

ADVERTISEMENT FOR REQUEST FOR PROPOSAL
COBB COUNTY PURCHASING DEPARTMENT

BID OPENING DATE: AUGUST 12, 2010

Sealed proposals from qualified contractors will be receive before 12:00 NOON, August 12, 2010, in the Cobb County Purchasing Department, 1772 County Services Parkway, Marietta, GA 30008 for furnishing all labor. Materials, equipment, appliances, etc. pursuant to the plans, specifications, condition and addenda for:

SEALED BID # 10 -5511
REQUEST FOR PROPOSAL
MEDICAL/MENTAL HEALTH EXPANSION
COBB COUNTY ADULT DETENTION CENTER
COBB COUNTY SHERIFFS DEPARTMENT

PRE-PROPOSAL MEETING: JULY 27, 2010 @ 9:00A.M.
COBB COUNTY WORK RELEASE FACILITY
1833 BILL HUTSON WAY
MARIETTA, GEORGIA 30008

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.

Proposals must be accompanied by bid security in the amount not less than five percent (5%) of the base bid. Performance Bond and Labor and Material Payment Bond, or other security instruments as allowed by law each in the amount equal to 100% of the contract sum will be required of the successful bidder. Bonds must be written by a surety company licensed to do business in the State of Georgia, have a "Best's" rating of "A" or better, appear on the current U.S. Treasury Department list of sureties that are acceptable on bonds for the federal government (circular 570), and have recommended bonds limits equal to or in excess of those required for this project; otherwise acceptable to the owner.

No proposal may be withdrawn for a period of ninety (90) days after date of bid opening, unless otherwise specified in the bid documents.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: JULY 16, 23, 30, 2010
AUGUST 6, 2010

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.



SUBMIT BID/PROPOSAL TO:
COBB COUNTY PURCHASING DEPARTMENT
1772 COUNTY SERVICES PARKWAY
MARIETTA, GA 30008-4012

BID/PROJECT NUMBER: 10-5511

REQUEST FOR PROPOSAL
COBB COUNTY ADULT DETENTION BUILDING B-97
MEDICAL / MENTAL HEALTH EXPANSION
COBB COUNTY SHERIFFS DEPARTMENT

**DELIVERY DEADLINE: AUGUST 12, 2010 BEFORE 12:00 (NOON) EST
(NO BIDS/PROPOSALS WILL BE ACCEPTED AFTER THIS DEADLINE).**

OPENING DATE: AUGUST 12, 2010 @ 2:00 P.M. IN THE PURCHASING DEPARTMENT BID ROOM.

BUSINESS NAME AND ADDRESS INFORMATION:

COMPANY NAME: _____

CONTACT NAME: _____

COMPANY ADDRESS: _____

E-MAIL ADDRESS: _____

PHONE NUMBER: _____

FAX NUMBER: _____

NAME AND OFFICIAL TITLE OF OFFICER GUARANTEEING THIS QUOTATION:

(PLEASE PRINT/TYPE) NAME _____ TITLE _____

SIGNATURE OF OFFICER ABOVE: _____
(SIGNATURE)

TELEPHONE: _____ FAX: _____

BIDDER WILL INDICATE TIME PAYMENT DISCOUNT: _____

BIDDER SHALL INDICATE MAXIMUM DELIVERY DATE: _____

BIDS RECEIVED AFTER THE DATE AND TIME INDICATED WILL NOT BE CONSIDERED. COBB COUNTY RESERVES THE RIGHT TO REJECT ANY AND ALL BIDS, TO WAIVE INFORMALITIES, TO REJECT PORTIONS OF THE BID, TO WAIVE TECHNICALITIES AND TO AWARD CONTRACTS IN A MANNER CONSISTENT WITH THE COUNTY AND THE LAWS GOVERNING THE STATE OF GEORGIA.

THE ENCLOSED (OR ATTACHED) BID IS IN RESPONSE TO INVITATION NUMBER 10-5511; IS A FIRM OFFER, AS DEFINED BY SECTION O.C.G.A. (S) 11-2-205 OF THE CODE OF GEORGIA (GEORGIA LAWS 1962 PAGES 156-178), BY THE UNDERSIGNED BIDDER. THIS OFFER SHALL REMAIN OPEN FOR ACCEPTANCE FOR A PERIOD OF 90 CALENDAR DAYS FROM THE BID OPENING DATE, AS SET FORTH IN THIS INVITATION TO BID UNLESS OTHERWISE SPECIFIED IN THE BID DOCUMENTS.

NOTICE TO BIDDERS -- BID QUOTES MUST INCLUDE INSIDE DELIVERY CHARGES

ADVERTISE DATES: JULY 16, 23, 30, 2010
AUGUST 6, 2010



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 # 10-5511 DATE: August 12, 2010

BIDS MUST BE RECEIVED BEFORE 12:00 NOON

**DESCRIPTION: Request for Proposal
Cobb County Adult Detention Building B-97
Medical / Mental Health Expansion**

PLEASE ATTACH LABEL TO OUTSIDE OF BID PACKAGE



Cobb County...Expect the Best!

REQUEST FOR PROPOSAL

**SEALED BID # 10 – 5511
COBB COUNTY ADULT DETENTION BUILDING B-97
MEDICAL / MENTAL HEALTH EXPANSION
COBB COUNTY SHERIFFS DEPARTMENT
BID OPENING DATE: AUGUST 12, 2010**

**PRE-PROPOSAL CONFERENCE: JULY 27, 2010 @ 9:00 A. M. (E.S.T.)
COBB COUNTY COBB COUNTY WORK RELEASE FACILITY
1833 BILL HUTSON WAY
MARIETTA, GEORGIA 3008**

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 7 COPIES OF BID
(UNLESS OTHERWISE SPECIFIED IN BID SPECIFICATIONS)**

N.I.G.P. COMMODITY CODE: 96842

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 10-5511
REQUEST FOR PROPOSAL
COBB COUNTY ADULT DETENTION BUILDING B-97
MEDICAL / MENTAL HEALTH EXPANSION**

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: _____

COBB COUNTY REQUEST FOR COMPETITIVE SEALED PROPOSALS

**COBB COUNTY ADULT DETENTION BUILDING B - 97
MEDICAL/MENTAL HEALTH EXPANSION**

COBB COUNTY ADULT DETENTION CENTER
1825 County Services Parkway
Marietta, Georgia 30060

SEALED BID NUMBER: 10-5511

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COBB COUNTY REQUEST FOR COMPETITIVE SEALED PROPOSALS

**COBB COUNTY ADULT DETENTION BUILDING B - 97
MEDICAL/MENTAL HEALTH EXPANSION**

COBB COUNTY ADULT DETENTION CENTER

1825 County Services Parkway
Marietta, Georgia 30060

BID NUMBER: 10-5511

The Cobb County Board of Commissioners (Owner) is soliciting competitive sealed proposals from experienced firms for the renovation of the existing Cobb County Adult Detention Building B-97 located at 1827 Bill Hutson Way, Marietta, GA 30008. This Project includes renovating the space to expand the current Medical/Mental Health area. An award will be made to the responsible and responsive offeror whose proposal is determined to be the most advantageous to Cobb County, taking into consideration the evaluation factors set forth in the Request for Competitive Sealed Proposals (RFP). Proposals will be received until **12:00 noon on August 12, 2010 at the Cobb County Purchasing Department located at 1772 County Services Parkway, Marietta, Georgia 30008**. Any proposal received after this time will be rejected and will not be opened. Proposals, timely received, will be opened at 2:00 PM (local time) on the same day at the offices of the Cobb County Purchasing Department, 1772 County Services Parkway, Marietta, Georgia 30008. Request for Proposal packages will be available upon request through the Cobb County Purchasing Department and available on the Cobb County website at www.purchasing.cobbcountyga.gov

The Cobb County Board of Commissioners reserves the right to reject all proposals, to waive technicalities and informalities, to reject portions of the proposals, and to award contracts in a manner consistent with the interest of Cobb County and the laws of the State of Georgia.

All proposals shall be accompanied by a bid bond in the amount not less than five percent (5%) of the cost proposal. No proposal shall be considered if a proper bid bond or other authorized security has not been submitted. The successful offeror will be required to furnish a satisfactory performance bond and labor and materials payment bond, on forms provided by Owner, each in the amount of the total amount payable by the terms of the contract and will be increased as the contract amount is increased.

No offeror may withdraw its proposal for 90 days after the actual date of the Bid Opening thereof.

I. Introduction

A County Selection Committee will determine the firm, whose proposal is believed to be most advantageous to the County to provide construction services through acceptance and start-up of the Facilities to include all necessary staff and support through the One-Year Warranty Period.

The County Selection Committee members will each review the responses to the RFP and provide a score for each based on the Selection Criteria contained in Section IV. The Selection Committee will convene and summarize the points earned by each offeror, then establish a list of offerors found by the selection committee to have submitted proposals reasonably susceptible of being selected for award. During the competitive sealed proposal process, proposals received will be opened in a manner so as to avoid disclosure of contents to competing offerors and during any process of discussion. The County will not disclose the contents of proposals to competing offerors until after an award.

Each firm is to prepare its proposal according to the RFP format, i.e., by section and paragraph of this RFP. Cobb County reserves the right to reject any proposal not submitted within the required time frame; reject any incomplete proposal submitted; contact client references; require further information; and/or require interviews/presentations from any responding firm. All costs related to the preparation, submittal, and/or presentation of a proposal are the responsibility of the offeror and will not be assumed in full or in part by Cobb County. All proposals shall be accompanied by a bid bond in the amount not less than five percent (5%) of the cost proposal. No proposal shall be considered if a proper bid bond or other authorized security has not been submitted.

Written inquiries regarding this RFP may be addressed to:

Cobb County Purchasing Department

1772 County Services Parkway

Marietta, Georgia 30008

Fax: 770-528-1154

Email: purchasing@cobbcounty.org

Responses to all written inquiries received by 5:00 pm, Tuesday, August 3, 2010 will be posted as an addendum on the Cobb County Purchasing web site (<http://purchasing.cobbcountyga.gov>). It is the ultimate responsibility of the bidder/proposer to ensure that they have all applicable addenda prior to bid/proposal submission.

Submit an original and seven (7) copies of this RFP to:

Cobb County Purchasing Department

1772 County Services Parkway

Marietta, Georgia 30008

Proposals must be submitted before **12:00 noon, August 12, 2010**. **Proposals must be received in a sealed envelope or container. Place the Project name, BID number, and opening date on the submitting envelope or container.** Proposals will be opened on this same date at 2:00 pm at the Cobb Purchasing Department.

A pre-proposal Conference will be held on July 27, 2010 at 9:00 am at the Cobb County Work Release Facility, located at 1833 Bill Hutson Way, Marietta Georgia 30008. All firms intending to respond to this Request for Proposals are strongly urged to attend.

II. Background

The renovation work in the existing 97' Building Intake area will allow for the expansion of current Medical/Mental Health services for the Facility. This invitation is for permitting, demolition and complete construction management to finish the renovation work.

Basis for the design are the construction documents already prepared for the project. These documents will be available to all proposers.

Cobb County Sheriff's Office will be the Owner and primary occupant. The Jail is operational 24 hours so teamwork between the Construction team and Owner will be critical. The Owners' tentative schedule for this project is; select Contractor by September 14, 2010, issue Notice to Proceed by September 30, 2010, agree upon final pricing for project by September 30, 2010, begin demolition work by October 11, 2010, and complete project by March 31, 2011.

Firms will be selected for interviews based on the enclosed scoring system. The selected firms will be scheduled for interviews at which time they will be able to show their experience in Jail / Justice Work, their ability to schedule and budget the entire project. General Contractor fees and general conditions should be included in initial proposals and may be discussed at length during personal interview.

A Guaranteed Maximum Price will be presented by Contractor prior to commencement of construction. Construction will commence with the release of distinct work packages and the Contractor will competitively bid all construction subcontracts and other work appropriate for competitive bidding with the assistance of the Owners' Representative as needed.

The Selection Committee will make a recommendation for bid award. Upon approval, a Contract will be issued between the Contractor and the (Sub) Contractor(s) as is appropriate.

III. Scope of Services

The following is a listing of some of the representative services to be provided by the Contractor. The full scope of services will be defined within the contract executed with Cobb County.

A. *Pre-construction Phase*

1. Develop a major task based bar schedule.
2. Develop a provisional construction schedule indicating methods and sequencing of construction.
3. Develop requirements for safety, quality assurance, and schedule adherence.
4. Prepare and complete all necessary final construction documents to demonstrate to the Owner work scope and meeting any and all permit requirements.
5. Perform a “constructability” review of the construction documents.
6. Develop subcontractor bid packages.
7. Provide detailed construction cost estimates to develop into a Guaranteed Maximum Price to achieve Owner’s budget.
8. Provide analysis of different construction methods in each major trade group for potential quality, cost, and schedule enhancements.
9. Develop budget to be maintained throughout construction.
10. Determine extent of Special Inspections requirements set by Cobb County.
11. Procure all required permits, approvals, etc.
12. Develop value-engineering options.

B. Construction Phase

1. Maintain on-site staff for construction management.
2. Establish and maintain coordinating procedures.
3. Develop and maintain a detailed schedule (CPM) including delivery, approvals, inspection, testing, construction, and occupancy.
4. Conduct and record job meetings.
5. Prepare and submit change order documentation for approval to the Architect and County.
6. Maintain a system for review and approval of shop drawings.
7. Maintain records and submit weekly reports and formal monthly reports to Architect and the County.
8. Maintain quality control and ensure conformity to plans.
9. Obtain all Third Party Special Inspections as required by permitting authority.
10. Provide cost control through progress payment review and verifications according to the approved schedule and contract amounts.
11. Obtain Certificate of Occupancy and other relevant documents for Owner to use facility.
12. Develop as-built drawings and deliver to Program Manager to be submitted to Cobb County for maintenance and operations use.
13. Coordinate post-completion activities, including the assembly of guarantees, manuals, closeout documents, training, and the Owner’s final acceptance.

C. Warranty Phase

1. Coordinate and monitor the resolution of remaining “punch-list” items.
2. Coordinate, monitor, and resolve all warranty issues to the satisfaction of the County during the one-year general warranty period and as extended.

All Local, County, State, and Federal Codes and regulations must be followed, with particular emphasis on Building Codes, Life Safety Codes, and the Americans with Disabilities Act. Once all contract documents are executed, between the County and the successful offeror, the successful offeror will be required to deliver the services required by this RFP. Cobb County must first approve any change in or substitution of project team members, including any consultant, in writing.

IV. Selection Criteria

The Competitive Sealed Proposals will be evaluated based on the information presented in the proposal package, and on an analysis of other publicly available information. The Owner may conduct such investigations or interviews, as it deems necessary to assist in the evaluation of any proposal submitted and to establish to Cobb County's satisfaction the responsibility, qualifications, and financial ability of any offeror.

The selection may be based solely on the evaluation of the information presented in the proposal package. If the Owner so elects, select firms may be invited to make presentations to the selection committee. Firms submitting proposals **should not** assume that the Owner will elect to pursue any discussion or interviews of the proposals.

A selection committee designated by Cobb County will evaluate the proposals. The ranking of the proposals will be based on the evaluation criteria as follows:

Technical/Qualifications Criteria

- Approach to Work: Clarity and logic of approach; understanding of project issues; identification of unique factors; schedule.
- Project Team Makeup: The total Commitment / Availability / Depth of key team members; qualifications / experience of key staff (Contractor, Subcontractors, and Sub consultants)
- Specialized Experience: Experience directly related to project
- Quality and Performance: Response of references; quality and satisfactory performance of prior work
- Financial/Assessment of financial information
- Review the completeness of proposal form
- Project schedule

COST

Construction cost

It is anticipated that a contract for the described work will be entered into with the Offeror that, in the opinion of Cobb County, offers the most favorable combination of qualifications, approach, and pricing. The evaluation by the Selection Committee will be based on the criteria listed. The relative importance of the criteria is also listed. The RFP should be prepared per the following Sections as well as a one-page letter of transmittal signed by an owner, officer, or authorized agent of the firm acknowledging and accepting the terms and conditions of this RFP and an executed Conflict of Interest Statement. An executed "Officer's

Oath” on the form provided will be required of the successful offeror prior to commencing work. The officer shall file the oath whose duty it is to make the payment. If the contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for procuring the contract shall also make the oath. If the contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath. If such oath is false, the contract shall be void, and all sums paid by the County on the contract may be recovered by appropriate action.

V. Provide the following Qualifications and Information:

A. Firm or Firms’ Information

1. Firm local name, address, and telephone number
2. Primary local contact person(s) and telephone number(s)
3. Total number of firm's local full-time employees
4. Year firm established
5. Local firm’s billings for the last three fiscal years
6. Local firms' billing for the current fiscal year
7. Listing and description of last 3 years of litigation involving the local firm
8. Listing and description of all litigation history for the local firm including 2009
9. Copy of the most recent 3 completed years of audited financial statements (Income Statement and Balance Sheet) for the local firm
10. Offeror must provide a letter of commitment from Surety or sureties regarding bonding capacity and availability.
11. Cost proposal amount (General Contract Fee, General Conditions,)
12. List any OSHA violations within the past 3 years.
13. State your Experience Modification Factor, for the past 3 years, as related to your Workman’s Comp. Rates.

B. Experience:

1. List of similar projects completed in the last 5 years. Include: size, cost, total fee, time to construct facility, description and cost of contractor change orders, special features (energy conservation, etc.), awards received, and type of project (be sure to specify which projects were similar to facilities of this size and type).
2. Provide no more than 3-5 examples of your experience as prime contractor in constructing facilities similar to this project (OR other public and private projects that indicate similar experience). For each of these projects:
 - a) Provide photographs
 - b) Provide an owner reference familiar with your performance on the project. ***It is the Offeror’s responsibility to ensure that the listed contact and phone number are current.***
 - c) Provide a Program Manager reference (if applicable).
 - d) List the individual who served as the Project Executive/Director, Project Manager, Superintendent, and Cost Estimator. Please note whether this individual is still employed with your firm.
3. For those projects listed in 1 and 2 above, indicate those projects that included architect, engineering consultant, and contractor serving a corporate or public client *as a team*.

C. Statement of local firm's capability to absorb additional workload, availability of personnel, and commitment to provide services on a timely basis.

D. Staffing Management

1. Provide a proposed Organizational Chart, which identifies individual names and areas of responsibility.
2. Submit brief resumes of each key team member, as listed below, in this section of the Proposal.
 - ❖ Project Manager
 - ❖ Superintendent
 - ❖ Field Engineer
 - ❖ Safety Supervisor
 - ❖ Materials testing & inspection consultant
 - ❖ Major Subcontractors

Resumes shall show at least the following:

- ❖ Name, specialty, job title, and project job title. The project job title must correspond with the positions listed.
- ❖ Years of relevant experience with firm, and experience with previous employers. Project experience descriptions must include dates.
- ❖ Academic degree(s), discipline and year degree(s) received.
- ❖ Professional registrations.
- ❖ Name of the firm(s) responsible for the individual and office location where employed.
- ❖ A synopsis of specific experience, skills, training, or other qualities, which demonstrate the individual's ability to fulfill the duties of their position.

Provide a current list of other commitments by the Contractor and other key team members and estimated completion dates by project in this section of the Proposal. Indicate the current commitments of individual staff to be assigned to the project and involvement with other projects.

3. Please identify the individual who, *from project start to finish*, will be the leader of your construction team and the principal point of contact between your firm and the Owner and Architect.

E. Services

1. Provide a comprehensive outline of the steps you propose in order to meet the services required in this RFP. This detail should indicate what is to be done, who individually, and by name is responsible to do it, and when it is to be completed.
2. Please answer the following questions and/or provide adequate responses:
 - a) Provide one page overview of services typically performed for similar projects.
 - b) How would you implement these services to ensure the success of this project?
 - c) How does your firm implement cost control and scheduling activities during preconstruction?
 - d) Explain your approach to value engineering, citing relevant, specific examples.

- e) Occasionally, subcontractors and suppliers go bankrupt during the course of a project. What would you do to protect the County from being adversely affected by such an occurrence?
- f) Describe how your firm would assist the County in assuring participation by local contractors. Include examples of other projects where you have been successful in meeting similar goals.
- g) Describe your approach to team work on a project of this magnitude.
- h) Describe how your firm intends to arrange the construction into bid packages in order to reach the county's schedule and budget objectives.

F. Other

At your option, you may provide any additional supporting documentation or information, which would be helpful in evaluating your firm's qualifications and commitment.

1. OTHER RELATIVE INFORMATION

At the discretion of the Offeror, other relative information may be submitted in this section of the Proposal in an effort to further demonstrate that the Offeror can serve the best interests and particular needs of the Owner on this project.

G. MODIFICATION OR WITHDRAWAL OF PROPOSALS

A submitted proposal may be retrieved in person by an offeror or its authorized representative if, before the scheduled closing time for receipt of proposals, the identity of the persons requesting retrieval is established and that person signs a receipt for the proposal. If the proposal is retrieved for modification, the sealed proposal must be resubmitted prior to the scheduled closing time for receipt of proposals. If the proposal is not resubmitted, it will be considered as withdrawn.

H. ADDENDA

Each proposal schedule shall include specific acknowledgment in the space provided of receipt of all addenda issued by the Owner during the advertisement period. Failure to acknowledge may result in the proposal being rejected as non-responsive.

I. MISTAKES; CORRECTIONS AND WITHDRAWAL OF PROPOSALS

After proposals are opened, if the low Offeror claims a serious and honest error in proposal preparation, and can support such claim with evidence satisfactory to the Owner, withdrawal of the proposal without forfeiture of the bid security will be permitted. As a condition of this release, the low Offeror will be prohibited from:

- 1) Subcontracting or furnishing labor or equipment on this project.
- 2) Bidding on any Cobb County System projects within ninety (90) days of release by Owner.

J. INTERPRETATIONS

No interpretation of the meaning of the drawings, specifications or other pre-proposal documents will be made to any Offeror orally. Every request for

such interpretation should be in writing, addressed to the Owner, and in order to be given consideration must be received at least seven days prior to the date fixed for the opening of proposals. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the request for proposals. All addenda so issued shall become a part of the Contract Documents.

Any questions concerning this request for proposals should be directed in writing no later than August 3, 2010 by 5:00 pm- to:

Cobb County Purchasing Department
1772 County Services Parkway
Marietta, GA 30008-4021
FAX: (770) 528-1154
E-mail: purchasing@cobbcounty.org

K. Notice of SPECIAL CONDITIONS;
NONE

L. LAWS AND REGULATIONS; LICENSING

The Offeror's attention is directed to the fact that all applicable Federal and state laws, county and municipal ordinances and the rules and regulations of all authorities having jurisdiction over construction of the project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though herein written out in full.

The State of Georgia has requirements for the licensing of contractors engaged in specific types of construction, including general contracting, electrical, plumbing, and underground utility work [re: OCGA § 43-14]. Any contractor (or subcontractor of any tier) performing regulated work on this project shall furnish proof of valid and current registration to the Owner. Similarly, the State requirements concerning local business licenses shall be met.

M. EXECUTION OF COMPETITIVE SEALED PROPOSALS

The Offeror, in signing his proposal on the whole or any portion of the work, shall conform to the following requirements:

1. Competitive Sealed Proposals, which are not signed by individuals providing said proposal shall have attached thereto a power of attorney evidencing authority to sign the proposal in the name of the person for whom it is signed.
2. Competitive Sealed Proposals, which are signed for a partnership shall be signed by all of the partners or by an attorney-in-fact. There should be attached to the proposal a power of attorney executed by the partners evidencing authority to sign the proposal.
3. Competitive Sealed Proposals, which are signed for a corporation shall have the correct corporate name thereof and the signature of the president or other authorized officer of the corporation manually written below the corporate name following the wording "By _____." The corporate seal shall also be affixed to the proposal.

N. NON-COLLUSION AFFIDAVIT

The Georgia statute concerning public works construction contracting requires that any person who procures such work by bidding or proposal shall make an oath in writing that he/she has not prevented or attempted to prevent competition in such bidding [OCGA § 36-91-21(d),(e)]. If the Contractor is a partnership, all of the partners and any officer, agent, or other person who may have represented or acted for them in bidding for or procuring the contract shall make the oath and complete the Affidavit. If the Contractor is a corporation, all officers, agents, or other persons who may have acted for or represented the corporation in bidding for or procuring the contract shall make the oath and complete the Affidavit. If such oath is false, the Contract shall be void, and all sums paid by the County on the Contract may be recovered by appropriate action.

O. CONTRACT PERFORMANCE BOND AND PAYMENT BOND

The Contractor will be required to furnish a contract performance bond and a payment bond executed by a surety company. This company must be listed in the latest issue of U.S. Treasury Circular 570, registered, and duly authorized to do business in the State of Georgia. The bond must be signed (or countersigned) by a local agent, each in an amount that is at least equal to one-hundred percent (100%) of the Contract Price, as security for the faithful performance of this contract and as security for the payment of all persons performing labor and furnishing material in connection with the Contract. The bond amount will be adjusted to the final Guaranteed Maximum Price once it is agreed upon.

The surety shall be acceptable to the Owner and the bond shall be executed on the form attached. In case of default on the part of the Contractor, all expenses incident to ascertaining and collecting losses under the bond, including both engineering and legal services, shall lie against the bond.

The Contractor will be required to provide the Owner a one-year guarantee covering workmanship and materials of the project. The contract performance bond shall remain in force for one year from date of project acceptance by the Owner. The cost of this bond shall be paid by the Contractor.

P. INSURANCE PROOF OF COVERAGE

Prior to execution of Contract Documents, a certificate of insurance will be submitted to the Owner as required.

The **Contractor** 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.

MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

A. General Liability

\$5,000,000 General Liability combined single limit per occurrence, for bodily injury, personal injury, property damage, contractual liability, and broad form property damage.

- B. Automobile Liability**
\$1,000,000 Automobile Liability combined single limit per accident, for bodily injury and property damage, including owner, non-owned, hired, leased or rented vehicles.
- C. Workers' Compensation and Employers' Liability**
\$100,000 Employers' Liability limit per accident and Worker's Compensation limits as required by the Labor Code of the State of Georgia.
- D. Builder's Risk**
Full amount of cost proposal minus the amount of Construction Management services. Cobb County should be listed as a Loss Payee under this insurance.
- E. Professional Liability**
\$1,000,000 Professional Liability Insurance to cover damages resulting from errors or omissions of the engineers and/or architects on the Design/Contractor's project team.
- F. Umbrella Policy**
\$25,000,000 limit for a combined single limit

DEDUCTIBLES AND SELF-INSURED RETENTION

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

OTHER INSURANCE PROVISIONS

The policies are to contain, or be endorsed to contain, the following provisions:

- A. General Liability and Automobile Coverage**
 1. The **Owner**, its officers, officials, employees, and volunteers are to be covered as additional named 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 limitation on the scope of protection afforded to the **Owner**, its officers, officials, employees, or volunteers. Nothing in this paragraph shall be construed to require the **Contractor** to provide liability insurance coverage to the **Owner** for claims asserted against the **Owner** for its sole negligence.
 2. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the **Owner**, its officers, officials, employees, or volunteers.
 3. 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.
- B. Workers' Compensation and Employers' Liability Coverage**
The insurer shall agree to waive all rights of subrogation against the **Owner**, its officers, officials, employees, and volunteers for losses arising from work performed by the **Contractor** for the **Owner**.

C. Builder's Risk

The **Contractor** shall secure all-risk type of Contractor's risk insurance covering work performed under the Contract, and materials, equipment, expedited deliveries or other items to be incorporated therein, while the same are located at the construction site, stored off-site, or at the place of manufacture. The policy shall cover not less than losses due to fire, flood, explosion, hail, lightning, weather, vandalism, malicious mischief, wind, collapse, riot, aircraft, smoke or other cataclysmic events, until the date of final acceptance of the work.

The making of progress payments to the **Contractor** shall not be construed as relieving the **Contractor** or his subcontractors or the insurance company or companies providing the coverage described herein of responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance.

D. All Coverage

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 to the **Owner**.

ACCEPTABILITY

Insurance is to be placed with insurers with a Best's rating of no less than A.VII, or acceptable to the **Owner**.

VERIFICATION OF COVERAGE

A. The **Contractor** shall furnish the **Owner** with five original Certificates of Insurance, each with **original endorsements** affecting 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 name of the Insured on the Certificate must exactly match the name on the Agreement/Contract and on the Contractor's corporate seal.

Each certificate must have an original signature in blue ink or a stamped signature in blue ink. Photocopies are not acceptable.

B. The Certificate Holder must be shown as:

Cobb County Board of Commissioners
Cobb County, Georgia
Attention: Cobb County Property Management
57 Waddell Street
Marietta, GA 30060

C. The certificates and endorsements naming additional insureds and indicating required waivers are to be submitted with the executed Agreement/Contract and Performance and Payment Bonds, and shall be approved by the **Owner** before work commences. The **Owner** reserves the right to require complete, certified copies of all required insurance policies at any time.

D. The endorsements on the certificates must read as follows:

1. The certificate for All Coverage shall include the following Cancellation endorsement, worded exactly as follows: "*Should any coverage be suspended, voided, cancelled or, reduced in coverage or in limits, thirty (30) days prior*

written notice delivered by certified mail, return receipt requested, will be given to the Certificate Holder.”

2. The certificate for General Liability and Automobile coverage shall include the following endorsement, worded exactly as follows: *"Owner, its officers, officials, employees and volunteers are covered as additional insureds as respects liability arising out of actions 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."*
3. The certificate for Worker's Compensation and Employers' Liability coverage shall include the following endorsement, worded exactly as follows: *"The insurer agrees to waive all rights of subrogation with respect to Worker's Compensation and Employers' Liability Coverage against the Owner, its officers, officials, employees, and volunteers for losses arising from work performed by the Contractor for the Owner."*

SUBCONTRACTORS

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

Q. AWARD OF CONTRACT

The Offeror to whom the Contract is awarded will be required to execute the agreement and obtain the performance bond, payment bond and provide insurance certificates acceptable to the Owner within twenty-one calendar days from the date when the notice of award is issued to the Offeror. In case of failure of the Offeror to execute the agreement or provide insurance or meet bonding requirements, the Owner may consider the Offeror in default, in which case the bid security accompanying the proposal shall become payable to the Owner.

R. OWNERSHIP OF PROPOSAL DOCUMENTATION

Upon receipt of the Proposal by the Owner, the Proposal and all included documentation shall become the property of the Owner, without compensation to the Offeror, for disposition or usage by the Owner at its discretion. The Owner assumes no responsibility or obligation to firms providing proposals and will make no payment for any costs associated with the preparation or submission of proposals. All work, including but not limited to planning, programming, cost estimates and summaries, plans, specifications and other materials prepared by or for the firms proposing to the Owner under this Invitation for Proposals shall become the property of the Owner

Conflict of Interest Statement

As a duly authorized representative of the firm _____

I, _____ with the title _____ certify

that to the best of my knowledge no circumstances exist that 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 Request for Proposals has any pecuniary interest in the business of this firm, associates or consultants of this firm, or the firm's parent firm, subsidiary, or other legal entity of which this firm is a part, and that no person associated with or employed by this firm has any interest that would conflict in any way, manner or degree with the performance of services for Cobb County Government.

Date: _____

Company Name: _____

Authorized Representative Name: _____

Title: _____

Signature: _____

Officer's Oath

As a duly authorized representative of the firm involved in the bidding for or procuring the contract _____

I, _____ with the title _____ certify that I did not prevent or attempt to prevent competition in such proposals by any means whatsoever. Nor did I prevent or endeavor to prevent anyone from making a proposal therefore by any means whatsoever, or induce another to withdraw a proposal for the work.

Date: _____

Company Name: _____

Authorized Representative Name: _____

Title: _____

Signature: _____

Compliance with Georgia Security and Immigration Compliance Act
(Effective 7/1/10, Supersedes All Prior Versions)

BACKGROUND

Pursuant to the “Georgia Security and Immigration Compliance Act,” Cobb County cannot enter into a contract for the physical performance of services unless the contractor registers and participates in the federal work authorization program to verify information of all newly hired employees or subcontractors. Neither may any contractor or subcontractor enter a contract with the county in connection with the physical performance of services unless the contractor and/or subcontractor registers and participates in the federal work authorization program to verify information of all new employees. O.C.G.A. § 13-10-91.

Before any bid for the physical performance of services is considered, the bid must include a signed, notarized affidavit from the contractor attesting to the following: (1) the affiant has registered with and is authorized to use the federal work authorization program; (2) the user ID number and date of authorization for the affiant; and (3) the affiant is using and will continue to use the federal work authorization program throughout the contract period. O.C.G.A. § 13-10-91 (b) (1). Affidavits shall be maintained for five years from the date of receipt. O.C.G.A. § 13-10-91 (b) (1).

Upon contracting with a new subcontractor, a contractor or subcontractor shall, as a condition of the contract or subcontract, provide Cobb County with notice of the identity of any and all subsequent subcontractors hired or contracted by that contractor or subcontractor within five (5) business days of entering into a contract or agreement for hire with any subcontractor. Such notice shall include an affidavit including the subcontractor’s name, address, user ID number, and date of authorization to use the federal work authorization program. O.C.G.A. § 13-10-91 (b) (3).

Based upon the County’s experience and desire for full compliance, no work may be commenced by any subsequent subcontractor prior to notice being received by the County that the subcontractor (regardless of tier) is in compliance with the law and the attached Procedures & Requirements, including the preparation and submission of the Contractor (or Subcontractor) Affidavit & Agreement AND the Immigration Compliance Certificate PRIOR to the commencement of any work.

DEFINITIONS

Affidavit – a written statement made or taken under oath before an officer of the court or a notary public or other person who duly has been authorized so to act.

Affiant – the person who makes and subscribes to a statement made under oath (affidavit).

Physical Performance of Services – the building, altering, repairing, improving, or demolishing of any public structure or building or other public improvements of any kind to public real property, including the construction, reconstruction, or maintenance of all or part of a public road; or any other performance of labor for a public employer under a contract or other bidding process.

PROCEDURES & REQUIREMENTS

1. Bid Documents: Bid documents should contain information regarding the contract language and contractual requirements described below.
2. Responsive Bid Documents: Responsive bid documents must include a signed, notarized affidavit from the contractor in the form attached. **If the affidavit is not submitted at the time of the bid, the applicant will be disqualified.**

This affidavit must be signed, notarized and submitted with any bid requiring the performance of physical services. If the affidavit is not submitted at the time of the bid, bid will be determined non-responsive and will be disqualified.

3. Contract Language & Contractual Requirements: Affirmative language shall be contained in agreements for the performance of services to cover all statutory and County requirements; such language shall require:
 - (a) That affidavits in the form attached to these “Procedures & Requirements” be executed from a contractor (and any subcontractors, regardless of tier) and notarized, showing compliance with the requirements of O.C.G.A. § 13-10-91 and that such be made part of the contract and/or subcontracts;
 - (b) That the contractor (and any subcontractors, regardless of tier) fully comply with the requirements for completing and submitting the “Immigration Compliance Certification” and that such certification be received by the County prior to the commencement of any work under the contract or subcontract;
 - (c) That the contractor (or any subcontractor, regardless of tier) notify the County within five (5) business days of entering into a contract or other agreement for hire with any subcontractor(s), regardless of tier;
 - (d) That the contractor be responsible for obtaining and providing to the County the “Subcontractor Affidavit & Agreement” and “Immigration Compliance Certification” attached to and required under these “Procedures & Requirements” from each subcontractor, regardless of tier, employed or retained for work under the contract prior to the commencement of any work under the contract or any subcontract;
 - (e) That Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);
 - (f) That any contractor and/or subcontractor retaining any other subcontractor to perform services under the contract provide legal notice to any subcontractor of the requirements of Cobb County for immigration compliance and further provide notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);
 - (g) That failure to comply with any of the requirements and procedures of the County (i.e., failure to timely supply required affidavits or compliance certification

documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by County or State officials upon request; and/or failure to continue to meet any of the statutory or County obligations during the life of the contract) shall constitute a material breach of the agreement and shall entitle the County to dismiss any general contractor or to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements;

(h) That upon notice of a material breach of these provisions, the contractor (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the County shall be entitled to all available remedies, including termination of the contract, the requirement that a subcontractor be dismissed from performing work under the contract, and any and all damages permissible by law.

4. Immigration Compliance Certification: Prior to commencing work under any contract for the physical performance of services, the contractor shall complete the “IMMIGRATION COMPLIANCE CERTIFICATION” form attached to these “Procedures & Requirements” and submit the same to the County.

Prior to allowing any other subcontractor to perform work under the contract, the contractor shall obtain a completed “IMMIGRATION COMPLIANCE CERTIFICATION” from each subcontractor (regardless of tier) and submit the same to the County.

FORM ATTACHMENTS:

1. CONTRACTOR AFFIDAVIT & AGREEMENT (EXHIBIT A);
2. SUBCONTRACTOR AFFIDAVIT & AGREEMENT (EXHIBIT A-1);
3. IMMIGRATION COMPLIANCE CERTIFICATION (EXHIBIT A-2).

**CONTRACTOR AFFIDAVIT & AGREEMENT
(EXHIBIT A)**

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the contractor or subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

EEV/Basic Pilot Program User ID Number

BY: Authorized Officer or Agent
[Contractor Name]

Contractor Business Name

Printed Name

Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201_

Notary Public Commission Expires: _____

This affidavit must be signed, notarized and submitted with any bid requiring the performance of physical services. If the affidavit is not submitted at the time of the bid, bid will be determined non-responsive and will be disqualified.

**SUBCONTRACTOR AFFIDAVIT & AGREEMENT
(EXHIBIT A-1)**

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program (an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)). The undersigned contractor further attests that it will continue to use the federal work authorization program throughout the contract period.

The undersigned further agrees that should it employ or contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the contract with Cobb County, Georgia, the undersigned subcontractor will:

- (1) Notify the County within five business days of entering into a contract or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit. (EXHIBIT A-1) prior to the commencement of any work under the contract/agreement;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (EXHIBIT A-2) prior to the commencement of any work under the contract/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any contractor or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit; and
- (5) Maintain records of such compliance and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Maintain such records for a period of five (5) years.

EEV/Basic Pilot Program User ID Number

BY: Authorized Officer or Agent
[Subcontractor Name]

Subcontractor Business Name

Printed Name

Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201_

Notary Public Commission Expires: _____

IMMIGRATION COMPLIANCE CERTIFICATION
(To be completed by Contractors and all Subcontractors)
(EXHIBIT A-2)

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to:

(Project Name/Description)

I further certify to Cobb County, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our contract to use the program;
- We have not received a Final Nonconfirmation response from E-Verify for any of the employees listed.
- If we receive a Final Nonconfirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the project.
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9's are accurate.
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States.
- If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

Sworn to by:

Contractor Name & Address:

Signature of Officer

Printed Name/Title

Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 201__

Notary Public
Commission Expires: _____

Disadvantaged Business Enterprises (DBE): The following provisions should be carefully read to determine applicability to your business.

Cobb County Government encourages the participation of all businesses in offering their services and/or products. The Cobb County Government has the goal to fairly and competitively procure the best product at the most reasonable cost.

A Disadvantaged Business Enterprise (DBE) is generally defined as a Female, Black American, Hispanic American and any other minority owned business. The Federal Government has long had program in place to ensure participation of DBE vendors and suppliers. The State of Georgia has established a similar program whereby DBE firms are defined, certified and made known. This effort is managed by the Georgia Department of Transportation (GDOT). More information can be obtained from GDOT web site:

1. <http://www.dot.state.ga.us/eeo-div/index.shtml>

The Cobb County Government addresses DBE business participation (frequency and dollar value) in the following ways:

1. Cobb County wishes to identify all DBE participation; both at the contractor and sub-contractor levels in the following ways.
 - a. DBE businesses are requested to identify such status at the time they register as a vendor.
 - b. DBE businesses are requested to identify themselves at the time they propose to do business. Please complete **EXHIBIT B** if applicable and return with bid submittal.
 - c. All businesses will receive with each Purchase Order an instruction sheet for use of the furnished *Cobb County Government DBE Participation Report*, **EXHIBIT C**. Businesses are requested to complete this report and submit it with each invoice for the time period billed.
2. Cobb County has established a Disadvantaged Business Enterprise Plan in accordance with the regulations of the U.S. Department of Transportation (U. S. Department of Transportation (US DOT), 49 CFR Part 26.) The Cobb County Department of Transportation is the lead agency for implementing the US DOT DBE Program for the County.

The Plan applies only to projects which are clearly indicated by the County.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) IDENTIFICATION
FORM**

A Disadvantaged Business Enterprise (DBE) is generally defined as a Female, Black American, Hispanic American and any other minority owned business. If your firm is classified as a Disadvantaged Business Enterprise (DBE), please complete this form and submit with bid response or send to:

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

Name of Firm: _____

Address: _____

Telephone: _____

Fax: _____

Email: _____

MBE Certification Number: _____

Name of Organization Certification _____

<p>This information is acquired for informational purposes only and will have no bearing on the award unless otherwise stated</p>
--

Instructions for Completing Disadvantaged Business Enterprise (DBE) Participation Report

All Cobb County Government contractors or vendors are requested to complete a report descriptive of any DBE subcontractor involvement in work for which the government is making payment. If otherwise specified in an RFP or contract, additional reporting forms may be required as well.

The objective of this request is to assist in the identification of Disadvantaged Business Enterprise (DBE) business participation with the Cobb County Government and to quantify that participation.

The Cobb County Government does not administer a DBE Certification Program. The principle certification agency for the State of Georgia is the Georgia Department of Transportation. As a Contractor/Vendor you are not responsible for verification of any DBE Certification information of your subcontractor.

*** Instructions ***

1. Contractor/Vendor is furnished the one-page *DBE Participation Report* form with each Cobb County Government-issued Purchase Order.
2. Contractor/Vendor completes this form for each billing period and attaches it to the invoice to then be sent to the Cobb County Government.
3. Upon receipt of a Contractor/Vendor invoice, County staff should simply separate the completed DBE form and transmit to:

Cobb County Purchasing Department,
Attn.: DBE Report

A Disadvantaged Business Enterprise (DBE) is a firm that is under the control of someone in an ownership position (at least 51%) that:

1. Has membership in one or more of the following groups: Female, Black American, Hispanic American, Native American, Subcontinent Asian American and Asian-Pacific America. There may be other groups that may be eligible to be certified as DBE;
2. Is a U.S. citizen or lawfully admitted permanent resident of the U.S.;
3. Has a personal net worth which does not exceed \$750,000; and,
4. The business meets the Small Business Administration's size standard for a small business and does not exceed \$17.42 million in gross annual receipts;
5. The business is organized as a for-profit business.
6. The business may also be DBE eligible as a certified U.S. Small Business Administration 8(a) program.

EXHIBIT C
Cobb County Government Disadvantaged
Business Enterprise Participation Report

PLEASE keep this blank form to make copies for actual use as needed. Also, please print or type in the form. ←

Submitted by: _____ Period Invoiced: _____
Name of Prime Contractor/Vendor **From/To:**

Cobb County Project Name: _____ Bid or P.O. Number: _____

Cobb County Department or Agency receiving service or product: _____

Description of Purchased Service/Product: _____

Full Contracted Amount: \$_____ Payment amount requested at this time: _____

1. Are YOU, the Prime Contractor or Vendor a DBE business? YES _____ NO _____

2. Please provide the following information for each subcontractor participating during this reporting period:

Subcontractor Business Name	Type Service or Product Supplied	Subcontractor Business/Contact Tel. Number	Actual Dollar Value of Subcontractor Participation this Reporting Period
			\$
			\$
			\$
			\$
			\$
			\$
			\$

Submitted by: _____
Printed Name

Title or position: _____

Date Completed: _____

Signature of Authorized Representative

**County Departments: Please send this completed form to the Cobb County Purchasing Department,
ATTN: DBE Report**

COBB COUNTY PROPERTY MANAGEMENT
COBB COUNTY PROPERTY MANAGEMENT
57 WADDELL STREET, MARIETTA, GA 30060-1964
PAYMENT BOND

Bond Number: _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____ as Principal, hereinafter called "**Contractor**", and _____, a corporation duly organized under the laws of the State of _____ listed in the latest issue of U.S. Treasury Circular 570, and registered in State of Georgia, as Surety, hereinafter called "**Surety**", are held and firmly bound unto Cobb County, Georgia, hereinafter called "**Owner**", in the sum of _____ (in words), (\$ _____) (in figures), for the payment of which sum, well and truly to be made, the **Contractor** and **Surety** bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the **Contractor** has entered into a written contract dated _____, 20____ with the **Owner** for performance of _____ in accordance with drawings and/or specifications prepared by or for Cobb County which contract is by reference made a part of this bond by reference as if fully set forth herein, and is hereinafter referred to as the **Contract**.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if **Contractor** shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A. A claimant is defined as an entity having a direct contract with the **Contractor** or with a Subcontractor of the **Contractor** for labor, material, or both, used or reasonably required for use in the performance of the Contract, "labor and material" being construed to include but not limited to that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- B. The **Contractor** and **Surety** hereby jointly and severally agree with the **Owner** that every claimant as herein defined who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done

or performed, or materials were furnished, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be due claimant, and have execution thereon. The **Owner** shall not be liable for the payment of any judgment costs or expenses of any such suit.

- C. No suit or action shall be commenced hereunder by any claimant,
1. Unless claimant, other than one having a direct contract with the **Contractor**, shall have given written notice to any two of the following: the **Contractor**, the **Owner**, or the **Surety** above-named, within ninety (90) days after such claimant did or performed the last of the work of labor, or furnished the last of the materials for which said claim is made, stating with substantial specifics and accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the **Contractor**, **Owner** and/or **Surety**, at the addresses provided in the Contract or in this bond, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 2. After one (1) year from the completion of Contract and the acceptance by **Owner** of the work there under, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 3. Other than in a state court of competent jurisdiction in and or the county or of the state in which the project, or any part thereof, is situated.
- D. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by **Surety** of mechanics' liens which may be filed on record against said improvement, whether or not claim for the amount of such presented under and against this bond.
- E. PROVIDED FURTHER, that the said **Surety**, for value received hereby, stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed there under or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the work or to the specifications.

IN WITNESS WHEREOF, this instrument is executed in three (3) counterparts, each one of which shall be deemed an original, this ____ day of _____, 20__.

Attest:

By: _____

Attest:

By: _____

Contractor (SEAL)

Signature

Typed Name

Title

Surety (SEAL)

Signature of Attorney-in-Fact

Typed Name of Attorney-in-Fact

(Bond must not be dated prior to date of Agreement)

PERFORMANCE BOND

Bond Number: _____

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned as Principal, hereinafter called "**Contractor**", and _____, a corporation duly organized under the laws of the State of _____, listed in the latest issue of U.S. Treasury Circular 570, and registered in the State of Georgia, as Surety, hereinafter called "**Surety**", are held and firmly bound unto Cobb County, Georgia, hereinafter called "**Owner**", in the sum of _____ (in words), (\$ _____)(in figures), for payment of which sum, well and truly to be made, the **Contractor** and **Surety** bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the **Contractor** has entered into a written contract dated _____, **20**_____ with **Owner** for the construction of _____ in accordance with drawings and/or specifications prepared by or for Cobb County which contract is made a part of this bond by reference as if set forth herein and is hereinafter referred to as the "**Contract.**"

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if **Contractor** shall promptly and faithfully perform said **Contract**, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

PROVIDED, FURTHER, that **Surety**, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed there under or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

Whenever **Contractor** shall be, and declared by **Owner** to be in default under the Contract, the **Owner**, having performed **Owner's** obligations there under, the **Surety** may promptly remedy the default, or shall promptly:

1. Complete the **Contract** in accordance with its terms and conditions; or,

2. Obtain a bid or bids for completing the **Contract** in accordance with its terms, and conditions, and upon determination by the **Owner** and the **Surety** jointly of the responsible and responsive bidder, arrange for a contract between such bidder and **Owner**, and make available as work progresses (even though there should be default or a succession of defaults) under the contract or contracts of completion arranged under this paragraph sufficient funds to pay the cost of completion less the balance of the **Contract** price; but not exceeding, including other costs and damages for which the **Surety** may be liable hereunder, the amount set forth in the first paragraph hereof.

The term "balance of the contract price", as used in this paragraph, shall mean the total amount payable by **Owner** to **Contractor** under the **Contract** and any amendments thereto, less the amount paid by **Owner** to **Contractor**.

Any suit under this Bond must be instituted before the expiration of two (2) years from the date on which final payment under the **Contract** falls due.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the **Owner** named herein or the heirs, executors, administrators or successors of the **Owner**.

The **Surety** may only cancel this bond by first providing thirty (30) days written notice to **Owner** and Contractor. Such cancellation shall not discharge the **Surety** from liability already accrued under this bond prior to the expiration of the thirty (30) day period.

IN WITNESS WHEREOF, this instrument is executed in four (4) counterparts, each one of which shall be deemed an original, this _____ day of _____, 20_____.

Attest:

By: _____

Attest:

By: _____

Contractor (SEAL)

Signature

Typed Name

President

Title

Surety (SEAL)

Signature of Attorney-in-Fact

Typed Name of Attorney-in-Fact

COBB COUNTY GREEN BUILDING POLICY

All new construction and renovation of occupied county building, 5000 square feet or more, where feasible, shall be designed and built to achieve a LEED certification. Other construction and renovations less than 5,000 square feet may also be considered where appropriate. The Green Building Policy shall require a payback of no more than ten years for projects designed to the LEED standard. County staff shall recommend to the Board of Commissioners which level of LEED certifications is appropriate for the particular project based on sustainability and life cycle cost analysis. Where no level of certification is feasible, then the project design and construction shall include as many measures as possible based on the LEED checklist.

**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.

[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 benefits 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 insured's, 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, false work, 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, insured's 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 who 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"]

Cobb County Board of Commissioners
("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"]

See Attachment One hereto setting forth Excluded Items.

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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.2A 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.

9.34A.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 it's 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 material men 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 material men 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 material man 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, material men, 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 judgment 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 sub schedules; (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 coverage's 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 supplier's 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.
- 26.5 **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.
- 26.6 **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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IN WITNESS WHEREOF, the parties hereto have set their hands and seal this ____ day of _____, 2010.

Contractor
Name of:

OWNER
COBB COUNTY

By _____
(Contractor Name)
President/CEO

By _____
Name of Chairman
Chairman, Board of Commissioners

Notary

Notary

APPROVED PER MINUTES OF

COBB COUNTY BOARD OF COMMISSIONERS

By _____
Sheriff Neil Warren

Notary

Title: _____
(Typed Name)

Attest as to form: _____
County Attorney

BID FORM

TO: COBB COUNTY BOARD OF COMMISSIONERS

**THE UNDERSIGNED HAVING EXAMINED THE PROPOSED BID DOCUMENTS
TITLED:**

**COBB COUNTY ADULT DETENTION BUILDING B - 97
MEDICAL/MENTAL HEALTH EXPANSION**

SEALED BID #10-5511

The Cobb County Sheriff's Office shall pay and the contractor shall accept, as full and complete payment for all of the Work required herein, the fee base sum of \$_____. The sum set forth in this paragraph shall constitute the Contract Price, which shall not be modified except by Change Order.

The contractor should include its fee base and any extra cost work/parts etc.

List and reference structured costs for each major Division items. A line item cost breakdown supporting this bid is required.

<u>Division Number</u>	<u>Description</u>	<u>Total Price</u>
1	General Conditions	\$ _____
2	Not Used	
3	Concrete	\$ _____
4	Masonry	\$ _____
5	Metals	\$ _____
6	Wood & Plastic	\$ _____
7	Thermal & Moisture Protection	\$ _____
8	Doors & Windows	\$ _____
9	Finishes	\$ _____
10	Specialties (Louvers/Vents/Toilet/Bath)	\$ _____
11	Equipment (Security)	\$ _____
12	Not Used	
13	Specialties (Fire Suppression)	\$ _____
14	Not Used	
15	HVAC, Refrigeration, Plumbing & Fire Protection	\$ _____
16	Electrical	\$ _____
17	Telecommunications	\$ _____
GRAND TOTAL COST		\$ _____