

ADVERTISEMENT FOR BIDS
COBB COUNTY PURCHASING DEPARTMENT

BID OPENING DATE: SEPTEMBER 23, 2010

Sealed bids from qualified contractors will be receive before 12:00 NOON, September 23, 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 –5525
DEMOLITION FOR TWO (2) COBB COUNTY GOVERNMENT BUILDINGS
COBB COUNTY PROPERTY MANAGEMENT DEPARTMENT**

PRE-BID/PROPOSAL MEETING: SEPTEMBER 7, 2010 @ 9:00 A.M.
COBB COMMUNITY TRANSIT MEETING ROOM
463 COMMERCE PARK DRIVE
SUITE 112
MARIETTA, GEORGIA 30060

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

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

All contractors wishing to submit bids for this work must submit a qualification statement form (in bid package) to be considered. 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No proposal may be withdrawn for a period of sixty (60) days after date of bid opening, unless otherwise specified in the bid documents.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 bids, to waive informalities and technicalities, to reject portions of the bids, 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:

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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: AUGUST 27, 2010
SEPTEMBER 3, 10, 17, 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: 10-5525
DEMOLITION FOR TWO (2) COBB COUNTY BUILDINGS
COBB COUNTY PROPERTY MANAGEMENT DEPARTMENT

DELIVERY DEADLINE: SEPTEMBER 23, 2010 BEFORE 12:00 (NOON) EST
(NO BIDS/PROPOSALS WILL BE ACCEPTED AFTER THIS DEADLINE).

BID OPENING DATE: SEPTEMBER 23, 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 10-5525; 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 60 DAYS 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: AUGUST 27, 2010
SEPTEMBER 3, 10, 17, 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 # 10-5525 DATE: September 23, 2010

BIDS MUST BE RECEIVED BEFORE 12:00 NOON

**DESCRIPTION: Demolition for Two (2)
Cobb County Buildings**

PLEASE ATTACH LABEL TO OUTSIDE OF BID PACKAGE



Cobb County...Expect the Best!

INVITATION TO BID

**SEALED BID # 10-5525
DEMOLITION FOR TWO (2) COBB COUNTY BUILDINGS
COBB COUNTY PROPERTY MANAGEMENT DEPARTMENT**

BID OPENING DATE: SEPTEMBER 23, 2010

**PRE-PROPOSAL CONFERENCE: SEPTEMBER 7, 2010 @ 9:00 A.M. (E.S.T.)
COBB COMMUNITY TRANSIT MEETING ROOM
463 COMMERCE PARK DRIVE
SUITE 112
MARIETTA, GEORGIA 30060**

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

N.I.G.P. COMMODITY CODE: 96832

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 10-5525
DEMOLITION FOR TWO (2) COBB COUNTY BUILDINGS**

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: _____

INVITATION TO BID

**DEMOLITION FOR TWO (2) COBB COUNTY GOVERNMENT BUILDINGS
505 FAIRGROUND STREET
431 COMMERCE PARK DRIVE,
MARIETTA, GA 30060**

COBB COUNTY PROPERTY MANAGEMENT DEPARTMENT

SEALED BID #10-5525

OWNER:

**COBB COUNTY BOARD OF COMMISSIONERS
COBB COUNTY, GEORGIA**

INVITATION TO BID

**DEMOLITION FOR TWO (2) COBB COUNTY GOVERNMENT BUILDINGS
505 FAIRGROUND STREET
431 COMMERCE PARK DRIVE,
MARIETTA, GA 30060**

COBB COUNTY PROPERTY MANAGEMENT DEPARTMENT

SEALED BID #10-5525

Sealed bids from qualified contractors will be received by the Cobb County Board of Commissioners, Marietta, GA, for furnishing all labor, materials, equipment, appliances, etc. pursuant to the plans, specifications, conditions and addenda for BUILDING DEMOLITION OF TWO (2) COBB COUNTY BUILDINGS LOCATED AT 505 FAIRGROUND STREET and 431 COMMERCE PARK DRIVE, MARIETTA, GA, 30060.

All bids must be received before 12:00 noon on SEPTEMBER 23, 2010, at the Cobb County Purchasing Department, 1772 County Services Parkway, Marietta, GA. 30008. No bids will be accepted after the 12:00 noon deadline. Bids will be opened at 2:00 P.M. on SEPTEMBER 23, 2010, at the Cobb County Purchasing Department, Bid Room, 1772 County Services Parkway, Marietta, GA. 30008.

Please submit an original and two (2) copies to the Cobb County Purchasing Department.

This project is funded by the Federal Transit Administration (FTA), State and/or local funds. Accordingly, the successful bidder will be required to comply with all applicable FTA, Federal and State rules and regulations, as well as those of Cobb County.

All contractors wishing to submit bids for this work must submit a qualification statement. Proposals must be accompanied by bid security in the amount not less than five percent (5%) of the base bid and documents required for the Georgia Security and Immigration Compliance Act.

A pre-bid meeting is scheduled for September 7, 2010 at 9:00 a.m. at the Cobb Community Transit (CCT) Training Room located at 463 Commerce Park Drive, Suite 112, Marietta, Georgia, 30060. It is strongly advised that potential bidders attend the pre-bid meeting and participate in a site visit at the conclusion of the meeting.

The competency and responsibility of bidders will be considered by the Owner in making the award. No bid may be withdrawn for a period of 60 days after the date of the Bid Opening. The Board of Commissioners reserve the right to reject any and all bids, to waive any informalities, to reject portions of the bid, to waive technicalities and to award contracts in a manner consistent with the interest of the Owner and the laws of the State of Georgia.

SPECIFICATIONS

THE PROJECT SCOPE IS AS FOLLOWS:

- Obtain all required permits.
- Install a 6 foot chain link security fence around the perimeter of the project. See available photographs.
- Install adequate erosion control measures.
- Disconnect and terminate all utilities. If the paint store remains operational, utilities to that facility will remain operational.
- Demolition and Removal of building structure, contents, sidewalks and building slab.
- Land shall be graded smooth.
- Testing will be performed by engineering firm to be selected and contracted by Owner. No contractor paving shall be performed prior to engineering test results and determination by Owner.
- Paving of the demolished areas and the drive access leading onto the paved Ryan's parking area as indicated in the attached pictures.
- All work must be submitted to the Owner for approval.

SCHEDULE A - WORK: The contractor shall complete all work per the Project Manual, Project Scope and the following specifications:

Details are as follows:

- **Building A: approximately 11,000 square feet, is located at 505 Fairground Street, Marietta, GA, 30060.**
 - The building is now vacant
 - The building is a single story storefront type building formerly used for a sandwich shop, hair styling shop, neighborhood grocery, etc.
 - All materials remaining in the building at Notice to Proceed will become the responsibility of the Contractor and will be removed from Cobb County property. It is the Contractor's responsibility to properly dispose of the materials in accordance with applicable codes, laws and ordinances.
 - Demolition shall proceed within ten (10) calendar days after issuance of a Notice to Proceed.
 - Demolition shall include removal of the building in it's entirety including all building components, utilities, concrete slab and footings to the substrate.
 - The substrate will be tested by a third party testing firm to be appointed by the Owner. No pavement replacement work will be done prior to the testing results being reviewed and approved by the Owner.
 - Asphalt paving (1 ½" Type E with 6" GAB) will be placed within the disturbed footprint of the building.
 - A sign fixture located in the parking lot adjacent to the building is to be demolished including the steel structure removal, all utilities and the footings below the surface. Electrical demolition is to include termination at the source. Existing conduit and wire may be abandoned in place.

Building B: approximately 22,000 square feet, is located at 431 Commerce Park Drive, Marietta, GA, 30060.

- The building is a single story storefront type building formerly used for a computer parts supplier, a pharmaceutical distributor, a glass replacement company, etc.
 - All materials remaining in the building at Notice to Proceed will become the responsibility of the Contractor and will be removed from Cobb County property. It is the Contractor's responsibility to properly dispose of the materials in accordance with applicable codes, laws and ordinances.
 - The building is currently occupied by a single tenant, a PPG paint supply store. It is anticipated that the tenant will vacate the building in the next 120 days, at which time the demolition contractor would be given an immediate notice to proceed with demolition.
 - Demolition will include removal of the building in its entirety including all building components, utilities, concrete slab and footings to the substrate.
 - The substrate will be tested by a third party testing firm to be appointed by the Owner. No pavement replacement work will be done prior to the testing results being reviewed and approved by the Owner.
 - Asphalt paving (1 ½" Type E with 6" GAB) will be placed within the disturbed footprint of the building.
 - Removal of a hardwood tree located adjacent to the building is to be included in the demolition
- **Prior to demolition of Building A, the property must be secured with fencing as shown on the attached aerial photo.**
 - Fencing material must match fencing used for the Ryan's property (6' Black Vinyl Coated 9 GA chain link).
 - Installation to include 2- 2 panel 24' wide gates located as shown on the aerial photo.
 - Not indicated on the aerial photo is the removal of approximately 240' of existing chain link fence on the eastern side of the property (adjacent to the fence on the west side of the Ryan's property) to be included in the demolition.
 - **A 24' wide asphalt drive as shown on the attached aerial photo is to be constructed.**
 - The drive will allow CCT to park Paratransit vehicles and Senior Services vehicles on the new properties while the concrete pavement project is underway.
 - The same asphalt section (1 ½" Type E with 6" GAB) can be used for this temporary drive. The substrate will be tested by a third party testing firm to be appointed by the Owner. No pavement replacement work will be done prior to the testing results being reviewed and approved by the Owner.

All work must be performed in accordance with applicable Federal, State and local regulation; including but not limited to, OSHA, Department of Transportation, EPA, The Georgia Immigration and Compliance Act and Georgia EPD by a licensed Contractor.

All work to be performed by Contractor, no work will be performed by Owner. All Permits and legal requirements must be met and obtained by the Contractor.

Miscellaneous Project Requirements:

- a. Materials and system types may designate specified manufacturers and models. Substitution will be allowed if demonstrated by vendor to be equal or superior. All materials incorporated

into the work shall be new unless otherwise specified herein or approved in special circumstances by Owner or Architect.

- b. Cobb County Commissioners are required to make certain decisions that may come up during the course of the job. Depending on the timing, this could take several weeks before an available scheduled commission meeting.
- c. The Contractor represents that any reference by the Contract Documents to Cobb County as supplying utilities, permits, licenses, approvals, procedures or items of any nature whatsoever are included with the Contractor's cost and shall not be construed to mean that the cost of such items will be paid by Cobb County. Contractor is completely responsible for any and all costs related to or levied as a result of this project. This also includes but is not limited to costs such as electrical power, gas, heat, light, water, sewer, telephone, temporary and permanent meters and fees of all types, etc.
- d. During the construction of the project, Contractor shall address construction concerns and questions to the Cobb County Property Management Department and shall not take direction from other persons or departments that may visit the site. Contractor may require to totally complete the project to a move-in condition are the responsibility of the Contractor. This may include but is not limited to additional plan information, associated work not indicated, required exit sign and fire extinguishing/detection equipment, engineering stamps, protection of existing materials & equipment, securing and paying for all permits, fees, certificates of occupancy, etc.
- e. All costs related to the preparation, submittal, etc., of this bid by the bidder are the responsibility of the bidder and will not be assumed in full or in part by the Owner. The Owner makes no representation or guarantee by the issuance of this request for bids that this project will be funded and/or performed.
- f. Should the Contractor fail to substantially complete the work under this contract per the specified schedule, he shall pay Owner liquidated damages \$100.00 per calendar day for each consecutive calendar day until project is complete; which sum is agreed upon as a reasonable and proper measure of damages which owner will sustain per diem by failure of Contractor to complete work within time as stipulated; it being recognized by Owner and Contractor that the injury to Owner which could result from a failure of Contractor to complete on schedule is uncertain and cannot be computed exactly. In no way shall costs for liquidated damages be construed as a penalty on the Contractor. Contractor shall not be entitled to any compensation should he finish early.
- g. Contractor to complete all work within twenty -one (21) calendar days from Owner's issuance of a "Notice to Proceed".
- h. ALL WORK OF THESE CONTRACT DOCUMENTS SHALL BE PERFORMED IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT.

A Disadvantaged Business Enterprise (DBE) participation goal of 7% has been established for this project. Bidders shall comply with 49 C.F.R. Part 26 in their efforts to attain this goal. Bidders shall be required to document sufficient DBE participation to meet this goal, or alternatively document good faith efforts to do so.

The Contractor must submit a DBE participation report to the County prior to beginning work on the project. A monthly DBE utilization report must be submitted with each monthly invoice. A final DBE report must be submitted at the end of the project. If DBE participation changes during the course of the project, an updated participation report must be submitted to the County at the time of such change. The County strongly supports DBE participation in all contracts.

The Contractor and their subcontractors are required to be in compliance with the "Georgia Security and Immigration Act." The Contractor must execute and submit the "Contractor Affidavit and Agreement," as well as the "Subcontractor Affidavit" executed by all of their subcontractors along with the bid. A "Subcontractor Affidavit" must be executed and submitted prior to beginning work on the project.

Bids for the complete work of all parts in each section in one general contract shall be made on the bid form provided and shall contain prices in figures for the work bid only. Only a bid submitted by a bidder on record with Cobb County as having received plans and specifications will be opened.

i. **FTA CLAUSES INCORPORATED BY REFERENCE**

This Agreement incorporates the following Federal Transit Administration required clauses with the same force and effect as if they given in the main text of the Agreement. It is understood and agreed that the Contractor may be obligated by and to Cobb County (hereinafter referred to as the County) for any specifications or documentation required of the County under these clauses.

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Contractor shall carry out applicable requirement of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

STATE AND LOCAL LAW DISCLAIMER

The Contractor agrees to comply with all applicable statutes, ordinances, and regulations of the United States, the U.S. Department of Transportation, the State of Georgia, and local governments.

CONTRACT TERMINATION PROVISIONS

49 CFR PART 18

4220.1D

(APPLIES TO CONTRACTS OVER \$10,000 UNLESS THEY ARE WITH A NOT FOR PROFIT OR INSTITUTION OF HIGHER LEARNING

Termination for Convenience: The County may terminate this contract in whole or in part, for the County's convenience or because of the failure of the Contractor to fulfill the contract obligations. The County shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall immediately discontinue all services affected, unless the notice directs otherwise, and delivery to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and

other information and materials accumulated in performing this Contract, whether completed or in process. If the termination is for the convenience of the County, the Contracting Officer shall make an equitable adjustment in the Contract price but shall allow no anticipated profit on unperformed services.

Termination for Default – If the Contractor does not deliver the goods or services provided by this solicitation in accordance with the provisions contained herein, or if the Contractor fails to perform in the manner called for with regard to other provisions of a Contract awarded in conjunction with this solicitation, the County may notify the Contractor of its intention to terminate this Contract for default. The Contractor shall be allowed fifteen (15) calendar days after receipt of the notice of intent to terminate for default in which to rectify the problems that were cause for such notice. Termination shall be effected by serving a final notice of termination on the Contractor setting forth the manner in which the Contractor may be paid for only items delivered and accepted, or services performed in accordance with the manner of performance set forth in the Contract. If it is later determined by the County that the Contractor had an excusable reason for not performing, such as strike, fire, flood, or other events which are not the fault of, or are beyond the control of the Contractor, the County, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure – The County in its sole discretion may, in the case of a termination for breach or default, allow the Contractor 30 days in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions. If the Contractor fails to remedy to the County’s satisfaction, the breach or default or any terms, covenants, or conditions of the Contract within ten (10) days after receipt by Contractor or written notice from the County setting forth the nature of said breach, the County shall have the right to terminate the Contract without any further obligation to the Contractor. Any such termination for default shall not in any way operate to preclude the County from pursuing all available remedies against the Contractor and its sureties for said breach or default.

RECYCLED PRODUCTS

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA) as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325

18 CFR 18.36 (i)

49 CFR 633.17

Access to Records - The following access to records requirements apply to this Agreement:

- (1) Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) (1), which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- (2) Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, the Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining

to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

- (3) Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, the Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- (4) Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) (1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
- (5) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (6) The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor agrees to maintain same until the County, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).
- (7) FTA does not require the inclusion of these requirements in subcontracts.

FEDERAL CHANGES

49 CFR Part 18

Federal Changes - The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (2) dated October, 1995) between the County and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to comply shall constitute a material breach of this Agreement.

NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government.

The County and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the County, the Contractor, or any other party (whether or not a party to that Agreement pertaining to any matter resulting from the underlying Agreement).

1. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENT AND RELATED ACTS

31 U.S.C. 3801 et seq.

49 CFR Part 31 18 U.S.C. 1001

Program Fraud and False or Fraudulent Statements or Related Acts.

- (1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- (2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- (3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1D

Termination for Convenience - The County, by written notice, may terminate this Agreement, in whole or in part, when it is in the Government's interest. If this Agreement is terminated, the County shall be liable only for payment under the payment provisions of this Agreement for services rendered before the effective date of termination.

PRIVACY ACT

5 U.S.C. 552

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

1. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
2. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

Civil Rights - The following requirements apply to the underlying contract:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 - (a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - (c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
3. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

CONTRACT ASSURANCE

49 CFR Part 26.13

The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in performance of the Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this Agreement or such other remedy, as the recipient deems appropriate.

PROMPT PAYMENT

49 CFR Part 26.29

The Contractor agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than seven (7) days from receipt of each payment the Contractor receives from the County. The Contractor further agrees to return retainage payments to each subcontractor with seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval by the County. The clause applies to DBE and non-DBE subcontractors.

In the case of dispute between a contractor and a subcontractor regarding prompt payment for the satisfactory completion of work, including retainage, arbitration between parties is the dispute resolution of choice.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS
FTA Circular 4220.1D

Incorporation of Federal Transit Administration (FTA) Terms - The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests, which would cause the County to be in violation of the FTA terms and conditions.

Cobb County General Instructions For Bidders, Terms and Conditions

I. Preparation Of Bids

Each bidder shall examine the drawings, specifications, schedule and all instructions. Failure to do so will be at the bidder's risk, as the bidder will be held accountable for their bid response.

Each bidder shall furnish all information required by the bid form or document. Each bidder shall sign the bid and print or type his or her name on the schedule. The person signing the bid must initial erasures or other changes. An authorized agent of the company must sign bids.

Invitations to Bid issued by Cobb County are advertised on the Cobb County Internet site (www.purchasing.cobbcounty.ga.gov) and every Friday in the Cobb County legal organ, the Marietta Daily Journal.

II. Delivery

Each bidder should state the time of proposed delivery of goods or services. Words such as "immediate", "as soon as possible", etc. shall not be used. The known earliest date or the minimum number of calendar days required after receipt of order (delivery A.R.O.) shall be stated (if calendar days are used, include Saturday, Sunday and holidays in the number).

III. Explanation to Bidders

Any explanation desired by a bidder regarding the meaning or interpretation of the invitation for bids, drawings, specifications, etc. must be received by **5:00 pm Tuesday, September 14, 2010** in order for a reply to reach all bidders before the close of the bid. Any information concerning an Invitation to Bid (ITB) will be furnished to all prospective bidders as an addendum if such information is necessary or if the lack of such information would be prejudicial to uninformed bidders.

The written bid documents supersede any verbal or written communication between parties. Addenda are posted on the Purchasing web site: www.purchasing.cobbcounty.ga.gov. Receipt of addenda should be acknowledged in the bid. It is the bidder's ultimate responsibility to ensure that they have all applicable addenda prior to bid submittal.

IV. Submission of Bids

Bids shall be enclosed in sealed envelopes, addressed to the Cobb County Purchasing Department with the name of the bidder, the date and hour of opening and the invitation to bid number on the face of the envelope. Bids must be received in the Purchasing Department no later than the date and time (determined by the date/time stamp in the department) set forth in the Invitation to Bid. It is the sole responsibility of the bidder to ensure that his or her bid reaches the Purchasing Department. Telegraphic/faxed bids will not be considered. Any addenda should be enclosed in the sealed envelopes as well. The bids will be publicly opened and read at the time and place set forth in the Invitation to Bid.

Samples of items, when required, must be submitted within the time specified and, unless otherwise specified by the County, at no expense to the County. Unless otherwise specified, samples will be returned at the bidder's request and expense if items are not destroyed by testing.

Items offered must meet required specifications and must be of a quality, which will adequately serve the use and purpose for which intended.

Full identification of each item bid upon, including brand name, model, catalog number, etc. must be furnished to identify exactly what the bidder is offering. The bidder must certify that items to be furnished are new and that the quality has not deteriorated so as to impair its usefulness.

If no items are bid on, the "Statement of No Bid" must be returned, with the envelope plainly marked "No Bid" including the bid number. Where more than one item is listed, any items not bid upon must be indicated "No Bid".

Unsigned bids will not be considered except in cases where bid is enclosed with other documents, which have been signed. The County will determine this.

Cobb County is exempt from federal excise tax and Georgia sales tax with regards to goods and services purchased directly by Cobb County. Suppliers and contractors are responsible for federal excise tax and sales tax, including any taxes for materials incorporated in county construction projects. Suppliers and contractors should contact the State of Georgia Sales Tax Division for additional information. Tax Exemption Certificates will be furnished upon request.

Information submitted by a bidder in the bidding process shall be subject to disclosure after the public opening in accordance with the Georgia Open Records Act. Each page of proprietary information must be identified. Entire bid may not be deemed proprietary.

V. Withdraw Bid Due To Errors

The bidder shall give notice in writing of his claim of right to withdraw his bid without penalty due to an error within two (2) business days (48 hours) after the conclusion of the bid opening. Bids may be withdrawn from consideration if the price was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of the bid, which unintentional arithmetic or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The bidder's original work papers shall be the sole acceptable evidence of error and mistake if he elects to withdraw his bid. If a bid is withdrawn under the authority of this provision, the lowest remaining responsive bid shall be deemed to be low bid. Bid withdrawal is not automatically granted and will be allowed solely at the discretion of Cobb County.

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

Supplier has up to forty-eight (48) hours to notify the Cobb County Purchasing Department of an obvious clerical error made in calculation of bid in order to withdraw a bid after bid opening. Withdrawal of bid for this reason must be done in writing within the forty-eight (48) hour period. Suppliers who fail to request the withdrawal of bid by the required forty-eight (48) hours shall automatically forfeit bid bond. Bid may not be withdrawn otherwise. Bid withdrawal is not automatically granted and will be allowed solely at the discretion of Cobb County.

VI. Testing and Inspection

Since tests may require several days for completion, the County reserves the right to use a portion of any supplies before the results of tests are determined. Cost of inspections and tests of any item, which fails to meet specifications, shall be borne by the bidder.

VII. F.O.B. Point

Unless otherwise stated in the Invitation to Bid and any resulting contract, or unless qualified by the bidder, items shall be shipped F.O.B. Destination. The seller shall retain title for the risk of transportation, including the filing for loss or damages. The invoice covering the items is not payable until items are delivered and the contract of carriage has been completed. Unless the F.O.B. clause states otherwise, the seller assumes transportation and related charges either by payment or allowance.

VIII. Patent Indemnity

The contractor guarantees to hold the County, its agents, officers, or employees harmless from liability of any nature or kind for use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, articles or appliances furnished or used in the performance of contract, for which the contractor is not the patentee, assignee or licensee.

IX. Bid, Pay, & Performance Bonds

A five percent (5%) bid bond, one hundred percent (100%) performance bond, and a one hundred percent (100%) payment bond shall be furnished to Cobb County for any bid as required in bid package or document. Failure to submit appropriate bonding will result in automatic rejection of bid. Bonding company must be authorized to do business in Georgia by the Georgia Insurance Commission, listed in the Department of the Treasury's publication of companies holding certificates of authority as acceptable surety on Federal bonds and as acceptable reinsuring companies, and have an A.M. Best rating as stated in the insurance requirements of the solicitation. The bonds shall be increased as the contract amount is increased.

XI. Insurance

Insurance requirements. Contractor shall procure and maintain for the duration of the contract, insurance against claims for injuries to persons or damages to property that may arise from or in connection with performance of the Work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

A. MINIMUM LIMITS OF INSURANCE

Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily injury, personal injury and property damage for premises/operations, products/completed operations, contractual liability, independent contractors, broad-from property damage, and underground, explosion and collapse hazard.

2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage including all owned, hired, and non-owned.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor code of the State of Georgia and Employers Liability of \$100,000 per accident.

4. Umbrella Liability: \$5,000,000 combined single limits per occurrence.

5. Builders Risk Insurance, if applicable: All Risk coverage on any buildings, structure of work and material in an amount equal to 100 per cent of the value of the contract. Coverage is to cover Cobb County interest and Cobb County shall be named as Loss Payee.

B. DEDUCTIBLES AND SELF-INSURED RETENTION

Any deductibles or self-insurance 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, and employees; or the Contractor shall procure a bond guaranteeing payment of losses related to investigations, claim administration and defense expenses.

C. OTHER INSURANCE PROVISIONS

1. General Liability, Automobile Liability, and Umbrella Liability Coverages

The Owner and its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor.

Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Owner and its officers, officials employees or volunteers.

The Contractor is responsible for insuring its own property and equipment.

2. Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Owner and its officers, officials, employees and volunteers for losses arising from the work performed by the Contractor for the Owner.

3. All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be changed, cancelled, suspended, terminated or non-renewed except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to Cobb County of said change of coverage, cancellation, suspension, termination / or non-renewal.

D. ACCEPTABILITY.

Insurance is to be placed with insurers with an A.M. Best's rating of no less than A: VII, or otherwise acceptable to the Owner.

E. VERIFICATION OF COVERAGE.

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

F. SUBCONTRACTORS

Subcontractor means one not in the employment of the Contractor who is performing all or part of the services under this Agreement under a separate contract with the Contractor.

Contractor shall include all subcontractors as insured under its insurance or shall ensure that subcontractors have met the insurance requirements of this agreement. Owner may request evidence of subcontractor's insurance.

Contractor is responsible for having all subcontractors comply with all terms and conditions of the Invitation to Bid.

G. WAIVER OF SUBROGATION

Vendor shall require all insurance policies in any way related to the work and secured and maintained by Vendor to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against Customer. Vendor shall require of subcontractors, by appropriate written agreements, similar waivers each in favor of all parties enumerated in this section.

XII. Award

Award will be made to the lowest responsive and responsible bidder. Conditional bids are not be acceptable. The quality of articles to be supplied, their conformity with the specifications, their suitability to the requirements of the County, and the delivery terms will be taken into consideration in making the award. The County may make such investigations as it deems necessary to determine the ability of the bidder to perform, and the bidder shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any bid if the evidence submitted by, or investigation of such bidder fails to satisfy the County that such bidder is properly qualified to carry out the obligations of the contract. The County reserves the right to reject or accept any or all bids and to waive technicalities, informalities, and minor irregularities in bids received.

The County reserves the right to purchase the goods or services described herein from other sources. The Bidder does not have the exclusive right to fill all of the County's requirements for the goods or services awarded nor will the County be obligated to purchase the estimated annual quantity or any quantity contained in the bid document.

The County reserves the right to make an award as deemed in its best interest, which may include awarding a bid to a single bidder or multiple bidders; or to award the whole bid, only part of the bid, or none of the bid to single or multiple bidders, based on its sole discretion of its best interest. In case of tie bid, the award will be made as follows:

1. The bid will be awarded to the in-county vendor.

2. The bid will be awarded to the in-state vendor.
3. The bid will be awarded to the vendor with the lesser total dollar volume.

The County reserves the right to award by line item to more than one vendor. The County reserves the right to negotiate a lower price than the bid award price on any line item with the successful vendor, should the quantity required significantly exceed those on the Invitation to Bid. If the County is unable to negotiate an acceptable price, it reserves the right to rebid the item(s) involved. If after the award of the bid there is a decrease in the price of a product from the manufacturer, or a rebate, the successful bidder will pass that price decrease and/or rebate onto the County.

Time payment discounts will be considered in arriving at net prices and in award of bids. Offers of discount for payment within ten (10) days following the end of the month are preferred.

XIII. Delivery Failures

Failure of a contractor to deliver within the time specified or within reasonable time as interpreted by the Purchasing Director, or failure to make replacement of rejected articles/services when so requested, immediately or as directed by the Purchasing Director, shall constitute authority for the Purchasing Director to purchase in the open market articles/services of comparable grade to replace the articles/services rejected or not delivered. On all such purchases, the contractor shall reimburse the County within a reasonable time specified by the Purchasing Director for any expense incurred in excess of contract prices, or the County shall have the right to deduct such amount from monies owed the defaulting contractor. Alternatively, the County may penalize the contractor one percent (1%) per day for a period of up to ten (10) days for each day that delivery or replacement is late. Should public necessity demand it, the County reserves the right to use or consume articles delivered which are substandard in quality, subject to an adjustment in price to be determined by the Purchasing Director.

XIV. County Furnished Property

No material, labor or facilities will be furnished by the County unless so provided in the invitation to bid.

XV. Reject And Withdraw Bids

Failure to observe any of the instructions or conditions in this invitation to bid may constitute grounds for rejection of bid.

XVI. Contract

Each bid is received with the understanding that the acceptance in writing by the County of the offer to furnish any or all commodities or services described therein shall constitute a contract between the bidder and the County which shall bind the bidder on his part to furnish and deliver the articles quoted at the prices stated in accordance with the conditions of said accepted bid. The County, on its part, may order from such contractor, except for cause beyond reasonable control, and to pay for, at the agreed prices, all articles specified and delivered. The County's normal payment terms are net thirty (30) days after receipt of invoice.

The Price and all unit prices shown shall be deemed to include all costs of Contractor's performance of the Work as set forth in the Bid Documents, including, but not limited to, the costs of labor, supervision, travel, services, materials, equipment, tools, scaffolds, hoisting, transportation, storage, insurance and taxes.

Upon receipt of a bid package, containing a Cobb County "Sample Contract" as part of the requirements, it is understood that the bidder has reviewed the documents with the understanding that Cobb County requires all agreements between the parties must be entered into via this document. If any exceptions are taken to any part, each must be stated in detail and submitted as part of the bid. If no exceptions are stated, it is assumed that the bidder fully agrees to the provisions contained in the "Sample Contract" in its entirety.

When the contractor has performed in accordance with the provisions of this agreement, Cobb County shall pay the contractor, within thirty (30) days of receipt of any payment request based upon work completed or service provided pursuant to the contract, the sum so requested, less the retainage stated in this agreement, if any.

XVII. Non-Collusion

By submission of a bid, the vendor certifies, under penalty of perjury, that to the best of its knowledge and belief:

- (a) The prices in the proposal have been arrived at independently without collusion, consultation, communications, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other vendor or with any competitor.
- (b) Unless otherwise required by law, the prices which have been quoted in the proposal have not been knowingly disclosed by the vendor prior to opening, directly or indirectly, to any other vendor or to any competitor.
- (c) No attempt has been made, or will be made, by the vendor to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

Collusions and fraud in bid preparation shall be reported to the State of Georgia Attorney General and the United States Justice Department.

XVIII. Conflict of Interest, Etc.

By submission of a bid, the responding firm certifies, under penalty of perjury, that to the best of its knowledge and belief:

1. No circumstances exist which cause a Conflict of Interest in performing the services required by this ITB, and
2. That no employee of the County, nor any member thereof, not any public agency or official affected by this ITB, has any pecuniary interest in the business of the responding firm or his sub-consultant(s) has any interest that would conflict in any manner or degree with the performance related to this ITB.

By submission of a bid, the vendor certifies under penalty of perjury, that to the best of its knowledge and belief:

- (a) The prices in the bid have been arrived at independently without collusion, consultation, communications, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other vendor or with any competitor.
- (b) Unless other wise required by law, the prices which have been quoted in the bid have not knowingly been disclosed by the vendor prior to opening, directly or indirectly, to any other vendor or competitor.
- (c) No attempt has been made, or will be made, by the vendor to induce any other person, partnership or cooperation to submit or not to submit a bid for the purpose of restricting competition.

For any breach or violation of this provision, the County shall have the right to terminate any related contract or agreement without liability and at its discretion to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment or consideration.

The successful responding firm shall require each of its sub-consultant(s) to sign a statement certifying to and agreeing to comply with the terms of the Sub-sections above.

XIX. Default

The contract may be cancelled or annulled by the Purchasing Director in whole or in part by written notice of default to the contractor upon non-performance or violation of contract terms. An award may be made to the next low responsive and responsible bidder, or articles specified may be purchased on the open market similar to those so terminated. In either event, the defaulting contractor (or his surety) shall be liable to the County for costs to the County in excess of the defaulted contract prices; provided, however, that the contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause. Failure of the contractor to deliver materials or services within the time stipulated on his bid, unless extending in writing by the Purchasing Director, shall constitute contract default.

XX. Disputes

Except as otherwise provided in the contract documents, any dispute concerning a question of fact arising under the contract which is not disposed of shall be decided after a hearing by the Purchasing Director, who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the contractor. The decision of the Purchasing Director shall be final and binding; however, the contractor shall have the right to appeal said decision to a court of competent jurisdiction.

XXI. Substitutions

Bidders offering and quoting on substitutions or who are deviating from the attached specifications shall list such deviations on a separate sheet to be submitted with their bid. The absence of such a substitution list shall indicate that the bidder has taken no exception to the specifications contained herein.

XXII. Ineligible Bidders

The County may choose not to accept the bid of a bidder who is in default on the payment of taxes, licenses, or other monies due to the County. Failure to respond three (3) consecutive times for any given commodity/service may result in removal from the supplier list under that commodity/service.

In compliance with the Americans With Disabilities Act (ADA), Cobb County provides reasonable accommodations to permit a qualified applicant with a disability to enjoy the privileges of employment equal to those employees without disabilities. Disabled individuals must satisfy job requirements for education background, employment experience, and must be able to perform those tasks that are essential to the job with or without reasonable accommodations.

XXIII. Alterations Of Documents

Alterations of County documents are strictly prohibited and will result in automatic disqualification of the firm's solicitation response. If there are "exceptions" or comments to any of the solicitation requirements or other language, then the firm may make notes to those areas, but may not materially alter any document language.

XXIV. Termination For Convenience

The County, by written notice, may terminate this contract, in whole or in part, when it is in the County's interest. If this contract is terminated, the County shall be liable only for goods or services delivered or accepted. The County Notice of Termination may provide the contractor thirty (30) days prior notice before it becomes effective. However, at the County's sole option a termination of convenience may be effective immediately and may apply to delivery orders (if applicable) or to the contract in whole.

XXV. Inter-governmental Agreement

Other cities and Authorities located in Cobb County will be allowed to purchase identical items at the same price and upon the same terms and conditions, pursuant to the Intergovernmental Cooperative Purchasing Agreements entered into between the BOC and Cobb County Governmental entities listed under the Intergovernmental Cooperative Purchasing Program. These entities include the Cobb County Board of Education and Cities of Acworth, Austell, Kennesaw, Smyrna, Marietta, and Powder Springs and the Cobb County-Marietta Water Authority and the Cobb-Marietta Coliseum and Exhibit Hall Authority.

XXVI. Indemnification and Hold Harmless

By submission of a bid, the selected responding firm agrees to the fullest extent permitted by law to indemnify Cobb County and protect, defend, indemnify and hold harmless Cobb County, its officers, officials, employees and volunteers from and against all claims, actions, liabilities, losses (including economic losses), or costs arising out of any actual or alleged a) bodily injury, sickness, disease, or death; or injury to or destruction of tangible property including the loss of use resulting there from; or any other damage or loss arising out of or resulting claims resulting in whole or part from any actual or alleged act or omission of the responding firm, sub-consultant, anyone directly or indirectly employed by any firm or sub-consultant; or anyone for whose acts any of them may be liable in the performance of work; b) violation of any law, statute, ordinance, governmental

administrative order, rule, regulation, or infringements of patent rights or other intellectual property rights by the responding firm in the performance of work; or c) liens, claims or actions made by the responding firm or other party performing the work, as approved by Cobb County. The indemnification obligations herein shall not be limited by any limitation on the amount, type of damages, compensation, or benefits payable by or for the responding firm or its sub-consultant(s), as approved by the County, under workers' compensation acts, disability benefit acts, other employee benefit acts, or any statutory bar or insurance.

XXVII. Special Terms and Conditions

Should these General Terms and Conditions be in conflict with any attached Special Terms and Conditions, the Special Terms and Conditions will control.

XXVIII. 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/eo-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 (USDOT), 49 CFR Part 26.) The Cobb County Department of Transportation is the lead agency for implementing the USDOT DBE Program for the County.

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

ATTACHMENT 1
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 CFR PART 26

The following bid conditions apply to this United States Department of Transportation assisted contract. Submission of a proposal by a prospective Contractor shall constitute full acceptance of these bid conditions.

REQUIRED CONTRACT CLAUSES (49 CFR 26.13)

UTILIZATION OF DISADVANTAGED BUSINESS ENTERPRISES

The Cobb Community Transit will ensure that the following clauses are included in each DOT assisted contract and subcontract:

I. Policy - It is the policy of the Cobb Community Transit that Disadvantaged Business Enterprises shall have the maximum practicable opportunity to participate in the performance of contracts. Consequently, the DBE requirements of 49 CFR Part 26, do apply to this agreement. Bidders shall use sufficient and reasonably good faith efforts to carry out this policy in the award of their subcontracts to the fullest extent, consistent with the efficient performance of this contract.

II. DBE Obligation - The contractor agrees to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26, Subpart D, have the maximum opportunity to participate in the performance of contracts and subcontracts. In this regard, all contractors shall take necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and perform contracts. Contractors shall not discriminate on the basis of race, color, national origin or sex.

III. Compliance - All bidders, potential contractors, or sub-contractors for this contract are hereby notified that failure to carry out the policy and the DBE obligation, as set forth above, shall constitute a breach of contract which may result in non-selection; termination of the contract; or such other remedy as deemed appropriate by Cobb Community Transit. Agreements between a bidder/proposer and a DBE, in which the DBE promises not to provide sub-contracting quotations to other BIDDERS/PROPOSERS, are prohibited.

IV. Sub-contract Clauses - All bidders and potential contractors hereby assure that they will include the above clauses in all sub-contracts which offer further sub-contracting opportunities.

V. Additional Terms And Conditions

(A) DBE Goal:

Notification is hereby given that a 7% DBE contract goal is established for this prime contract.

All bidders and proposers hereby assure that they will make sufficient reasonable good faith efforts to meet the above stated goals. Moreover such bidders or proposers hereby assure that they will meet the DBE participation percentages submitted in their respective bids or proposals.

BIDDERS/PROPOSERS, also agree to provide any additional information requested by Cobb Community Transit to substantiate DBE participation, including but not limited to, the written subcontract agreement between prime bidder and each subcontractor for the work relative to this project.

(B) DBE Substitutions:

All bidders and proposers shall make a good faith effort to replace a DBE sub-contractor who is unable to perform successfully, with another DBE sub-contractor. The Cobb Community Transit Division Manager or Disadvantaged Business Enterprise Liaison Officer must approve all substitutions. There shall be no substitutions or additions during the time period between the bid opening date and the bid award date.

Bidders or proposers may not make substitutions of DBE subcontractors after bid award on the grounds that they have solicited a response from another contractor whose price is more reasonable than the DBE submitted at bid opening.

(C) Contract Award Criteria:

The award selection procedure for this solicitation will ensure that prime contracts are awarded only to competitors who make a good faith effort to meet the established Disadvantaged Business Enterprise (DBE) goal.

1. Subject to other applicable provisions herein, bids or proposals will be considered incomplete, and ineligible to receive a contract award unless the following forms (copies are a part of the bid documents) are completed and submitted with the bid:
 - (a) DBE Form 1 – Schedule of DBE Participation Form
 - (b) DBE Form 2 – DBE Contractor Affidavit Identification
 - (c) DBE Form 3 – Letter of Intent to perform as a Disadvantaged Business Enterprise Subcontractor. One form for each DBE subcontractor listed on DBE Form 1 must be completely filled out and executed by the proposed subcontractor. Failure to submit this with the bid may preclude the bidder from award. Forms are supplied with the contract documents.
 - (d) DBE Form 4- DBE Unavailability Certification must be submitted with the bid proposal, if the DBE goal is not met.
2. Cobb Community Transit will count toward the established DBE project goal only those firms which are certified as a DBE at bid opening. For information regarding the DBE certification process, please contact the Georgia Department of Transportation.

(D) Reporting Requirements:

The awardee shall establish, maintain and submit regular reports, as required, which will identify and assess progress in achieving DBE sub-contract goals and other affirmative action efforts.

Progress reports shall be submitted with each periodic pay request, or application for payment. Payments will not be approved without current, completed progress reports.

The awardee is required to submit invoices each month for portions of work completed during the month, including all DBE monies due for that period. The awardee is also required to submit a DBE Utilization Form with each monthly invoice.

Failure to comply with this requirement may constitute breach of contract and may result in the termination of this contract or such other remedy as Cobb Community Transit may deem appropriate.

- VI. Acceptable Good Faith Efforts - If any bidder fails to meet the DBE goals for this solicitation, the bidder shall submit, with the bid, proof of good faith efforts, using the guideline listed in Appendix A to 49 CFR

26, along with a written statement of efforts made and reasons for not meeting said goals. (See DBE Form 4 which must be submitted with bid)

A list of the efforts that a bidder should make, and Cobb Community Transit may use in making a determination as to the acceptability of the bidder, are as follows:

- (1) Whether the bidder attended any pre-solicitation or pre-bid meetings which were scheduled by Cobb Community Transit to inform DBEs of contracting and subcontracting opportunities;
- (2) Whether the bidder advertised in general circulation, trade association, and minority-focus media concerning the sub-contracting opportunities;
- (3) Whether the bidder provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;
- (4) Whether the bidder followed up initial solicitations of interest by contracting DBEs to determine, with certainty, whether the DBEs were interested;
- (5) Whether the bidder selected portions of work to be performed by DBEs in order to increase his/her chances of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
- (6) Whether the bidder provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
- (7) Whether the bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.
- (8) Whether the bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by Cobb Community Transit or contractor, and
- (9) Whether the bidder effectively used the services of available minority and women community organizations; minority and women contractors' groups; local, state and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of socially and economically individuals.

NOTE: The nine (9) items set forth above are not the exclusive criteria, and Cobb Community Transit may specify that you submit information on certain other actions which were taken to secure DBE participation in an effort to meet the goal. A bidder may also submit, to the owner, other information on efforts he/she made to meet the goal.

VII. Contractor Assurance - The bidder assures that he/she will make a good faith effort to meet the DBE participation goal as established in Paragraph V, Section A.

General Instructions

1. Contract Goal - Bidders who fail to achieve the contract goal(s) stated in the bid document must provide (with the bid) an explanation as to why the goal was not achieved and documentation demonstrating that a "Good Faith Effort" was made by the bidder as outlined in DBE Form 4.

*2. DBE Forms 1 & 2- All bidders/contractors shall complete and submit, with their bids, DBE Forms 1 & 2.

*3. Letter of Intent To Perform as a DBE Subcontractor - Each subcontractor listed on DBE Form 1 shall complete and sign a Letter of Intent to Perform as a DBE Subcontractor.

4. Certification - BUSINESS/CONTRACTORS seeking to participate as DBEs must be certified at the time of bid submittal. Check the DBE Directory. The Directory is available on line at <http://www.dot.state.ga.us>. or by contacting:

Georgia Department of Transportation
2 Capitol Square, S.W.
Room 262
Atlanta, Georgia 30334
(404)656-5323 (phone)
(404 656-5509 (fax)

5. Copies of Forms - Contractors may duplicate as many forms as needed. All DBE Program questions should be directed to the Cobb Community Transit Division Manager or the DBE Liaison Officer.

***ITEMS 2 & 3 ABOVE MUST BE SUBMITTED WITH THE BID IN ORDER TO BE ELIGIBLE TO RECEIVE A CONTRACT AWARD.**

DBE FORM 1 (Reproduce as necessary)
SCHEDULE OF DBE PARTICIPATION

Name of Bidder: _____
 Project: _____
 Project No.: _____
 Bid No: _____ Total Bid
 Amount: _____

NAME OF DBE SUBCONTRACTOR	ADDRESS (COUNTY, STATE)	TYPE OF WORK SUBCONTRACTED	DBE	SUBCONTRACT VALUE
				\$
				\$
				\$
				\$
				\$
				\$
				\$

DBE PARTICIPATION TOTAL VALUE _____ \$

The attainment of DBE participation goals for this contract will be measured as a percentage of the total dollar value of the contract.

The undersigned will enter into a formal agreement with the DBE Subcontractors identified herein for work listed in this schedule conditioned upon execution of a contract with

Sworn to and subscribe before me, this ____ day of _____, 20__.

_____ (SEAL) Name (Typed) _____

NOTARY PUBLIC

DBE FORM 2 (Reproduce as necessary)
DBE SUBCONTRACTOR IDENTIFICATION AFFIDAVIT

STATE OF _____
COUNTY OF _____

I HEREBY DECLARE AND AFFIRM THAT I AM THE _____
(Title - Owner, President, Co-Venturer, etc.)

and duly authorized representative of _____
(Name of Firm)

whose address is _____

* I hereby declare and affirm that I am a certified DBE.

This firm is interested in quoting/bidding on the following categories of work being procured for Cobb Community Transit: _____

This firm has current DBE certification from the following agencies:

A copy of the current certification letter notifying the firm that it has been DBE certified by the Georgia Department of Transportation must be attached to this form.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED ON BEHALF OF THE FIRM TO MAKE THIS AFFIDAVIT.

(Date)

(Affiant)

STATE OF _____ COUNTY OF _____

On this _____ day of _____, 20____, before me,
_____, the above signed officer, personally appeared, known to me to be the person described in the foregoing affidavit and acknowledged that he/she executed the same in the capacity therein stated and for the purposes therein contained.

In witness thereof, I hereunto set my hand and official seal.

_____ (SEAL)

My Commission Expires _____

DBE FORM 4 (Reproduce as necessary)
DBE UNAVAILABILITY CERTIFICATION

I, _____, _____

of _____, certify that on the dates below,

I invited the following DBE Subcontractor(s) to bid work items to be performed on

<u>DATE OF REQUEST</u>	<u>DBE</u>	<u>NAME OF SUBCONTRACTOR</u>	<u>WORK ITEMS SOUGHT</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The following Subcontractors submitted bids, which were not the low responsible bid:

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

ATTACHMENT 2
NON-COLLUSION BIDDING CERTIFICATE

By submission of this certificate, each Proposer and each person signing on behalf of any Proposer certifies under penalty of perjury, that to the best of its knowledge and belief:

1. The cost or prices to be negotiated shall have been arrived at independently without collusion, consultation, communication or agreement, for any purpose of restricting competition as to any matter relating to such costs or prices with any other Proposer or with any competitor.
2. Unless otherwise required by law, the cost or prices to be negotiated have not been knowingly disclosed by the firm prior to the opening of price negotiations, directly or indirectly to any other Proposer or to any competitor; and,
3. No attempt has been made or will be made by the Proposer to induce any person, partnership or corporation to submit or not submit a Statement of Qualifications for the purpose of restricting competition.

Date: _____ By: _____

Proposer: _____

ATTACHMENT 3
CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS; PRIMARY COVERED TRANSACTIONS

The Proposer, _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or Contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with the commission of any of the offenses enumerated in paragraph (2) of this certification; and
4. Have not within a three-year period preceding this application/Proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, such participant shall attach an explanation to this Proposal.

THE CONSULTANT, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

Signature of Authorized Official

Witness

Title of Authorized Official

Date

**ATTACHMENT 4
INELIGIBILITY CERTIFICATE**

_____ certifies that neither it nor any of its consultants to be used in performing this Contract are listed on the list of Ineligible Contractors maintained by the Comptroller General of the United States.

Date: _____

Signature of Authorized Official: _____

Name/Title of Authorized Official: _____

ATTACHMENT 5
CERTIFICATION OF CONSULTANT DRUG-FREE WORKPLACE

I hereby certify that I am a principal and duly authorized agent of _____ whose address is _____, and it is also certified that:

1. The provisions of Section 50-24-1 through 50-24-6 of the Official Code of Georgia Annotated, relating to the “Drug-Free Workplace Act” have been complied in full; and
2. A drug-free workplace will be provided for the consultant’s employees during the performance of the Contract; and
3. Each subcontractor hired by the consultant shall be required to ensure that the subcontractor’s employees are provided a drug-free workplace. The Consultant shall secure from that subcontractor the following written certification: “As part of the subcontracting agreement with the Consultant, certifies to the Consultant that a drug-free workplace will be provided for the subcontractor’s employees during the performance of this Contract pursuant to paragraph (7) of subsection (b) of the Official Code of Georgia Annotated Section 50-24-3”; and
4. It is certified that the undersigned will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the Contract.

Date

Signature

**ATTACHMENT 6
COBB COUNTY CONFLICT OF INTEREST AND PROHIBITION AGAINST
CONTINGENT FEES CERTIFICATION**

_____ certifies that to the best of its knowledge there are no circumstances which shall cause a Conflict of Interest in performing services for Cobb County.

Date: _____

Signature of Authorized Agent

Name/Title of Authorized Agent

**ATTACHMENT 7
NON-SEGREGATED FACILITIES**

The Bidder certified that he does not, and will not, provide and maintain segregated facilities for his employees at his establishments and, further that he does not, and will not, permit his employees to perform their services at those locations, under his control, where segregated facilities are provided and maintained. Segregated facilities include, but are not necessarily limited to, drinking fountains, transportation, parking, entertainment, recreation, and housing facilities; waiting, rest, wash, dressing, and locker rooms, and time clock, work, storage, restaurant, and other eating areas which are set apart in fact, or by explicit directive, habit, local custom, or otherwise, on the basis of color, creed, national origin, and race. The Bidder agrees that, except where he has obtained identical certifications from proposed Contractors for specific time periods, he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000.00 which are not exempt from the provisions of the Equal Opportunity clause, and that he will retain such certifications in his files.

The Bidder agrees that a breach of this certification is in violations of the Equal Opportunity clause in this Contract. The penalty for making false statements is prescribed in 18 U.S.C. 1001.

Contractor

Signature

Name and Title of Signer

Date

**ATTACHMENT 8
CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contracts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C 1601, et seq.)]
3. The undersigned shall require that the language of this certification be included in the award documentations for subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. [Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Consultant, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. 3801, et seq., apply to this certification and disclosure, if any.

Signature of Consultant's Authorized Agent: _____

Name and Title of Consultants Authorized Agent: _____

Date: _____ Telephone #: _____

Firm of Company Name: _____

Address: _____

**ATTACHMENT 9
CONTRACTOR'S QUALIFICATION STATEMENT**

CONTRACTOR

- Name of Contractor: _____
- Address of Contractor: _____
- Primary Contact Person: _____
- Telephone Number: _____
- Fax Number: _____
- E-Mail Address: _____

Bank Reference

- Primary Bank: _____
- Account Officer: _____
- Telephone Number: _____
- Fax Number: _____
- E-Mail Address: _____

Background

- Has Contractor ever done business under a different name:
If yes, please provide names: _____
- Prior projects with Cobb County: _____

Similar Project Experience

- Name of Project: _____
- Address of Project: _____
- Contact Person with Owner: _____
- Phone Number: _____
- Fax Number: _____
- E-Mail Address: _____
- Name of Project: _____
- Address of Project: _____
- Contact Person with Owner: _____

Phone Number: _____

Fax Number: _____

E-Mail Address: _____

Bidder: _____

Signed: _____

Title: _____

Address: _____

License Number: _____

Bond Company: _____

Agent: _____

Type of Business: _____

(Corporation, Sole Proprietorship, Partnership, P.C.)

Individual Members of the Firm: _____

President of the Corporation: _____

Secretary of the Corporation: _____

Corporation is organized under the Laws of
The State of _____

Bid dated this _____ day of _____, 201__

ATTACHMENT 10
BID TRANSMITTAL LETTER

The undersigned, _____, hereby submits its Proposal to provide Construction Management Services for Cobb Community Transit pursuant to the Request for Proposals/Cobb Community Transit Construction Management Services (the "RFP"), delivered to the undersigned by Cobb County, Georgia.

The undersigned acknowledges and agrees that the Proposal submitted by the undersigned shall be binding upon the undersigned and that if Cobb County, Georgia awards the Contract to the undersigned, the Proposal made by the undersigned and delivered to Cobb County, Georgia herewith, together with such award, will constitute a legal, valid and binding Contract between the undersigned and Cobb County, Georgia. The Contract created pursuant to the previous sentence shall incorporate the terms and conditions of the RFP including, but not limited to, the RFP Scope of Work, Solicitation instructions and Conditions, the Contract Provisions and the Contractor's Cost Proposal, all as described in the RFP.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Proposal Transmittal Letter this _____ day of _____ 2010.

By

Title

Sworn to and subscribed before me the ____ day of _____, 2010.

Notary Public

My Commission Expires:

Date

ATTACHMENT 11
Compliance with Georgia Security and Immigration Compliance Act
(Effective 8/23/2010 - Supersedes All Previous 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 Employment Eligibility Verification (EEV) 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 (E-Verify) Program User ID Number

EEV Program Date of Authorization

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 Employment Eligibility Verification (EEV) 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 (E-Verify) Program User ID Number

EEV Program Date of Authorization

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:

<i>(Project Name/Description)</i>		

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:

Employer Name & Address:

Signature of Officer

Printed Name/Title

Date

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

Notary Public
Commission Expires: _____

This Agreement incorporates the following Federal Transit Administration required clauses with the same force and affect as if they given in the main text of the Agreement. It is understood and agreed that the Contractor may be obligated by and to Cobb County (hereinafter referred to as the County) for any specifications or documentation required of the County under these clauses.

“Contractors who have an office or place of business within Cobb County shall provide the County, on the proper form, proof of being licensed to do business within Cobb County. Contractors who do not have an office or place of business within Cobb County do not have to obtain a Cobb County business license, but must provide proof of being licensed to do business within the State of Georgia. Proof of proper business licenses shall also be provided by the prime Contractor for any and all subcontractors coming under the jurisdiction of this contract (see Subcontractors’ Notification List). Any out-of-state Contractor shall secure the proper permits and licenses required by the Georgia D.O.T. to perform work within Georgia.

Before any work proceeds along areas adjacent to a State Highway, the Contractor shall assure that a permit showing that the project is approved by the Georgia Department of Transportation is posted. The Contractor shall notify both the Engineer and the local Georgia Department of Transportation’s representative 48 hours before moving into a new area to begin construction.

The Contractor assumes and is liable specifically for all State and Federal so-called payroll or social security taxes and for all State and Federal sales and use taxes which may be in force at the time of the awarding of the Contract, and guarantees to hold the County harmless in every respect against same.

Before any excess material is transported off site and deposited at any location, the Contractor shall check and confirm that any and all required State, Federal, and local permits have been obtained. This will require a submittal through the Cobb County Department of Transportation. The Contractor shall provide verification to the Engineer of proper approvals and compliance with this Section. If the Contractor is found to be in violation of this Section by the County or other approving authority, the Contractor shall be liable and responsible for any and all costs associated with remedies for the Contractor to regain compliance with this Section. Written agreements with the property owners shall be provided indicated that permission has been granted to the Contractor to use the property as intended.”

Section 107.13 PROTECTION AND RESTORATION OF PROPERTY AND LANDSCAPE

Delete the 4th and 5th paragraphs of subparagraph A and substitute the following:

“The Contractor shall allow the Cobb County Archaeologist access to the construction site at all times in a manner so as not to interfere with the prosecution of the work under this contract. The Contractor is further required to notify the Engineer of any historical, archaeological and/or other items of value and to place these items under the custody of the Engineer. In the event that the Contractor uncovers any item that is described above, the Contractor shall not excavate these items but shall notify the Engineer of these finds. The Engineer will then immediately notify the Cobb County Archaeologist who will then have total and free access to this find for 48 hours. The County Archaeologist will make every effort so as not to disrupt or interfere with the prosecution of the work under this Contract. In the event delays are unavoidable to the work under the Contract, the Contractor shall have the right to request for a time extension only for the delay caused by the Archaeologist after the initial 48-hour period.”

BID FORM

TO: COBB COUNTY BOARD OF COMMISSIONERS

THE UNDERSIGNED, having examined the project documents titled:

**BUILDING DEMOLITION
505 FAIRGROUND STREET
431 COMMERCE PARK DRIVE
MARIETTA, GA 30060
SEALED BID #10-5525**

AND having visited the work site(s) and examined the conditions affecting the Work, HEREBY proposes and agrees to furnish all labor and materials, equipment, and appliances and to perform all operations necessary TO COMPLETE ALL WORK FOR ALL SERVICES AS REQUIRED BY THE PROJECT MANUAL, INCLUDING ANY ADDENDA, FOR THE SUMS STIPULATED BELOW.

_____ DOLLARS (\$ _____)

The undersigned understands and agrees also to comply with and be bound by the entire contents of the Request for Bid including all Addenda.

Acknowledged: _____

The undersigned acknowledges receipt of Addenda numbers:

ADDENDUM NO.	_____	Acknowledged:	_____
ADDENDUM NO.	_____	Acknowledged:	_____
ADDENDUM NO.	_____	Acknowledged:	_____
ADDENDUM NO.	_____	Acknowledged:	_____
ADDENDUM NO.	_____	Acknowledged:	_____
ADDENDUM NO.	_____	Acknowledged:	_____

SAMPLE CONTRACT

NATIONAL CONSTRUCTION LAW CENTER, INC.

STANDARD FIXED PRICE AGREEMENT BETWEEN OWNER AND CONTRACTOR

NCLC DOCUMENT I
1992 EDITION

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

STANDARD FIXED PRICE AGREEMENT BETWEEN OWNER AND CONTRACTOR

This Agreement is made by and between _____
,(hereinafter referred to as the "Owner") and _____
(hereinafter referred to as the "Contractor") under seal for construction of _____
(hereinafter referred to as the "Project"), the Owner and the contractor hereby agreeing as follows:

(This page has been left blank intentionally)

ARTICLE I

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 THE CONTRACT

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

1.2 THE CONTRACT DOCUMENTS

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

(Here list any additional Contract Documents such as addenda, special conditions, supplemental conditions. etc.)

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

1.3 ENTIRE AGREEMENT

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

1.4 NO PRIVACY WITH OTHERS

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

1.5 INTENT AND INTERPRETATION

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

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

1.5.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

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

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

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

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

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

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

1.6 OWNERSHIP OF CONTRACT DOCUMENTS

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

ARTICLE II

THE WORK

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

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

ARTICLE III

CONTRACT TIME

3.1 TIME AND LIQUIDATED DAMAGES

3.1.1 The Contractor shall commence the Work _____

(Here insert any applicable date or Notice to Proceed provisions.)

and shall achieve Substantial Completion of the Work no later than _____.

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

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

3.2 SUBSTANTIAL COMPLETION

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

3.3 TIME IS OF THE ESSENCE

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

ARTICLE IV

CONTRACT PRICE

4.1 THE CONTRACT PRICE

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

ARTICLE V

PAYMENT OF THE CONTRACT PRICE

5.1 SCHEDULE OF VALUES

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

5.2 PAYMENT PROCEDURE

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

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

5.2.3 On or before the _____ day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the _____ day of the month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment properly stored onsite (or elsewhere if approved in advance in writing by the Owner) for subsequent incorporation in the Work, less the total amount of previous payments received from the Owner. Payment for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Architect shall determine and certify to the Owner the amount properly owing to the Contractor. The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect's receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow.

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

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

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

5.3 WITHHELD PAYMENT

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

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or a third party to whom the Owner is, or may be, liable.

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

5.4 UNEXCUSED FAILURE TO PAY

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

5.5 SUBSTANTIAL COMPLETION

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

5.6 COMPLETION AND FINAL PAYMENT

5.6.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the

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

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

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

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

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

ARTICLE VI

THE OWNER

6.1 INFORMATION, SERVICES AND THINGS REQUIRED FROM OWNER

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

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

6.1.3 The Owner shall furnish the Contractor, free of charge, _____ copies of the Contract Documents

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

6.2 RIGHT TO STOP WORK

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

6.3 OWNER'S RIGHT TO PERFORM WORK

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

ARTICLE VII

THE CONTRACTOR

7.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Architect, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

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

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

7.4 WARRANTY

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

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

7.6 SUPERVISION

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

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

NAME	FUNCTION
_____	_____
_____	_____
_____	_____
_____	_____

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

7.7 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner and the Architect for their information, the Contractor's schedule for completing the Work. The Contractor's schedule shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect. Failure by the Contractor to strictly comply with the provisions of this Paragraph 7.7 shall constitute a material breach of this Contract.

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

7.9 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

7.10 CLEANING THE SITE AND THE PROJECT

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

7.11 ACCESS TO WORK

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

7.12 INDEMNITY

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

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

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 THE ARCHITECT

8.1.1 The Architect for this project is _____

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

8.2 ARCHITECT'S ADMINISTRATION

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

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

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

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

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

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

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

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

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

8.3 CLAIMS BY THE CONTRACTOR

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

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

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

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

8.3.4.1 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction.

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

the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.4 FIELD ORDERS

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

ARTICLE IX

SUBCONTRACTORS

9.1 DEFINITION

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

9.2 AWARD OF SUBCONTRACTS

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

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

ARTICLE X

CHANGES IN THE WORK

10.1 CHANGES PERMITTED 10.1

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

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

10.2 CHANGE ORDER DEFINED

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

10.3 CHANCES IN THE CONTRACT PRICE

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

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Architect on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Architect requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In no event shall any expenditure or savings associated with the Contractor's home office or other nonjobsite overhead expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Architect's Certificate for Payment.

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

10.4 MINOR CHANGES

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

10.5 EFFECT OF EXECUTED CHANGE ORDER

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

10.6 NOTICE TO SURETY; CONSENT

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

ARTICLE XI

UNCOVERING AND CORRECTING WORK

11.1 UNCOVERING WORK

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

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

11.2 CORRECTING WORK

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

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

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

11.3 OWNER MAY ACCEPT DEFECTIVE OR NONCONFORMING WORK

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

ARTICLE XII

CONTRACT TERMINATION

12.1 TERMINATION BY THE CONTRACTOR

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

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

12.2 TERMINATION BY THE OWNER

12.2.1 FOR CONVENIENCE

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

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

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

- 12.2.1.4 (a) The Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.
- (b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.
 - (c) Absent agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:
 - (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
 - (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

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

12.2.2 ***FOR CAUSE***

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

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

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

ARTICLE XIII

INSURANCE

(Here Insert applicable insurance requirements.)

ARTICLE XIV

MISCELLANEOUS

13.1 GOVERNING LAW

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

13.2 SUCCESSORS AND ASSIGNS

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

13.3 SURETY BONDS

13.3.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner. PERFORMANCE BOND: SUBSTITUTION OF LETTER OF CREDIT MAY BE ACCEPTED FOR CONTRACTS UP TO \$300,000. PAYMENT BOND: SUBSTITUTION OF CASHIERS CHECK, CERTIFIED CHECK, OR CASH MAY BE ACCEPTED AND WILL BE RETAINED BY THE OWNER FOR NINETY (90) CALENDAR DAYS AFTER FINAL COMPLETION IS CERTIFIED.

OWNER

CONTRACTOR

SEAL
(TYPED NAME)

SEAL
(TYPED NAME)

By: _____
(SIGNATURE)

By: _____
(SIGNATURE)

(PRINTED NAME, TITLE AND ADDRESS)

(PRINTED NAME, TITLE, AND ADDRESS)

(DATE OF EXECUTION)

(DATE OF EXECUTION)



BUILDING B
APPROX
22,000 SF

431

24' WIDE ASPHALT DRIVE
APPROX LOCATION

680

24' GATE

24' GATE

463

FairgroundSt

QUIKTRIP CURRENTLY
UNDER CONSTRUCTION

BUILDING A
APPROX
11,000 SF

BUILDING B
APPROX
22,000 SF

PROPERTY
BOUNDARY

Commerce Park Dr

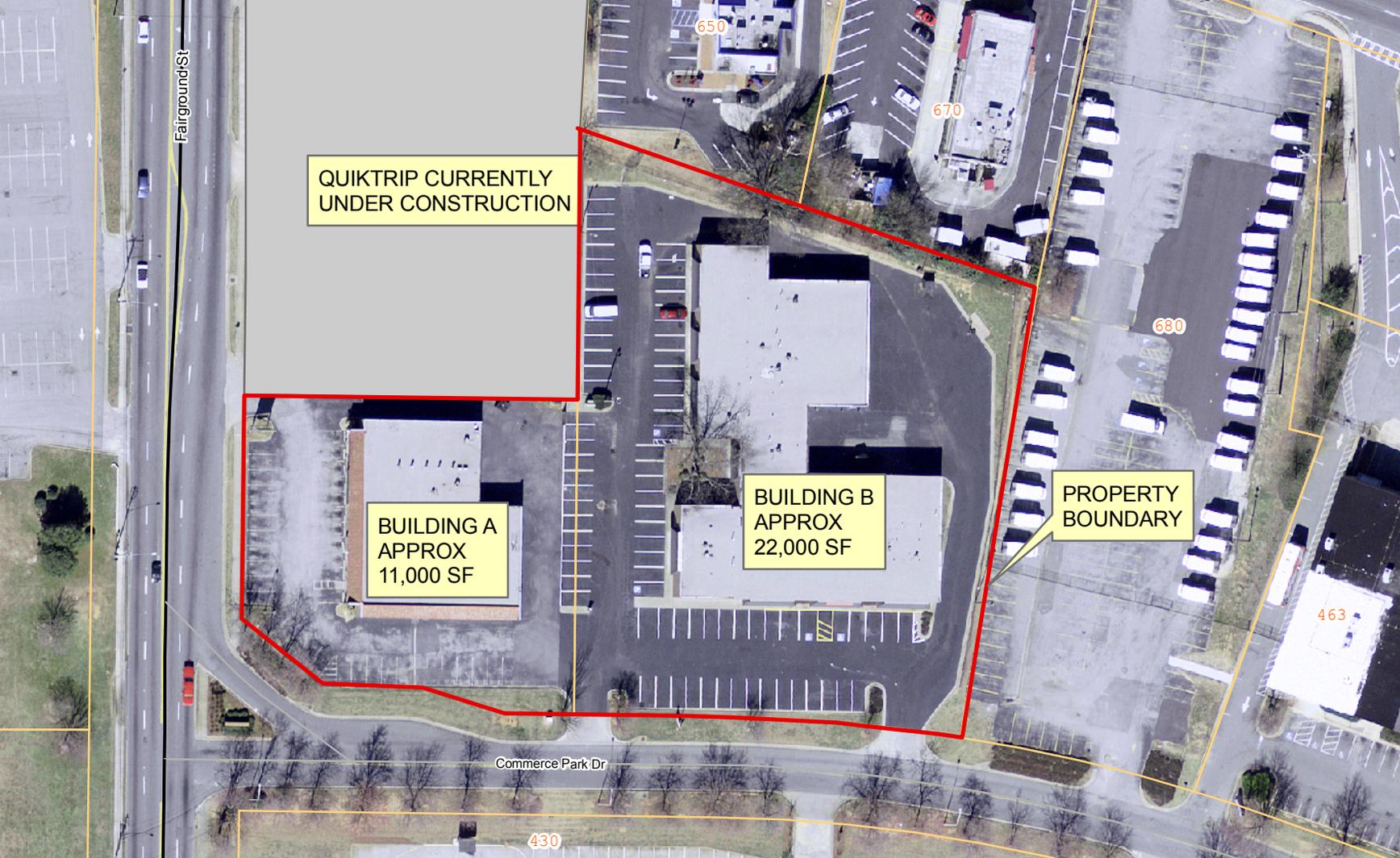
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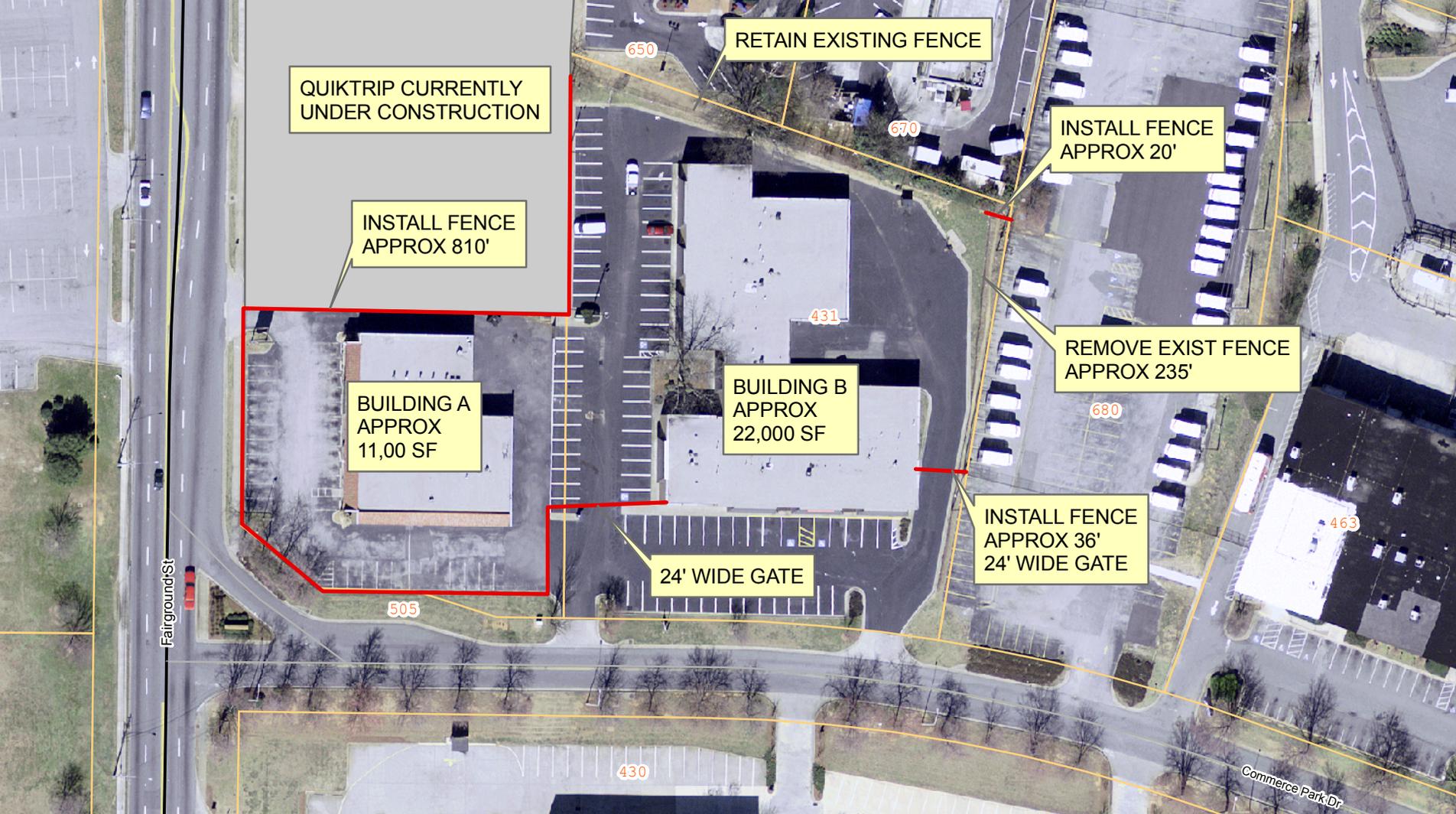
670

680

463

430





QUIKTRIP CURRENTLY UNDER CONSTRUCTION

INSTALL FENCE APPROX 810'

BUILDING A APPROX 11,00 SF

BUILDING B APPROX 22,000 SF

24' WIDE GATE

RETAIN EXISTING FENCE

INSTALL FENCE APPROX 20'

REMOVE EXIST FENCE APPROX 235'

INSTALL FENCE APPROX 36'
24' WIDE GATE

Fairground St

Commerce Park Dr