Owner.

29. MISCELLANEOUS: (a) All matters relating to the validity, performance, or interpretation of this Contract shall be governed by the laws of the State of Georgia, performance, or interpretation, as the case may be, of the Contract. This Contract is entered into in Cobb County and all services under this Contract are capable of being performed and are to be performed in Cobb County, Georgia. Therefore, the parties agree that Cobb County is the proper venue for the resolution of any disputes.

(b) This Contract, including the documents incorporated herein by reference, embodies the entire agreement of the parties and supersedes all prior negotiations, agreements, and understandings related to the subject matter hereof.

(c) This Contract may not be changed in any way except as herein provided or by a writing signed by a duly authorized officer or agent of each party, No requirement of this Contract may be waived except in writing signed by a duly authorized officer of the waiving party.

(d) The provisions of this Contract and the Contract Documents are intended to supplement and complement each other. If, however, any provision of this Contract irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty on the Contractor shall govern. In case a provision of this Contract is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.

(e) Where the context requires, neuter terms used herein shall include the masculine and feminine, and singular terms shall include the plural, and vice versa.

IN WITNESS WHEREOF, the parties have duly executed this Contract as of the date first above written.

COBB COUNTY BOARD OF COMMISSIONERS, COBB COUNTY, GEORGIA

ATTEST:

_____ By: _____

Title: _____

ATTEST:

CONTRACTOR:

_____ By: _____

Title: _____

CONTRACTOR CHECK ONE: Corporation Partnership/Joint Venture Individual

LICENSING: By executing this Contract, Contractor affirms that it holds the following contractor license(s) applicable to the Work as required by the State of Georgia:
License No((s)) _____ License Classification(s): _____ Expiration Date: _____ **FEDERAL**

EMPLOYER

ID #: _____

BUSINESS LICENSE #: _____

SCHEDULE A - WORK: Pursuant to paragraph 1 of this Contract, Contractor shall prosecute and complete the following Work:

SCHEDULE B - CONTRACT DOCUMENTS: The Contract Documents referred to in paragraph 1 and elsewhere in this Contract consist of the Contract and the following:

Contractor's proposal dated xx/xx/98
RFP dated FEBRUARY 19, 1999
All Addenda issued by the owner prior to receipt of bids
Contractor's bid form
Owner's Purchase order and Notice to Proceed

Initials:

SCHEDULE C - SUPPLEMENTAL PRICE SCHEDULE:

UNIT PRICES: Pursuant to paragraphs 2 and 8 of this Contract, the following unit prices shall be used in determining the Price and any adjustments thereto, without limitation unless expressly provided herein:

N/A

ALLOWANCES: The price specified on page 1 of the Contract includes the following allowances for the parts of the Work specified below, to be furnished by Contractor in accordance with the Contract Documents:

N/A

SCHEDULE D - PERFORMANCE SCHEDULE: Pursuant to paragraph 6 of this Contract and without limiting the provisions thereof, Contractor shall perform the Work and its several parts according to the following specific schedule, and as the same may be revised from time to time by Owner:

Contractor to complete all portions of the contract work within the calendar day period (30 calendar days) described in the Specifications portion of the Project Manual. The start date is established as the date the successful bidder receives the Owner's "Notice to Proceed."

Initials: