



DeKalb County
G E O R G I A



**DeKalb County
Department of Purchasing and Contracting**

NOVEMBER 14, 2016

REQUEST FOR PROPOSALS (RFP) NO. 16-500413

FOR

**LOWER CROOKED CREEK PUMP STATION
AND
ROAD RESTORATION**

Procurement Agent: DeValory Donahue
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Mandatory Pre-Proposal Conference and Site Visit: November 30, 2016
Deadline for Receipt of Questions: December 9, 2016
Deadline for Submission of Proposals: January 10, 2017

THE RESPONSIBILITY FOR SUBMITTING A RESPONSE TO THIS RFP TO THE DEPARTMENT OF PURCHASING AND CONTRACTING OF DEKALB COUNTY GOVERNMENT ON OR BEFORE THE STATED DATE AND TIME WILL BE SOLELY AND STRICTLY THE RESPONSIBILITY OF THE PROPOSER.

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I. INTRODUCTION

The DeKalb County Department of Watershed Management (the County) is soliciting proposals from interested firms to design, permit, and construct the **Lower Crooked Creek Pump Station and Road Restoration**. The project requires the design of a minimum twenty (20) ton capacity overhead crane system in order to remove the existing pumps and heavy service equipment at The Lower Crooked Creek Pump Station No. 1 facility. The **Lower Crooked Creek Pump Station and Road Restoration** design shall be completed by August 31, 2017 and construction shall be substantially completed by October 31, 2017.

This RFP is subject to revision after the date of issuance only via written addenda. Any such addenda will be posted on the County's website (not distributed directly to potential Respondents). It is each Respondent's responsibility to obtain all RFP addenda prior to submitting its PROPOSAL.

- A. The Required Documents Checklist includes a list of attachments that **shall** be completed and returned with Proposer's technical proposal. **See page 24 of the solicitation.**
- B. The services shall commence within ten (10) calendar days after acknowledgement of receipt of written notice to proceed.
- C. **The County shall award to one (1) respondent.**

II. STATEMENT OF WORK

The Design-Builder shall be responsible for the design of all facilities in accordance with the design standards and requirements set forth in the Project Technical Requirements (Attachment D). The Design-Build Firm shall prepare all construction plans and specifications required to obtain all permits and governmental approvals, and construct all facilities to ensure that the Project is timely built to specifications. The construction plans and specifications shall adhere to the design standards and requirements set forth in the Project Technical Requirements (Attachment D), DeKalb County Department of Watershed Management Design and Construction Standards, Georgia Environmental Protection Division's Minimum Standards for Public Water Systems, and all other local, State, and Federal requirements of Governmental Authority.

DeKalb County Department of Watershed Management Design and Construction Standards can be obtained at DeKalb County's Department of Watershed Management, 1580 Roadhaven Drive, Stone Mountain, GA 30083, telephone number (770) 621-7200.

The Design-Builder shall prepare drawings, specifications, permit applications and supporting documentation to obtain all permits and approvals necessary to construct the Project. The Design-Build firm shall provide construction services to build and complete all Project Facilities as required by this RFP and the Design-Build Contract, including all labor, materials and equipment. Unless otherwise specified in the Design-Build Contract, the Design-Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for completion of the Project.

It is anticipated that the Progressive Design-Build Contract shall be executed on or about March 31, 2017. The completion schedules are shown in Part 6, Table III.

The Design-Builder shall provide services for design and construction.

Services generally consist of preliminary engineering and 100% design development. The proposed schedule includes the Project's design (developed to the County's required level of completion), Project schedule, and supporting documentation. Services also generally encompass construction and performance testing. Permitting activities are included in the scope of this RFP.

The final design is to be prepared as defined in Attachment C (Scope of Design-Builder Services). Design and construction is to be performed concurrently on a parallel path as design steps are completed by the design-builder and approved by the County. Construct the project

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and conduct post-construction tasks, including performance testing, startup commissioning, and operator training and support.

A. SCOPE OF WORK- OVERHEAD CRANE SYSTEM

The Proposer shall:

1. Develop the project execution plan, including the project schedule.
2. Design a twenty (20) ton crane lift system at the north end of the pump house to remove and service grinder pumps as required.
3. Provide a Lift system that has the ability to lift a one hundred thirty-six (136) inch high grinder pump with a seventy-two (72) inch chain and clear the thirty-two (32) inch pump chamber doors by ten (10) inches. The total minimum clearance is twenty-one (21) vertical feet.
4. Provide a rail system that is not supported on the existing structure and will need to span forty-four (44') linear feet unsupported.
5. Provide a rail system that has a minimum of ten (10) linear feet west of the pump station to enable easy pump removal from the site.
6. Provide a rail system that has grounding to accommodate lightning strikes.

B. SCOPE OF WORK-ACCESS ROAD

The Proposer shall:

1. Upgrade the existing six hundred (600) linear foot access road to a minimum of fifteen (15) feet wide.
2. Replace the existing twenty-four (24) inch concrete culvert with a new reinforced concrete pipe culvert.
3. Grade the low point in the access road to prevent the "pooling" of water in the road way.
4. Design the access road per wet land standards as portions of the road lie in a marsh area.
5. Design the access road in accordance with American Association of State Highway and Transportation Officials (AASHTO) Standards to support heavy truck loading.

C. SCOPE OF WORK- GENERAL

The Proposer shall:

- Develop the final engineering design: submit a final design review package for review and approval by the County.
- Prepare a project cost model and provide detailed cost estimates as the design and design

alternatives are advanced.

- Perform engineering studies (such as additional subsurface geotechnical investigations and site surveys) to support design and cost estimating (as necessary).
- Identify Project permitting requirements and initiate the necessary permitting activities.
- Procure equipment and subcontractors.
- Secure all necessary permits and bonds.
- Construct the Project.
- Conduct startup and performance testing.
- Provide operator training.
- Provide warranty coverage and contact information.

III. PROPOSAL FORMAT

Proposers are required to submit their proposals in the following format:

A. Cost Proposal

1. The cost proposal shall be submitted in a separate, sealed envelope with the Proposer's name and "Cost Proposal for Request for Proposals No. **16-500413-Lower Crooked Creek Pump Station and Road Restoration**" on the outside of the envelope.
2. The sealed envelope containing the cost proposal is requested to be included in the sealed package containing the technical proposal.
3. **DO NOT INCLUDE FEES OR COSTS IN ANY AREA OUTSIDE OF THIS COST PROPOSAL.** Including fees in any area outside of the Cost Proposal in its separate, sealed envelope may result in Proposer's proposal being deemed non-responsive.
4. Proposers are required to submit their costs on Attachment A, *Cost Proposal Form*. **Proposer shall not alter the cost proposal form.**
5. The respondent with the lowest total cost will receive the full points allocated for cost in this RFP. For respondents with second, third, fourth, etc., their total costs will be divided into the lowest cost and multiplied by the full points allocated for cost in this RFP.

B. Technical Proposal**DO NOT INCLUDE ANY COSTS OF ANY KIND IN THE TECHNICAL PROPOSAL.**

1. Technical Proposals shall be submitted in a sealed envelope(s) or box(es) with the Proposer's name and "Request for Proposals No. 16-500413 for Lower Crooked Creek Pump Station and Road Restoration" on the outside of each envelope or box.
2. Each Proposer assumes full responsibility for timely delivery of its PROPOSAL at the required location. Any PROPOSAL received after the submittal deadline shall be deemed nonresponsive and returned. The delivered packaging containing the PROPOSAL documents shall note "PROPOSAL Enclosed" on its face.

The Cost Proposal of the Project shall be submitted in a separate sealed envelope as part of the Proposal submittal and should be clearly marked with the Proposal number, company name and titled "Cost Proposal." One (1) original Cost Proposal should be submitted with the original unbound proposal and seven (7) separate, sealed Technical Proposals should be submitted with the seven bound copies. All copies of the Technical Proposal shall be identical.

The PROPOSAL shall not exceed one hundred and twenty (120) total pages (most or all 8½ x 11 inch with 1-inch or greater margins), excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. A maximum of forty (40) of the total pages may be 11 x 17-inch tri-fold format. Eleven-point font or larger shall be used in PROPOSAL Parts 1–6.

3. Proposer shall complete Attachment B, *Proposal Cover Sheet*, and include this as the first page of the technical proposal.
4. The content requirements set forth in this RFP represent the minimum content requirements for the PROPOSAL. It is the Proposer's responsibility to include information in its PROPOSAL to present all relevant qualifications and other materials. The PROPOSAL, however, should not contain standard marketing or other general materials. It is the Proposer's responsibility to modify such materials so that only directly relevant information is included in the PROPOSAL.
5. The PROPOSAL shall include the following information in the order listed:
 - Transmittal Letter
 - Part 1 – Executive Summary
 - Part 2 – Design-Builder Profile
 - Part 3 – Project Team
 - Part 4 – Experience
 - Part 5 – Project Approach
 - Part 6 – Project Schedule

- Part 7 – Fee and Rate Proposal
- Appendix A – Forms for Affirmation of Compliance
- Appendix B – Resumes
- Appendix C – Financial Statements
- Appendix D – Draft Design-Build Agreement Comments (not required)
- Appendix E – Completed Addenda Acknowledgement Form
- Completed Project Fee and Rate Proposal Form (submit in separate envelope)

Transmittal Letter

Proposers shall submit a transmittal letter (maximum two pages) on the Proposer's letterhead. It shall be signed by a representative of the Proposer who is authorized to sign such material and to commit the Proposer to the obligations contained in the PROPOSAL. The transmittal letter shall include the name, address, phone number and email address for the Proposer's Contact, and shall specify who would be the Design-Builder's signatory to any contract documents executed with the County. Such letter should include other information as follows:

1. Firm Name
2. Address
3. Contact Name
4. Former Firm Names, Joint Venture Information, Out of State Offices, if applicable.
5. Statement of which office shall handle the project, if multiple offices.
6. A clear and concise response as to why the County should select your firm for this project.
7. List any litigations, arbitrations, or mediations in which the firm has been involved in the past **five (5)** years involving claims for more than \$50,000 made by an owner against the firm or by the firm against the County, and indicate the disposition of each claim, the name of the owner, and the nature of the claim.
8. Statement that the proposal shall remain in effect for and not be withdrawn for **one hundred twenty (120) days** after the date due to DeKalb County.
9. Statement acknowledging and receipt of each and every Addendum that the County may issue to the RFP.
10. Statement that, if selected, Proposer shall negotiate in good faith with the County.

Note: Failure to meet this requirement shall be considered “non - responsive”, and the entire submittal shall be rejected.

Part 1 – Executive Summary

The Executive Summary shall be a maximum of **four (4) pages**, and shall include a concise overview of the key elements of the PROPOSAL and shall summarize and refer to information in the PROPOSAL concerning satisfaction of the Minimum Qualification Requirements. The Executive Summary shall not be used to convey additional information not found elsewhere in the PROPOSAL.

Part 2 – Design-Builder Profile

A detailed and complete description of the company proposed as the Design-Builder shall be provided in Part 2 of the PROPOSAL. (The term “company” can refer to either a single entity or a joint venture.) Information concerning Key Personnel and other firms that may be included on the Project Team, such as sub consultants and subcontractors, should be provided in Part 3 of the PROPOSAL. The Design-Builder Profile shall include the following information:

- **General**
Provide general information about the Design-Builder, such as lines of business and service offerings, locations of home office, office that this Project shall be managed from and other offices, number of employees (professional and non-professional), years in business, and evidence of required licenses.
- **Legal structure**
Identify whether the Design-Builder is organized as a corporation, limited liability company (LLC), general partnership, joint venture, limited partnership, or other form of legal entity. As applicable, identify the owner’s of the Design-Builder (*e.g.*, shareholders, members, partners, etc.) who hold an interest of ten percent or more.
- **Project office location**
Identify where the Design-Builder intends to maintain its project office(s) and where the majority of the design work shall be performed.
- **Financial condition**
In the PROPOSAL Appendix C (Financial Statements), provide audited financial statements for the Design-Builder for the past **three (3) years** and quarterly financial statements, certified by the Chief Financial Officer, for the current year. If the Design-Builder is a joint venture, LLC, or partnership, such financial statements shall be provided for each partner or member.
- **Payment and performance bonds**
A letter from the Design-Builder’s surety shall be provided to verify the availability of a

design-build bond. The Design-Build Contractor shall also provide as additional security for delivering the Project under the Design-Build Agreement, a Bond for Faithful Performance (Performance Bond) and a Payment Bond:

- (1) issued by a surety company having received a rating of at least "A" in the latest revision of the A.M. Best Company's Insurance Report authorized to do business in the State of Georgia;
- (2) listed in the United States Treasury Departments Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties of Federal Bonds and as Acceptable Reinsurance Companies";
- (3) holding a valid certificate of authority to transact surety business in the State of Georgia.

The Performance Bond and the Payment Bond are each required to be in an amount equal to the value of non-design services for the Project, inclusive of construction, permitting, acceptance testing, and preconstruction services.

- **Insurance**

The Contractor shall, without expense to the County, provide certificates of insurance, and copies of signed insurance policies including declarations pages from companies that are authorized to engage in the insurance business in the state of Georgia and are otherwise acceptable to the County Finance Director or his/her designee, attached hereto as Attachment H. Such insurance shall be placed with admitted insurers that maintain an A.M. Best's rating of not less than A (Excellent) with a Financial Size Category of VII or better with coverage forms acceptable to Contractor. The insurance described below shall be maintained uninterrupted for the duration of the project, including any warranty periods, and shall protect Contractor, and others as required by contract, for liabilities in connection with work performed by or on behalf of Contractor, its agents, representatives, employees or Contractors.

- (1) *Workers Compensation Insurance.* Statutory workers compensation insurance is to be provided in compliance with the requirements of Georgia law with limits not less than the following:

Employer's liability insurance by accident, each accident	\$1,000,000
Employer's liability insurance by disease, policy limit	\$1,000,000
Employer's liability insurance by disease, each employee	\$1,000,000

- (2) *Commercial General Liability Insurance.* Commercial general liability insurance is to be provided with limits not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage liability
\$1,000,000 personal and advertising injury liability
\$2,000,000 general aggregate
\$2,000,000 products-completed operations aggregate

\$ 100,000 damage to rented premises (each occurrence)
 \$ 5,000 medical expense (any one person)

- (3) *Umbrella or Excess Insurance.* Umbrella or excess insurance is to be provided with General Liability, Auto Liability and Employers Liability scheduled as underlying policies with limits not less than the following:

\$5,000,000 per occurrence
 \$5,000,000 aggregate

- (4) *Comprehensive Automobile Liability Insurance.* Comprehensive automobile liability insurance with form coverage is to be provided for all owned, non-owned and hired vehicles with combined single limit of \$1,000,000. Automobile liability insurance shall be written on ISO Business Auto Coverage Form CA 0001 (1990 edition or later), or a substitute form providing equivalent coverage, and shall cover liability for bodily injury and property damage arising from the use or operation of any automobile, including those owned, hired or otherwise operated or used by or on behalf of Contractor. The policy must include Broadened Pollution Liability Endorsement CA9948 12 93.

- (5) *Builder's Risk Insurance Coverage (If Applicable).* DeKalb County shall procure and maintain Builders Risk Insurance on the entire work which provides "All-risk" form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism, malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than caused by flood), and such other perils or causes of loss as may be specifically required by Supplementary Conditions) until Final Completion and Acceptance of the Project. Such policy of insurance shall contain at least the following sub-limits of insurance and deductibles:

Sub-limits:

Property in Transit	\$1,000,000
Property in Offsite Storage	\$1,000,000
Plans & Blueprints	\$25,000
Debris Removal	25% of Insured Physical Loss
Delay in Completion / Soft Cost	TBD
Ordinance of Law (Increased Cost of Construction)	\$1,000,000
Flood and Earthquake	TBD – Full Contract Value
Deductibles:	
Flood and Earthquake	\$25,000
Water Damage other than Flood	\$100,000
All other Perils	\$10,000

- A. The County, its elected officials, officers, employees and agents, hereinafter referred to in this article and in the article entitled "Certificates of Insurance" as "the County and its officers" are to be named as additional insured on all policies of insurance except worker's compensation insurance with no cross suits exclusion. The County and its officers shall be included as additional insureds under commercial general liability and commercial umbrella insurance, for liabilities arising out of both the ongoing and completed operations of Contractor. Such additional insured coverage shall be endorsed to Contractor's policy by attachment of ISO Additional Insured Endorsement forms CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (products-completed operations), or form(s) providing equivalent coverage.
- B. All coverages required of the Contractor will be primary over any insurance or self-insurance program carried by the County.
- C. If the Contractor is a joint venture involving two (2) or more entities, then each independent entity will satisfy the limits and coverages specified here or the joint venture will be a named insured under each respective policy specified.
- D. In addition to procuring and maintaining commercial general liability insurance, automobile liability and commercial umbrella insurance, for the Contract Term, Contractor shall continue to procure and maintain the products-completed operations liability insurance coverage and commercial umbrella insurance after the Work is substantially complete for the entire Contract Term or for the applicable five-year statutory limitation, whichever is greater. For such period of time, all terms and conditions of such coverage shall remain unchanged, including the limits specified herein and the requirement to provide the County with coverage as an additional insured.
- E. Contractor agrees to waive all rights of subrogation and other rights of recovery against the County and its officers and shall cause each Subcontractor to waive all rights of subrogation for all coverage.
- F. Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided will not be construed as a waiver of the Contractor's obligation to maintain such coverage.
- G. Contractor understands and agrees that the purchase of insurance in no way limits the liability of the Contractor.

Certificates of Insurance

- A. Certificates shall state that the policy or policies shall not expire, be cancelled or altered without at least sixty (60) days prior written notice to the County. Policies and Certificates of Insurance listing the County and its officers as additional insureds (except for workers' compensation insurance) shall conform to all terms and conditions (including coverage of the indemnification and hold harmless agreement) contained in this Contract.

- B. The Contractor agrees to name the County and its officers as additional insured on the commercial general liability insurance, using the ISO Additional Insured Endorsement forms CG20101001 (ongoing operations) and CG20371001 (products-completed operations) forms, or form(s) providing equivalent coverage.
- C. Certificates of Insurance must contain the policy number, policy limits, and policy expiration date of all policies issued in accordance with this Contract; the location and operations to which the insurance applies. Certificates must be provided annually for the duration of the project. If applicable, a specific statement must be included that blasting coverage is included to the extent such risk is present; that Contractor's protective coverage applies to any Subcontractor's operations; and Contractor's contractual liability insurance coverage applies to any Subcontractor.
- D. This insurance for the County as the additional insured shall be as broad as the coverage provided for the named-insured Contractor. It shall apply as primary insurance before any other insurance or self-insurance, including any deductible, non-contributory, and waiver of subrogation provided to the County as the additional insured.
- E. The Contractor shall be wholly responsible for securing certificates of insurance coverage as set forth above from all Subcontractors who are engaged in the Work.
- F. If the County shall so request, the Contractor will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.
- G. Contractor shall be responsible and have the financial wherewithal to cover any deductibles or retentions included on the certificate of insurance.
- H. Such certificates should be sent to the County and must identify the "Certificate Holder" as follows:

DeKalb County, Georgia
 Director of Purchasing & Contracting
 The Maloof Center
 1300 Commerce Drive, 2nd Floor
 Decatur, Georgia 30030

- I. Copies of Required Insurance policies with Declarations Page(s) shall be attached hereto as Attachment H.

The PROPOSAL shall provide the following additional information pertaining to factors or events that have the potential to adversely impact the Design-Builder's ability to perform its contractual commitments.

- **Material adverse changes in financial position.** Describe any material historical, existing or anticipated changes in financial position, including mergers, acquisitions, takeovers, joint ventures, bankruptcies, divestitures, or any material changes in the mode

of conducting business.

- **Legal proceedings and judgments.** List and briefly describe any pending or past (within **ten (10) years**) legal proceedings and judgments, or any contingent liability that could adversely affect the financial position or ability to perform contractual commitments to the County. If no such proceedings or judgments are listed, provide a sworn statement to that effect from the general counsel.
- **Completion of contracts.** If applicable, describe circumstances where the Design-Builder failed to complete any contract, or where a contract been terminated due to alleged poor performance or default within the past **ten (10) years**.
- **Violation of laws.** If applicable, describe circumstances where the Design-Builder been convicted of any criminal conduct or been found in violation of any Federal, State, or local statute, regulation, or court order concerning antitrust, public contracting, employment discrimination or prevailing wages within the past **ten (10) years**.
- **Debarred from bidding.** If applicable, describe the circumstances where the Design-Builder has been debarred within the past **ten (10) years**, or where it under consideration for debarment, on public contracts by the Federal government or by any State.

If any of the above are answered in a manner that indicates that any of these unfavorable factors or events are present, it is the Proposer's responsibility to: (1) describe in detail the unfavorable factor or event; and (2) provide sufficient information to demonstrate that the unfavorable factor or event shall not adversely impact the Design-Builder's ability to perform its contractual commitments.

The Proposer shall notify the County of any changes subsequent to submission of the PROPOSAL and before the selection process is completed (and, in the case of the selected Proposer, before execution of the Design-Build Agreement).

Part 3 – Project Team

The composition, organization and management of the Project Team shall be described in two separate subsections.

Design-Builder/other firms:

- Identify any other firms (such as subcontractors and sub consultants) included on the Project Team along with the Design-Builder and describe the scope of the Design-Builder's and each firm's services and responsibilities during Phase One and Phase Two

of the Project. The firm(s) serving as the Designer and the Builder shall be clearly identified.

- Provide Phase One and Phase Two organizational charts showing the reporting relationships and responsibilities of the Design-Builder and any other firms, and describe the Design-Builder's approach to the management of such firms.

Key Personnel

- Identify all Key Personnel (and their firm affiliations) on the Project Team and describe their specific responsibilities during Phase One and Phase Two of the Project. Minimum Key Personnel identified shall include Project Manager, Design Manager, and Construction Manager. Preference will be given to Key Personnel with similar design-build project experience.
- Provide Phase One and Phase Two organizational charts showing the reporting relationships and responsibilities of all Key Personnel (along with their firm affiliations) and describe the Design-Builder's approach to the management of such Key Personnel.
- Indicate the commitment of all Key Personnel in terms of an estimated percentage of time during each phase of the Project.
- Provide resumes for all Key Personnel in PROPOSAL Appendix B (Resumes). Resumes shall be limited to two pages per individual and include:
 - Academic and professional qualifications
 - Professional registration and Licenses (as applicable)
 - Experience as it relates to the Project and to the individual's specified role on the Project
- Requirements of Key Personnel

Any change in the firms or Key Personnel included in the PROPOSAL would require County approval.

Part 4 – Experience

The PROPOSAL shall describe the performance history and experience of the Project Team on similar projects and provide information concerning safety. Preference will be given to similar design-build project experience.

Reference Projects

The Proposer shall submit descriptions of reference projects to demonstrate relevant experience. Each project description shall contain at least the following information:

- Name of County

- County reference and contact information
- Role of Proposer
- Contract Value
- Change Order Value (if any)
- Year started and year completed, as compared to planned year started and planned year completed
- Description of the project showing relevance to this Project
- Firms and Key Personnel that participated in project and are included in this PROPOSAL, along with a clear description of the project role and responsibility of each

In addition, a one-page summary table should be provided to cross-reference the Project Team (firms and Key Personnel) with participation in the reference projects.

Safety

The Proposer shall provide a summary description of the Design-Builder's corporate safety program and include safety statistics or records indicating categories of accidents and their incidence or frequency rates for the past **5 (five) years**. The following safety records shall be provided for the Design-Builder for the current and past **5 (five) years**:

- The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau. (The EMR is also referred to as the experience modification rating, experience modification factor, experience modifier or X-mod.)
- The days-away-from-work injury incidence rate. A day-away-from-work injury is an injury that prevents an employee from returning to his or her next regularly scheduled shift. The incidence rate is calculated by multiplying the number of days-away-from-work injuries for the particular year by 200,000 and then dividing the product by the person-hours worked for that year.

Part 5 – Project Approach

Provide a Project specific description of how the firm proposes to approach this Project. Include sufficient discussion of proposed value engineering, methodologies, techniques, and procedures for each work item. Provide a breakdown and description of tasks assigned to Project team members. Include obstacles and methods for overcoming these obstacles.

The Technical Approach shall provide detailed descriptions and initial drawings (if an alternate is being proposed) of all work proposed, as required by this RFP. The level of effort should be sufficient to convey the concepts of the Project components. Because of the sensitive nature of the Project, it is required that **thirty percent (30%)** of the work performed under this contract for the Project be self-performed by the prime company. The following sub-sections describe in

more detail the intent of this section.

Design/Build Management Plan

The Design/ Build (D/B) Firm shall provide an overall plan on how it will manage the entire implementation of the Project. The Management Plan should address how the D/B Firm will interact with, resolve issues, and coordinate the work with the many stakeholders involved in the Project. At a minimum, the Management Plan should include the following:

Provide a conceptual description (maximum six pages) of the Design-Builder's approach for managing and performing its services during the Project. The following items should be addressed:

- Discuss how a collaborative relationship with the County would be established during design development, scheduling and cost estimating.
- Discuss how the design and construction processes will interface (including how constructability issues will be addressed).
- Identify the work components critical to the Project's success and how these components would be achieved.
- Describe the process for developing the cost proposals for any additions or deductions that may occur during the design (to be accommodated with the County's contingency line item in the cost proposal).
- Discuss how key risk factors will be identified and mitigated.
- Project specific safety plan.
- Project specific quality plan.
- Schedule.

In addition, the Project Approach shall include brief descriptions of the Design-Builder's approach to the following:

- Communications (with the County and other stakeholders, such as regulatory agencies)
- Quality management
- Risk management (including key risk factors)
- Adherence to the GMP and schedule.

Design-Build Plan

The D/B Firm shall clearly describe the specifics of the Project. All major components of the Project shall be described, including the key process steps and other support steps, buildings and areas. The following subsections outline the technical elements that shall be included in order to demonstrate compliance with the performance guarantees and minimum design requirements set

forth in Attachment D– Project Technical Requirements.

The plan should include at a minimum the following:

- Initial Drawings of Proposed Modifications
 - The design drawings included in this package serve as an overview of the technical design proposed for the project and will become a part of the Appendices to the DB Services Agreement. The DB Firm may include additional drawings or propose alternatives to the provided drawings. The D/B Firm shall clearly label and illustrate the specifics of their proposed modifications to the provided design in sufficient detail to be understood by the County.

- Design-Build Narrative
 - The Design-Build Narrative Section should address at a minimum the reasoning and approach to determining the proposed changes. Indicate the minimum areas to be addressed within the Design-Build Narrative section.
 - Sufficient technical information shall be provided for the County to review and understand the design being provided.
 - Pumping equipment selection
 - Structural
 - Power supply and electrical equipment
 - Instrumentation and controls
 - Reliability and redundancy
 - Architecture, aesthetics, and landscaping
 - Operational concerns

Design-Build Approach and Staffing Plan

The D/B Firm shall provide a staffing plan that includes a Design-Build organization chart with, at a minimum: 1) number of positions; 2) job classifications and descriptions; and 3) reporting structure. The organization chart shall show the number of employees, their reporting relationship, and their titles. This text should describe the key individual responsibilities and the rationale for the organization. This section shall also include a discussion on how the design-build team will interact during concurrent design and build activities.

Construction Safety

The D/B Firm shall provide the planning and safety measures to be used on the Site and a description of how this will be communicated to all individuals near or on the Site during the construction period. The D/B Firm shall also describe its approach to minimizing the likelihood of construction-related accidents and compliance with safety measures required by current Applicable Law. This section shall, at a minimum, address the following items:

- Safety goals, standards, and guidelines, including compliance with applicable requirements of the Occupational Safety and Health Administration (OSHA) for workplace safety and health standards.
- Designation by name of a full-time, on-site safety coordinator who is to be responsible for all safety related activities and a description of other staff positions involved in safety planning and review.
- A framework for a safety review process and appropriate regular meetings to address safety issues.
- Documentation of safety procedures.

Licenses, Permits, and Approvals

The D/B Firm shall describe the approach to obtaining each license, permit, approval, or other Governmental Approval needed to design and construct the Project. The D/B Firm's PROPOSAL shall indicate where coordination or assistance from the County in obtaining such licenses, permits and approvals is required. The D/B Firm's PROPOSAL shall identify the name of the applicable license, permit, or approval, the estimated time required to obtain, and any other parties that shall assist in obtaining the licenses, permits and approvals. The D/B Firm's PROPOSAL shall identify any permits listed in this RFP that the D/B Firm believes are not required and shall identify any permits not listed in this RFP that may be required due to the specific nature of the Project.

Part 6 – Project Schedule

Provide a proposed time schedule and a method for assuring that the time schedule is met. Provide a proposed time schedule for completion of key tasks and the method to assure that the time schedule shall be met. The design and construction are to be performed concurrently. It is DeKalb County's intent to have the project substantially completed (operational) by the CD deadline of **August 31, 2017**. Project final completion is **October 31, 2017**.

Table III – Progressive Design Build Completion Schedule

	COMPLETION DATES		
	DESIGN COMPLETION DATE	SUBSTANTIAL COMPLETION DATE	FINAL COMPLETION DATE
LCC Pump Station No. 1	05/31/2017	10/31/2017	12/31/2017
Access Road Restoration	05/31/2017	10/31/2017	12/31/2017

Part 7 – Fee and Rate Proposal

The Proposer shall complete the RFP Attachment A Cost Proposal – with all required pricing information – and include it in a separate sealed envelope with the Proposal. The scope of Design-Builder services for which pricing is required is defined in RFP Attachment C (Scope of Design-Builder Services). Part 4 of the Proposal should describe the basis for the fee and rate proposal and discuss its viability from the Design-Builder’s perspective.

Please be advised that the County is not interested in proposed fees or rates that provide excessive discounts from the Design-Builder’s anticipated actual costs for the services. If the County determines (at its sole discretion) that the fees and rates for services included in a PROPOSAL are unacceptably below industry norms or that a Proposer’s fees and rates are substantially or unacceptably below other PROPOSALS, the County may (at its sole discretion) declare that PROPOSAL to be non-responsible or seek additional detailed information from that Proposer concerning the cost basis for its fee and rate proposal prior to rendering a decision on the PROPOSAL’S responsibility.

Proposal Design/Build Price. The PROPOSAL shall clearly describe the expected costs of design and construction components of the Project. The Price Proposal Form, Attachment A is attached to this RFP. This Proposal Form provides for the base price proposal for the County to consider in ranking. Descriptions of Modifications proposed should be provided for the selection team to review in Part 5 Project Approach of the Proposal. Costs associated with the Modifications to handle current and anticipated flows shown in Section 2.1 that are proposed by the Proposer should be shown in the Additional Capacity Modifications as Recommended by the Design-Builder line item and/or the Deductive Alternate for Pumping System Capacity Reduction Modifications line items of the Cost Proposal.

Proposer shall provide financial statements (balance sheet, income statement and cash flow statement) for the last three 3 years as evidence that the Proposer has the financial capacity to perform the scope of work.

References:

- a. Proposer shall provide three (3) references for projects similar in size and scope to the project specified herein using the *Reference and Release Form* attached hereto as Attachment F.
- b. Provide three (3) references for each subcontractor proposed as a part of the project team. The references shall be for the same or similar types of services to be performed by the subcontractor (including LSBE-DeKalb and LSBE-MSA firms) on projects similar in size and scope to the project outlined in this RFP. Use Attachment G, Subcontractor Reference and Release Form. Make additional copies as needed.

Provide the following information: Are you a DeKalb County Firm? Yes/No.**Local Small Business Enterprise Ordinance**

It is the objective of the Chief Executive Officer and Board of Commissioners of DeKalb County to provide maximum practicable opportunity for all businesses to participate in the performance of government contracts, including Local Small Business Enterprises (LSBE). See Attachment H of this RFP. The County's *Schedule of Local Small Business Enterprise Participation* (Exhibit A) and *Letter of Intent to Perform as a Subcontractor or Provide Materials or Services* (Exhibit B) are included in the Request for Proposal (RFP). The current DeKalb County List of Certified Vendors may be found on the DeKalb County website.

For details relative to DeKalb County's Local Small Business Enterprise Ordinance, contact the Contract Compliance Division at contract@dekalbcountyga.gov or 404.371.4795.

In order for a Proposal to be considered, it is **mandatory** that the *Schedule of Local Small Business Enterprise Participation* (Exhibit A) and *Letter of Intent to Perform as a Subcontractor or Provide Materials or Services* (Exhibit B) be completed and submitted with Proposer's proposal.

Federal Work Authorization Program Contractor and Subcontractor Evidence of Compliance

All qualifying contractors and subcontractors performing work with DeKalb County, Georgia shall register and participate in the federal work authorization program to verify the work eligibility information of new employees. Successful Proposer(s) shall be required to register and participate in the federal work authorization program which is a part of Attachment R, *Sample County Contract*. In order for a Proposal to be considered, it is **mandatory** that the *Contractor's Affidavit*, Attachment I, be completed and submitted with Proposer's proposal.

IV. CRITERIA FOR EVALUATION

The following evaluation criteria will be used as the basis for the evaluation of proposals.

• Project Approach	10 points
• Project Schedule	20 points
• Cost Proposal	25 points
• Experience and capabilities	
• Design-Builder/subcontractor/other firms	15 points
• Key Personnel	10 points
• Trade Information, management and safety	10 points
• Local Small Business Enterprise Participation	<u>10 points</u>
	100 points
Interview (Optional)	10 points

V. CONTRACT ADMINISTRATION

A. Standard County Contract

The attached sample contract is the County's standard contract document (see Attachment R), which specifically outlines the contractual responsibilities. All Proposers should thoroughly review the document prior to submitting a proposal. Any proposed revisions to the terms or language of this document shall be submitted in writing with the Proposer's response to the request for proposals. Since proposed revisions may result in a proposal being rejected if the revisions are unacceptable to the County, Proposers should review any proposed revisions with an officer of the firm having authority to execute the contract. No alterations can be made in the contract after award by the Board of Commissioners.

B. Mandatory Pre-Proposal Conference and Site Visit

A mandatory Pre-Proposal Conference will be held **at 10:00 am on November 30, 2016 at Manuel Maloof Building, 1300 Commerce Drive, 2nd Fl., Decatur, GA, 30030**. The site visit will be immediately following the Pre-Proposal Conference.

In order to have your submission considered, **Proposers shall attend both the pre-proposal conference and mandatory site visit**. For information regarding the pre-proposal conference and site visit, please contact DeValory Donahue, Senior Procurement Agent, 404-371-0884 or email dadonahue@dekalbcountyga.gov.

C. Questions

All questions concerning the Project and requests for interpretation of the Contract may be asked and answered at the pre-bid conference; however, oral answers are not authoritative. Questions shall be submitted to DeValory Donahue via email to dadonahue@dekalbcountyga.gov, no later than 4:00 pm EST on **December 9**,

2016. Questions and requests for interpretation received by the Department of Purchasing and Contracting after this date will not receive a response or be the subject of addenda.

D. Acknowledgment of Addenda

Addenda may be issued in response to changes in the RFP. It is the responsibility of the Proposer to ensure awareness of all addenda issued for this solicitation. Please acknowledge the addenda and submit to the Department of Purchasing and Contracting as requested. Proposer may call DeValory Donahue at 404-371-0884 or send an email to awalker@dekalbcountyga.gov to verify the number of addenda prior to submission. Addenda issued for this project may be found on DeKalb County's website, <http://www.dekalbcountyga.gov/purchasing/pc-formal-bids-&-rfps.html>.

E. Proposal Duration

Proposals submitted in response to this RFP shall be valid for a period of One Hundred and Twenty (120) days from proposal submission deadline and shall be so marked.

F. Project Director/Contract Manager

The County will designate a Project Director/Contract Manager to coordinate this project for the County. The successful Proposer will perform all work required pursuant to the contract under the direction of and subject to the approval of the designated Project Director/Contract Manager. All issues including, payment issues, shall be submitted to the Project Director/Contract Manager for resolution.

G. Expenses of Preparing Responses to this RFP

The County accepts no responsibility for any expenses incurred by the Proposers to this RFP. Such expenses are to be borne exclusively by the Proposers.

H. Georgia Open Records Act

Without regard to any designation made by the person or entity making a submission, DeKalb County considers all information submitted in response to this invitation or request to be a public record that will be disclosed upon request pursuant to the Georgia Open Records Act, O.C.G.A. §50-18-70 et seq., without consulting or contacting the person or entity making the submission, unless a court order is presented with the submission. You may wish to consult an attorney or obtain legal advice prior to making a submission.

I. First Source Jobs Ordinance

The DeKalb County First Source Jobs Ordinance requires contractors or beneficiaries entering into any type of agreement with the County, including purchase orders, regardless of what they may be called, for the procurement or disposal of supplies, services, construction projects, professional or consultant services, which is funded in whole or part with County funds or County administered funds in which the contractor is

to receive \$50,000 or more in County expenditures or committed expenditures and recipient of urban redevelopment action grants or community development block funds administered in the amount of \$50,000 or more make a good faith effort to hire DeKalb County residents for at least 50% of jobs using the First Source Registry (candidate database). The work to be performed under this contract is subject to the provisions of the DeKalb County First Source Jobs Ordinance. For more information on this Ordinance requirement, please contact DeKalb Workforce Development at 404.687.3400.

Proposer shall complete the First Source Jobs Ordinance Acknowledgement Form attached to this RFP as Attachment P.

J. Preferred Employees

Contractors, subcontractors, and independent contractors bidding on this contract will be **encouraged** by DeKalb County to have 25% or more of their labor force consisting of Preferred Entry Level Employees selected from the First Source Registry and trained by a U.S. Department of Labor registered apprenticeship program.

For information on Preferred Employees, please contact DeKalb County Workforce Development by telephone at 404-687-3417 or 404-687-7171.

Proposer shall complete the Preferred Employee Tracking Form attached to this RFP as Attachment Q.

K. Business License

Proposer shall submit a copy of its valid company business license. If the Proposer is a Georgia corporation, Proposer shall submit a valid county or city business license. If the Proposer is not a Georgia corporation, Proposer shall submit a certificate of authority to transact business in the state of Georgia and a copy of its valid business license issued by its home jurisdiction. If Proposer holds a professional certification which is licensed by the state of Georgia, then Proposer shall submit a copy of its valid professional license. A copy of both state of Georgia General Contractor's license and Utility Systems Contractor's license shall be submitted with response. Any license submitted in response to this requirement shall be maintained by the Proposer for the duration of the contract.

L. Right To Audit

The County shall have the right to audit all books and records, including electronic records, relating or pertaining to this contract or agreement, including but not limited to all financial and performance related records, property, and equipment purchased in whole or in part with County funds and any documents or materials which support those records, kept under the control of the Contractor, including but not limited to those kept by the Contractor's employees, agents, assigns, successors and subcontractors. The County also has the right to communicate with Contractor's employees related to the audited records.

VI. AWARD OF CONTRACT

An evaluation committee will review and rate all proposals and may determine an interview list of the firms whose proposals are highest rated based on qualifications and information provided in Section III, Proposal Format, and Section IV, Evaluation Criteria.

Interview listed firms may be scheduled for an oral presentation to the evaluation committee, not to exceed one hour's duration, in order to respond to questions from the evaluation committee relevant to the firm's proposal.

The evaluation committee will make its recommendation for award to the DeKalb County Board of Commissioners, who will make the final decision as to award of contract.

REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

VII. ATTACHMENTS

This Contract includes the following Attachments all of which are incorporated herein by reference. **The attachments marked with an asterisk (*) shall be returned with the Request for Proposal.**

- Attachment A: Cost Proposal*
- Attachment B: Proposal Cover Sheet*
- Attachment C: Scope of Design/Build Services
- Attachment D: Project Technical Requirements
- Attachment E: Project Permitting Requirements
- Attachment F: Contractor Reference and Release Form*
- Attachment G: Subcontractor Reference and Release Form*
- Attachment H: LSBE Opportunity Tracking Forms and Exhibits*
- Attachment I: Contractor's Affidavit*
- Attachment J: Subcontractor's Affidavit(s)*
- Attachment K: Sub-subcontractor's Affidavit(s)*
- Attachment L: Certificate of Corporate Authority or Joint Venture Certificates
- Attachment M: Performance Bond and Accompanying Power of Attorney
- Attachment N: Payment Bond and Accompanying Power of Attorney
- Attachment O: First Source Jobs Ordinance Acknowledgement
- Attachment P: Preferred Employee Tracking Form
- Attachment Q: Sample Contract (any mark-ups, if applicable)*
- Attachment R: General Requirements, GR-1 through GR-46
- Attachment S: Ethics Policy

THE COUNTY RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS, TO WAIVE INFORMALITIES, AND TO RE-ADVERTISE.

Sincerely,



DeValory Donahue, C.P.M.
Senior Procurement Agent
Department of Purchasing and Contracting

ATTACHMENT A

COST PROPOSAL FORM
(3 pages)
RFP 16-500413-LOWER CROOKED CREEK PUMP STATION
AND ROAD RESTORATION

Proposer: Please complete the attached pages of the Cost Proposal Form, and return them with this cover page. The cost proposal shall be submitted in a separate, sealed envelope with the Proposer's name and "Request for Proposals No. RFP 16-500413 Lower Crooked Creek Pump Station and Road Restoration " clearly identified on the outside of the envelope.

By signing this page, Proposer acknowledges that he has carefully examined and fully understands the Contract, Scope of Work, and other attached documents, and hereby agrees that if his proposal is accepted, he will contract with DeKalb County according to the Request for Proposal documents.

Please provide the following information:

Name of Firm: _____

Address: _____

Contact Person Submitting Proposal: _____

Title of Contact Person: _____

Telephone Number: _____

Fax Number: _____

E-mail Address: _____

Signature of Contact Person

Title of Contact Person

COST PROPOSAL FORM

All proposers shall provide costs based on the documents provided in this RFP and attachments. The Total Price provided with this proposal shall be a Guaranteed Maximum Price. Attachment I should be submitted with the Proposal in a separate, sealed envelope entitled “Cost Proposal – RFP 16-500413- Lower Crooked Creek Pump Station and Road Restoration”.

Bid Item 1 – Engineering Design:					
ITEM NUMBER	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
1.01	Engineering and Design-LCC Pump Station	Each	1	\$	\$
1.02	Engineering and Design-Access Road Restoration	Each	1	\$	\$
1.03	Permitting	Each	1	\$	\$
Bid Item 2 – Construction of Lower Crooked Creek Pump Station And Access Road Restoration					
ITEM NUMBER	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
2.01	Construction of LCC Pump Station	Each	1	\$	\$
2.02	Restoration of Access Road	Each	1	\$	\$
Bid Item 3 – Start-up and Commissioning					
ITEM NUMBER	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
3.01	Equipment Start-up	Each	1	\$	\$
3.02	Acceptance Testing	Each	1	\$	\$
Bid Item 4 – Other Direct and Indirect Costs:					
ITEM NUMBER	DESCRIPTION	UNIT	QTY	UNIT PRICE	TOTAL PRICE
4.01	Administrative	Each	1	\$	\$
4.02	Record Drawings, O&M Manuals and Training	Each	1	\$	\$
4.03	Insurance (During Construction)	Each	1	\$	\$
4.04	Payment & Performance Bond (During Construction)	Each	1	\$	\$
4.05	Safety & Quality Control	Each	1	\$	\$
PROPOSAL DESIGN/BUILD PRICE (Proposal Item 1 + 2 + 3 + 4)					\$

Contingency**	\$100,000.00
TOTAL PROPOSAL DESIGN/BUILD PRICE (Proposal Item 1 + 2 + 3 + 4 + Contingency)	\$

* Pump Station Capacity Modifications Proposed by the Design-Builder can be a deduction or additive line item depending upon what is proposed by the Design-Builder to meet the requirements of Attachment D-Project Technical Requirements.

**** CONSTRUCTION CONTINGENCY FUND**

Proposer shall add a \$100,000.00 Construction Contingency Fund. Contractor shall not be entitled to use this fund without written approval by the County.

CONSTRUCTION CONTINGENCY

Contingency is a reserve to the County Project Manager to deal with the unexpected, unplanned events during the course of the project. Contingency enables the project to proceed with minimal interruptions or delays to the schedule. In the event that reimbursement through the use of County authorized Contingency Funding for Unforeseen Conditions is necessary, form AIA Document No. G701, Change Order, must be used as contingency authorization document, and must have been previously approved by the County Project Manager. The General Contractor's draw-down request(s) for payment, consistent with values listed within the revised AIA G703, Schedule of Values, then be certified by the Architect and subsequently approved by the County Project Manager when the general contractor requests payment accordingly.

ATTACHMENT B
PROPOSAL COVER SHEET

NOTE: Read all instructions, conditions and specifications in detail before completing this Request for Proposal.

Please complete and include this cover sheet with your technical proposal.

Company Name		Federal Tax ID#	
Complete Primary Address	County	City	Zip Code
Mailing Address (if different)	City	State	Zip Code
Contact Person Name and Title	Telephone Number (include area code)		
Email Address	Fax Number (include area code)		
Company Website Address	Type of Organization (check one) <input type="checkbox"/> Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Proprietorship <input type="checkbox"/> Government		
<p>Proposals for RFP 16-500413 Lower Crooked Creek Pump Station and Road Restoration – described herein will be received in the Purchasing & Contracting Department, Room 2nd Floor, The Maloof Center, 1300 Commerce Drive, Decatur, Georgia 30030 on January 10, 2016 until 3:00 p.m. (EST). Proposals shall be marked in accordance with the RFP, Section V.B.</p> <p>CAUTION: The Decatur Postmaster will not deliver certified or Special Delivery Mail to specific addresses within DeKalb County Government. When sending bids or time sensitive documents, you may want to consider a courier that will deliver to specific addresses.</p>			
<p>Proposal Cover Sheet should be signed by a representative of Proposer with the authority to bind Proposer to all terms, conditions, services, and financial responsibilities in the submitted Proposal.</p>			
Authorized Representative Signature(s)		Title(s)	
Type or Print Name(s)		Date	

ATTACHMENT C

Scope of Design-Builder Services

The DeKalb County Department of Watershed Management (the County) is soliciting proposals from interested firms to design, permit, and construct the **Lower Crooked Creek Pump Station and Road Restoration**. The project requires the design of a minimum twenty (20) ton capacity overhead crane system in order to remove the existing pumps and heavy service equipment at The Lower Crooked Creek Pump Station No. 1 facility.

I. DESIGN BUILD SERVICES

It is anticipated that the Design-Builder shall provide the County with the following integrated Design-Build services:

A. Project Management

1. Provide Project planning and control
2. Obtain Project-related permits
3. Provide internal Project communications and assist the County with external communications, such as press releases
4. Develop a design and construction quality control program

B. Construction

1. Build improvements as described by the Design-Build Contract and approved by the County during the Design phase
2. Comply with all County and industry construction standards and best practices
3. Comply with all environmental mitigation requirements
4. Implement the construction quality control program

C. Startup, Acceptance, Commissioning & Training

1. Demonstrate performance and complete plant acceptance tests
2. Provide training to County operations staff

II. SCOPE OF WORK

A. SCOPE OF WORK- OVERHEAD CRANE SYSTEM

The Proposer shall:

1. Develop the project execution plan, including the project schedule.
2. Design a twenty (20) ton crane lift system at the north end of the pump house to remove and service grinder pumps as required.
3. Provide a Lift system that has the ability to lift a one hundred thirty-six (136) inch high grinder pump with a seventy-two (72) inch chain and clear the thirty-two (32) inch pump chamber doors by ten (10) inches. The total minimum clearance is twenty-one (21) vertical feet.

4. Provide a rail system that is not supported on the existing structure and will need to span forty-four (44') linear unsupported.
5. Provide a rail system that has a minimum of ten (10) linear feet west of the pump station to enable easy pump removal from the site.
6. Provide a rail system that has grounding to accommodate lightning strikes.

B. SCOPE OF WORK- ACCESS ROAD

The Proposer shall:

1. Upgrade the existing six hundred (600) linear foot access road to a minimum of fifteen (15) feet wide.
2. Replace the existing twenty-four (24) inch concrete culver with a new reinforced concrete pipe (RCP)? culvert.
3. Grade the low point in the access road to prevent the "pooling" of water in the road way.
4. Design the access road per wet land standards as portions of the road lie in a marsh area.
5. Design the access road in accordance with AASTO? Standards to support heavy truck loading.

C. SCOPE OF WORK- GENERAL

The Proposer shall:

1. Develop the final engineering design: submit a final design review package for review and approval by the County.
2. Prepare a project cost model and provide detailed cost estimates as the design and design alternatives are advanced.
3. Perform engineering studies (such as additional subsurface geotechnical investigations and site surveys) to support design and cost estimating (as necessary).
4. Identify Project permitting requirements and initiate the necessary permitting activities.
5. Procure equipment and subcontractors.
6. Secure all necessary permits and bonds.
7. Construct the Project.
8. Conduct startup and performance testing.
9. Provide operator training.
10. Provide warranty coverage and contact information.

**ATTACHMENT D
PROJECT TECHNICAL REQUIREMENTS**

Complete design, construction and post-construction tasks, including performance testing, startup commissioning and operator training and support required for the following:

1. There are other facilities (Large basins, and Buildings) located at the site of the pump station that are at the disposal of the Design Builder to utilize in the interest of the final product if required by the Design Builder.
2. The work also includes site grading, landscaping, hardscaping, erosion control, improvements to ingress and egress as requires by the Design Builder.

Technical standards the design shall adhere to include, but are not limited to:

- DeKalb County's Department of Watershed Management Design and Construction Standards
- Georgia Environmental Protection Division Minimum Standards for Public Water Systems
- Codes adopted and enforced by DeKalb County:
 - International Building Code, 2012 Edition, with Georgia Amendments
 - International Mechanical Code, 2012 Edition, with Georgia Amendments
 - International Plumbing Code, 2012 Edition, with Georgia Amendments
 - International Fire Code, 2012 Edition, with Georgia Amendments
 - International Energy Conservation Code, 2009 Edition, with Georgia Supplements and Amendments
 - NFPA National Electrical Code, 2014 Edition
 - 2012 NFPA 101 Life Safety Code with all Georgia State Amendments
 - Georgia Accessibility Code Chapter 120-3-20, as amended
 - 2010 ADA Standards for Accessible Design

Land and Easements:

DeKalb County has all required easements and fee simple property in hand to construct the work associated with the pump station. The Design Builder shall assess the status of properties along the route of the existing FM and GSs report the results to the County for directions on how to proceed.

Utilities:

- DB Contractor to coordinate water service with DeKalb DWM.
- DB Contractor to coordinate electrical service with DeKalb DWM.

Demolition and Removal of Existing Equipment from the PS - The contractor shall include in his Cost Proposal the lump sum cost to:

1. Remove and transport to Snapfinger WWTP all mechanical, electrical and instrumentation from the Lower Crooked Creek Pump Station and Road Restoration.
2. Remove and properly dispose of all other equipment and material as required from the site of the pump stations including but not limited to the equipment foundation, and underground piping as required. The site shall be graded to match existing grades. All holes shall be filled and compacted with clean excavated material from the construction.
3. Demolition activities shall be performed in accordance with the current standards and the specifications.

ATTACHMENT E
PROJECT PERMITTING REQUIREMENTS

The table below provides a summary of the major anticipated permits that will require the involvement of the D/B Contractor. In some cases, responsibility for securing and complying with the permit may be shared, and in others these responsibilities will be delegated solely to the D/B Contractor or to the County.

Summary of Anticipated Project Permitting Requirements				
Permits	Permit Details	County Responsibility	County and D/B Contractor Joint Responsibility	D/B Contractor Responsibility
DeKalb County Land Disturbance Permit			X	
DeKalb County Building Permit			X	

**ATTACHMENT F
CONTRACTOR REFERENCE AND RELEASE FORM**

List below at least three (3) references, including company name, contact name, address, email address, telephone numbers and contract period who can verify your experience and ability to perform the type of service listed in the solicitation.

Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		
Project Name			
Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		
Project Name			
Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		
Project Name			

REFERENCE CHECK RELEASE STATEMENT

You are authorized to contact the references provided above for purposes of this RFP.

Signed _____ Title _____
(Authorized Signature of Proposer)

Company Name _____ Date _____

**ATTACHMENT G
SUBCONTRACTOR REFERENCE AND RELEASE FORM**

List below at least three (3) references, including company name, contact name, address, email address, telephone numbers and contract period who can verify your experience and ability to perform the type of service listed in the solicitation.

Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		
Project Name			

Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		
Project Name			

Company Name	Contract Period		
Contact Person Name and Title	Telephone Number (include area code)		
Complete Primary Address	City	State	Zip Code
Email Address	Fax Number (include area code)		
Project Name			

REFERENCE CHECK RELEASE STATEMENT

You are authorized to contact the references provided above for purposes of this RFP.

Signed _____ Title _____
(Authorized Signature of Proposer)

Company Name _____ Date _____

ATTACHMENT H**LSBE INFORMATION
WITH EXHIBITS A – B****SCHEDULE OF LOCAL SMALL BUSINESS ENTERPRISE PARTICIPATION
OPPORTUNITY TRACKING FORM**

The Chief Executive Officer and the Board of Commissioners of DeKalb County believe that it is important to encourage the participation of small and local businesses in the continuing business of County government; and that the participation of these types of businesses in procurement will strengthen the overall economic fabric of DeKalb County, contribute to the County's economy and tax base, and provide employment to local residents. Therefore, the Chief Executive Officer and the Board of Commissioners have made the success of local small businesses a permanent goal of DeKalb County by implementing the Local Small Business Enterprise Ordinance.

PROVISIONS OF LOCAL SMALL BUSINESS ENTERPRISE (LSBE) ORDINANCE

Amount of LSBE Participation Required
20% of Total Award

	Request For Proposals (RFP)	Invitations To Bid (ITB)
LSBE Within DeKalb (LSBE-DeKalb)	Ten (10) Percentage Points	Ten (10) Percent Preference
LSBE Outside DeKalb (LSBE-MSA)	Five (5) Percentage Points	Five (5) Percent Preference

Certified Local Small Business Enterprises (LSBEs) located within DeKalb County and prime contractors utilizing LSBEs that are locally-based inside DeKalb County shall receive ten (10) percentage points in the initial evaluation of their response to any Request for Proposal and a ten (10) percent preference on all responses to any Invitation to Bid. Certified LSBEs located outside of DeKalb County but within the ten (10) County Metropolitan Statistical Area (MSA) consisting of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry and Rockdale Counties shall receive five (5) percentage points in the initial evaluation of their response to any Request for Proposal and a five (5) percent preference on all responses to any Invitation to Bid.

For all qualified sealed solicitations, the Director of Purchasing and Contracting, DeKalb County Government, shall determine if the bidder/proposer has included written documentation showing that at least twenty percent (20%) of the total contract award will be performed by a certified LSBE. This written documentation shall be in the form of a notarized Schedule of LSBE Participation (Attached hereto as "Exhibit A".) For all contracts, a signed letter of intent from all certified LSBEs describing the work, material, equipment and/or services to be performed or provided by the LSBE(s) and the agreed upon dollar value shall be due with the bid or proposal documents and included with "Exhibit A". The certified vendor list establishes the group of

Certified LSBE's from which the bidder/proposer must solicit subcontractors for LSBE participation. Contractors failing to meet the LSBE benchmark must document and demonstrate Good Faith Efforts in accordance with the attached "Checklist for Good Faith Efforts" portion of "Exhibit A." The notarized Schedule of LSBE Participation shall be due and submitted with each bid or proposal. Failure to achieve the LSBE benchmark or demonstrate good faith efforts shall result in a bid or proposal being rejected.

Upon award, Prime Contractors are required to submit a report detailing LSBE/Sub-Contractor usage with each request for payment and not less than on a monthly basis. Prime Contractors are also required to certify that all sub-contractors have been paid within seven (7) days of the Prime's receipt of payment from the County. Failure to provide requested reports/documentation may constitute a material breach of contract, entitling the County to terminate the Contract for default or pursue other remedies. LSBE sub-contractors must submit a detailed report of their sub-contracting activity for each County contract they participate in.

For eligible bids over \$5,000,000.00, The Director of Purchasing and Contracting or designee will determine if the Mentor-Protégé provision of the Ordinance will apply.

It is the objective of the Chief Executive Officer and Board of Commissioners of DeKalb County to provide maximum practicable opportunity for all businesses to participate in the performance of government contracts. To achieve this purpose, the County would like to track and record information about participating vendors. The attached "Exhibit A," also records who performs work and renders services to the County. Contractors are requested to indicate whether they are a LSBE-DeKalb or MSA and list the level of participation by subcontractors designated as such on each solicitation.

EXHIBIT A

**SCHEDULE OF LOCAL SMALL BUSINESS ENTERPRISE PARTICIPATION
OPPORTUNITY TRACKING FORM**

As specified, Bidders and Proposers are to present the details of LSBE participation below:

PRIMEBIDDER/PROPOSER _____

SOLICITATION NUMBER-16-500413

TITLE OF UNIT OF WORK –**Lower Crooked Creek Pump Station and Road Restoration
Project**

1. My firm, as the prime bidder/proposer on this unit of work, is a certified (check all that apply):
 LSBE-DeKalb LSBE-MSA

2. If you are a Certified LSBE-DeKalb or MSA, please indicate below the portion of work (including the percentage of the amount bid/proposal) that your firm will carry out directly:
 _____.

3. If the prime bidder/proposer is a joint venture, please describe below the nature of the joint venture and level of work and financial participation to be provided by the LSBE-DeKalb or MSA joint venture firm.

4. List the LSBE-DeKalb or MSA subcontractors and/or firms (including suppliers) to be utilized in of this contract, if awarded. No changes can be made in the subcontractors listed below without the prior written approval of the County. Please attach a signed letter of intent from all certified LSBEs describing the work, materials, equipment or services to be performed and/or provided and the agreed upon dollar value. A Letter of Intent form is attached hereto as “Exhibit B”.

Name of Company	
Address	
Telephone	
Fax	
Contact Person	
Indicate all that apply and attach proof of certification: LSBE-DeKalb/LSBE-MSA	
Description of services to be performed	
Percentage of work or estimated contract award amount to be performed	

Name of Company	
Address	
Telephone	
Fax	
Contact Person	
Indicate all that apply and attach proof of certification: LSBE-DeKalb/LSBE-MSA	
Description of services to be performed	
Percentage of work or estimated contract award amount to be performed	

Name of Company	
Address	
Telephone	
Fax	
Contact Person	
Indicate all that apply and attach proof of certification: LSBE-DeKalb/LSBE-MSA	
Description of services to be performed	
Percentage of work or estimated contract award amount to be performed	

Name of Company	
Address	
Telephone	
Fax	
Contact Person	
Indicate all that apply and attach proof of certification: LSBE-DeKalb/LSBE-MSA	
Description of services to be performed	
Percentage of work or estimated contract award amount to be performed	

Please attach additional pages, if necessary.

EXHIBIT A, CONT'D**DEKALB COUNTY**
CHECKLIST FOR GOOD FAITH EFFORTS

A bidder/proposer that does not meet the County's LSBE participation benchmark is required to submit documentation to support all "Yes" responses as proof of "good faith efforts." Please indicate whether or not any of these actions were taken:

	Yes	No	Description of Actions
1.			Advertisement for solicitation of LSBEs in general circulation media and trade association publications at least seven (7) calendar days prior to bid or proposal opening any and all sub-contractor opportunities. Proof of advertisement must be submitted with the bid or proposal.
2.			Provided written notice to LSBEs that their interest in sub-contracting opportunities or furnishing supplies is solicited. Provide a contact log showing the name, address, email and contact number (phone or fax) used to contact the proposed certified subcontractors, nature of work requested for quote, date of contact, the name and title of the person making the effort and the amount of the quoted price if one was obtained.
3.			Provided interested LSBEs with timely, adequate information about the plans, specification, and other such requirements of the contract to facilitate their quotation and conducted follow up to initial solicitations.
4.			Efforts made to divide the work for LSBE subcontracting areas likely to be successful and to identify portions of work available to LSBEs consistent with their availability. Include a list of divisions of work not subcontracted and the corresponding reasons for not including them. The ability or desire of a bidder/proposer to perform the contract work with its own organization does not relieve it of the responsibility to make good faith efforts on all scopes of work subject to subcontracting.
5.			Efforts were made to assist potential LSBE subcontractors meet bonding, insurance, or other governmental contracting requirements. Where feasible, facilitating the leasing of supplies or equipment when they are of such a specialized nature that the LSBE could not readily and economically obtain them in the marketplace.
6.			Communication with Contract Compliance seeking assistance in identifying available LSBEs. Provide Contract Compliance representative name and title.
7.			For all contracts, a signed letter of intent from all certified LSBEs describing the work, materials, equipment or services to be performed or provided by the LSBE(s) and the agreed upon dollar value shall be due with the bid or proposal documents. Provide subcontractor information as requested by forms provided by Contract Compliance.
8.			Other Actions (specify):

Please explain all "no" answers above (by number):

This list is a guideline and by no means exhaustive. The County will review these efforts, along with other documents, to assess the bidder/proposer's efforts to meet the County's LSBE Participation benchmark. If you require assistance in identifying certified, bona fide LSBEs, please contact the Purchasing and Contracting Department - LSBE Program, Felton Williams, Special Projects Manager at 404-371-6312. A copy of the list of LSBEs certified by the DeKalb County Government, Purchasing and Contracting Department is available on our website at <http://www.dekalbcountyga.gov/>.

EXHIBIT A, CONT'D**DEKALB COUNTY LOCAL SMALL BUSINESS ENTERPRISE SCHEDULE OF PARTICIPATION
OPPORTUNITY TRACKING FORM****Bidder/Proposer Statement of Compliance**

Bidder(s)/Proposer(s) hereby state that they have read and understand the requirements and conditions as set forth in the objectives and that reasonable effort were made to support the County in providing the maximum practicable opportunity for the utilization of LSBEs consistent with the efficient and economical performance of this contract. The Bidder and any subcontractors shall file compliance reports at reasonable times and intervals with the County in the form and to the extent prescribed by the Director of DeKalb County Purchasing and Contracting Department. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of Contractors and their subcontractors.

1. Non-Discrimination Policy

- a. During the performance of this agreement, Contractor agrees to conform to the following Non-Discrimination Policy adopted by the County.
- b. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The Contractor will take action to ensure that applicants are employed, and the employees are treated during employment without regard to their race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following:
 - (1) 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. Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided setting forth provisions of this non-discrimination clause.
 - (2) Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.
- c. Without limiting the foregoing, Contractor shall not discriminate on the basis of disability in the admission or access to, or treatment or employment in, the programs and activities, which form the subject of the contract. The Contractor will take action to ensure that applicants for participation in such programs and activities are considered without regard to disability. Such action shall include, but not be limited to, the following:
 - (1) Contractor agrees to post in conspicuous places available to participants in its programs and activities notices to be provided setting forth the provisions of this non-discrimination clause.
 - (2) Contractor shall, in all solicitations or advertisements for programs or activities, which are the subject of the contract, state that all qualified applicants will receive consideration for participation without regard to disability.

2. Commitment

The undersigned certifies that he/she has read, understands, and agrees to be bound by the bid specifications, including the accompanying Exhibits and other terms and conditions of the Invitation to Bid and/or Request for Proposal regarding LSBE utilization. The undersigned further certifies that he/she is legally authorized by the bidder or responder to make the statements and representations in

Exhibit A and that said statements and representations are true and correct to the best of his/her knowledge and belief. The undersigned will enter into formal agreement(s) with the LSBE(s) listed in this Exhibit A, which are deemed by the owner to be legitimate and responsible LSBEs. Said agreement(s) shall be for the work and contract with the County. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder knowing them to be false, or if there is a failure of the successful Bidder (i.e., Contractor) to implement any of the stated agreements, intentions, objectives, goals and commitments set forth herein without prior approval of the County, then in any such events the contractor's act or failure to act, as the case may be, shall constitute a material breach of contract, entitling the County to terminate the Contract for default. The right to so terminate shall be in addition to, and not in lieu of, any other rights and remedies the County may have for other defaults under the Contract. Additionally, the Contractor will be subject to the loss of any future contract awards by the County for a period of one year.

Firm Name (Please Print):

Firm's Officer: _____
(Authorized Signature and Title Required) Date

Sworn to and Subscribed to before me this ____ day of _____, 201__.

Notary Public

My Commission Expires: _____

“EXHIBIT B”

**LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR
PROVIDING MATERIALS OR SERVICES**

Instructions:

1. Complete the form in its entirety and submit with bid documents.
2. Attach a copy of the LSBE’s current valid Certification Letter.

To: _____
(Name of Prime Contractor Firm)

From: _____ **LSBE –DeKalb** **LSBE –MSA**
(Name of Subcontractor Firm) (Check all that apply)

ITB Number: 16-500413

Project Name: Lower Crooked Creek Pump Station and Road Restoration

The undersigned subcontractor is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials, or services to be performed or provided).

Description of Materials or Services	Project Commence Date	% of Contract Award	Estimated Dollar Amount

Prime Contractor

Sub-Contractor

Signature: _____

Signature: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTACHMENT I

CONTRACTOR AFFIDAVIT UNDER O.C.G.A. §13-10-91

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 engaged in the physical performance of services on behalf of DEKALB COUNTY has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned Contractor will continue to use the federal work authorization program throughout the Contract Term and the undersigned Contractor will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit to the Contractor with the information required by O.C.G.A. §13-10-91. Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor

Lower Crooked Creek Pump Station and Road Restoration

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (city), _____ (state).

By: _____
Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and Sworn before me on this the _____ day of _____, 20 ____.

NOTARY PUBLIC
My Commission Expires:

ATTACHMENT J

SUBCONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91

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 under a contract with _____ (insert name of Contractor) on behalf of DEKALB COUNTY, GEORGIA has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned Subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the Subcontractor with the information required by O.C.G.A. § 13-10-91. Additionally, the undersigned Subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the Contractor within five business days of receipt. If the undersigned Subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned Subcontractor must forward, within five business days of receipt, a copy of the notice to the Contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Subcontractor

Lower Crooked Creek Pump Station and Road Restoration
Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (city), _____ (state).

By: _____
Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and Sworn before me on this the _____ day of _____, 20 ____.

NOTARY PUBLIC

My Commission Expires: _____

ATTACHMENT K

SUB-SUBCONTRACTOR AFFIDAVIT UNDER O.C.G.A. § 13-10-91

By executing this affidavit, the undersigned sub-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 under a contract for _____ (name of subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract) and _____ (name of Contractor) on behalf of DEKALB COUNTY, GEORGIA has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned sub-subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub-subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the sub-subcontractor with the information required by O.C.G.A. § 13-10-91(b). The undersigned sub-subcontractor shall submit, at the time of such contract, this affidavit to _____ (name of Subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Additionally, the undersigned sub-subcontractor will forward notice of the receipt of any affidavit from a sub-subcontractor to _____ (name of Subcontractor or sub-subcontractor with whom such sub-subcontractor has privity of contract). Sub-subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

_____ Federal Work Authorization User Identification Number

_____ Date of Authorization

_____ Name of Sub-subcontractor

Design Build Services for the Gravity Sewer Collection System

_____ Name of Project

_____ Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, 20__ in _____ (city), _____ (state).

By: _____

Signature of Authorized Officer or Agent

_____ Printed Name and Title of Authorized Officer or Agent

Subscribed and Sworn before me on this the _____ day of _____, 20__

NOTARY PUBLIC

My Commission Expires: _____

ATTACHMENT L

DEKALB COUNTY, GEORGIA
CERTIFICATE OF CORPORATE AUTHORITY
(Choose Applicable Certificate)

I, _____, certify that I am Secretary of the corporation named as Contractor herein, same being organized and incorporated to do business under the laws of the State of _____; that _____, who executed this Contract on behalf of the Contractor was, then and there, _____; and that said Contract was duly signed by said officer for and in behalf of said corporation, pursuant to the authority of its governing body and within the scope of its corporate powers.

I further certify that the names and addresses of the owners of all the outstanding stock of said corporation as of this date are as follows:

This _____ day of _____, 20____.

Secretary (Corporate Seal)

ATTACHMENT L

DEKALB COUNTY, GEORGIA
CERTIFICATE OF AUTHORITY – JOINT VENTURE
(Separate Certificate to be submitted by each joint venture partner)

I, _____, ⁽¹⁾ certify that

1. I am the _____ ⁽²⁾ of _____, ⁽³⁾ (hereinafter “Venturer”);
2. Venturer is a partner and participant in the joint venture named as Contractor in that certain Contract for Construction dated _____ with DeKalb County, issued pursuant to Invitation to Bid or Request for Proposal No. _____;
3. Venturer is organized and incorporated to do business under the laws of the State of _____;
4. _____, who executed this Contract on behalf of the Contractor was, then and there, _____; and
5. Said Contract was duly signed by said officer for and in behalf of said Venturer and the Contractor pursuant to the authority of the governing body of each and within the scope of its corporate powers.
6. I further certify that the names and addresses of the owners of all the outstanding stock or ownership interest in Venturer as of this date are as follows:

This _____ day of _____, 20____.

INSTRUCTIONS:

1. Name of secretary (if Venturer is a corporation), or Manager or CEO (if Venturer is a LP) of _____ Venturer.
2. Title of person executing Certification.
3. Name of joint venture partner.

MAKE COPIES OF THIS FORM AND SUBMIT A SEPARATE FORM FOR EACH JOINT VENTURE PARTNER.

ATTACHMENT M
PERFORMANCE BOND
(Consisting of 3 pages)

KNOW ALL MEN BY THESE PRESENTS that _____ [Insert name of contractor] (hereinafter called the "Principal") and _____ [Insert name of surety] (hereinafter called the "Surety"), are held and firmly bound unto _____ County (hereinafter called the "County") and their successors and assigns, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which the Principal and the Surety bind themselves, their administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written contract with the County, awarded by the DeKalb County Governing Authority on _____, which is incorporated herein by reference in its entirety (hereinafter called the "Contract"), for the **Lower Crooked Creek Pump Station and Road Restoration**, more particularly described in the Contract (hereinafter called the "Project"); and

NOW, THEREFORE, the conditions of this obligation are as follows, that if the Principal shall fully and completely perform all the undertakings, covenants, terms, conditions, warranties, and guarantees contained in the Contract, including all change orders, modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Whenever the Principal shall be, and declared by the County to be, in default under the Contract, the Surety shall promptly remedy the default as follows:

1. Complete the Contract in accordance with the terms and conditions; or
2. Obtain a Bid or Bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Surety and the County of the lowest responsible bidder, arrange for a contract between such bidder and County and make available as the work progresses (even though there should be a default or succession of defaults under the Contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the penal sum set forth in the first paragraph hereof, as may be adjusted, and the Surety shall make available and pay to the County the funds required by this Paragraph prior to the payment of the County of the balance of the contract price, or any portion thereof. The term "balance of the contract price," as used in this paragraph, shall mean the total amount payable by the County to the Contractor under the Contract, and any amendments thereto, less the amount paid by the County to the Contractor; or, at the option of the County; or
3. Allow County to complete the work and reimburse the County for all reasonable costs incurred in completing the work.

In addition to performing as required in the above paragraphs, the Surety shall indemnify and hold harmless the County from any and all losses, liability and damages, claims, judgments, liens, costs, and fees of every description, including reasonable attorney's fees, litigation costs and expert witness fees, which the County may incur, sustain, or suffer by reason of the failure or default on the part of the Principal in the performance of any or all of the terms, provisions, and requirements of the Contract, including any and all amendments and modifications thereto, or incurred by the County in making good any such failure to performance on the part of the Principal.

The Surety shall commence performance of its obligations and undertakings under this Bond promptly and without delay, after written notice from the County to the Surety.

The Surety hereby waives notice of any and all modifications, omissions, additions, changes, alterations, extensions of time, changes in payment terms, and any other amendments in or about the Contract, and agrees that the obligations undertaken by this bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, alterations, extensions of time, change in payment terms, and amendments.

The Surety hereby agrees that this Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto, upon any amendment to the Contract, so as to bind the Principal and Surety to the full and faithful performance of the Contract as so amended or modified, and so as to increase the penal sum to the adjusted Contract Price of the Contract.

The Surety's obligations under this bond include all of the Contractor's duties under the Contract, including without limitation its maintenance and guarantee obligations.

No right of action shall accrue on this bond to or for the use of any person, entity, or corporation other than the County and any other obligee named herein, or their executors, administrators, successors or assigns.

This Bond is intended to comply with O.C.G.A. §36-91-70, and shall be interpreted so as to comply with the minimum requirements thereof. However, in the event the express language of this Bond extends protection to the County beyond that contemplated by O.C.G.A. §36-91-70, or any other statutory law applicable to this Project, then the additional protection shall be enforced in favor of the County, whether or not such protection is found in the applicable statutes.

If any one or more of the provisions of this Bond are determined to be illegal or unenforceable by a court of competent jurisdiction, all other provisions shall remain effective.

IN WITNESS WHEREOF the undersigned have caused this instrument to be executed and their respective corporate seals to be affixed and attested by their duly authorized representatives this ____ day of _____, 20__.

PRINCIPAL

By: _____ (SEAL)
Signature of Principal

Print Name and Title of Authorized Signer

Print Name of Principal Business

ATTEST:

Corporate Secretary

SURETY

By: _____ (SEAL)
Signature of Surety (by Power of Attorney)

Print Name and Title of Authorized Signer

Print Name of Surety Business

WITNESS:

[Attach Original Power of Attorney]

ATTACHMENT N
 (Consisting of 2 pages)
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that _____ [Insert name of contractor] (hereinafter called the "Principal") and _____ [Insert name of surety] (hereinafter called the "Surety"), are held and firmly bound unto _____ County, (hereinafter called the "County"), its successors and assigns as obligee, in the penal sum of [Insert contract amount], lawful money of the United States of America, for the payment of which the Principal and the Surety bind themselves, their administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written contract with the County, awarded by the DeKalb County Governing Authority on _____ [insert date of award] which is incorporated herein by reference in its entirety (hereinafter called the "Contract"), for the construction of a Project known as [insert name of Project], as more particularly described in the Contract (hereinafter called the "Project");

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to all persons working on or supplying labor or materials under the Contract, and any amendments thereto, with regard to labor or materials furnished and used in the Project, and with regard to labor or materials furnished but not so used, then this obligation shall be void; but otherwise it shall remain in full force and effect.

4. A "Claimant" shall be defined herein as any Subcontractor, person, party, partnership, corporation or other entity furnishing labor, services, or materials used, or reasonably required for use, in the performance of the Contract, without regard to whether such labor, services, or materials were sold, leased, or rented, and without regard to whether such Claimant is or is not in privity of contract with the Principal or any Subcontractor performing work on the Project, including, but not limited to, the following labor, services, or materials: water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.
5. In the event a Claimant files a claim against the County, or the property of the County, and the Principal fails or refuses to satisfy or discharge it promptly, the Surety shall satisfy or discharge the claim promptly upon written notice from the County, either by bond or as otherwise provided in the Contract.
6. The Surety hereby waives notice of any and all modifications, omissions, additions, changes, alterations, extensions of time, changes in payment terms, and any other amendments in or about the Contract and agrees that the obligations undertaken by this bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, alternations, extensions of time, changes in payment terms, and amendments.
7. The Surety hereby agrees that this Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto, upon any amendment or modification to the Contract, so as to bind the Principal and Surety, jointly and severally, to the full payment of any Claimant under the Contract, as amended or modified, provided only that the Surety shall not be liable for more than the penal sum of the Bond, as specified in the first paragraph hereof.

- 8. This Bond is made for the use and benefit of all persons, firms, and corporations who or which may furnish any materials or perform any labor for or on account of the construction to be performed or supplied under the Contract, and any amendments thereto, and they and each of them may sue hereon.
- 9. No action may be maintained on this Bond after one (1) year from the date the last services, labor, or materials were provided under the Contract by the Claimant prosecuting said action.
- 10. This Bond is intended to comply with O.C.G.A. §36-91-90, and shall be interpreted so as to comply with the minimum requirements thereof. However, in the event the express language of this Bond extends protection to the County beyond that contemplated by O.C.G.A. §36-91-90, or any other statutory law applicable to this Project, then the additional protection shall be enforced in favor of the County, whether or not such protection is found in the applicable statutes.

IN WITNESS WHEREOF, the Principal and Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized representatives this ____ day of _____, 20__.

PRINCIPAL

By: _____ (SEAL)
Signature of Principal

Print Name and Title of Authorized Signer

Print Name of Principal Business

ATTEST:

Corporate Secretary

SURETY

By: _____ (SEAL)
Signature of Surety (by Power of Attorney)

Print Name and Title of Authorized Signer

Print Name of Surety Business

WITNESS:

[Attach Original Power of Attorney]

ATTACHMENT O



DeKalb Workforce Development
Where Workforce Comes Together

First Source Jobs Ordinance Acknowledgement

Contract No. _____

The DeKalb County First Source Ordinance requires contractors or beneficiaries of eligible projects entering into any type of agreement with the County, including purchase orders, regardless of what they may be called, for the procurement or disposal of supplies, services, construction projects, professional or consultant services, which is funded in whole or part with County funds or County administered funds in which the contractor is to receive \$50,000 or more in County expenditures or committed expenditures and recipient of urban redevelopment action grants or community development block funds administered in the amount of \$50,000 or more to make a good faith effort to hire DeKalb County residents for at least 50% of jobs created using the First Source Registry (candidate database) within one hundred twenty (120) days of contract execution. The work to be performed under this contract is subject to the provisions of the DeKalb County First Source Jobs Ordinance. All contractors will be asked to submit copies of active payroll registers on a monthly basis to verify compliance. The undersigned acknowledges and agrees to comply with the provisions of the DeKalb County First Source Jobs Ordinance.

CONTRACTOR OR BENEFICIARY INFORMATION:

 Contractor or Beneficiary Name (Signature)

 Contractor or Beneficiary Name (Printed)

 Title

 Telephone

 Email

 Name of Business

Please answer the following questions:

1. How many job openings do you anticipate filling related to this contract? _____
2. How many incumbents/existing employees will retain jobs due to this contract?
 DeKalb Residents: _____ Non-DeKalb Residents: _____

Please return this form to Workforce Development, fax (404) 687-4099 or email to dblake@dekalbcountyga.gov.

◆ (404) 687-3400 ◆ www.dekalbworkforce.org
 DeKalb Workforce Development is a 501(c) 3 non - profit organization
 An Equal Opportunity Employer/Program

ATTACHMENT Q

SAMPLE COUNTY CONTRACT

STATE OF GEORGIA

COUNTY OF DEKALB

DESIGN AND CONSTRUCTION AGREEMENT BETWEEN OWNER AND DESIGN/BUILDER

This DESIGN AND CONSTRUCTION AGREEMENT (the “Agreement” or “Contract”) is, under seal, by and between DEKALB COUNTY, GEORGIA, a political subdivision of the State of Georgia, (hereinafter referred to as the “Owner” or “County”) and _____, a _____ of the State of, with offices in _____ County, _____ (hereinafter referred to as the “Design/Builder “or “Contractor”). This Agreement is for the design and construction of a Project identified as: (the “Project”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, Owner and Design/Builder agree as follows:

ARTICLE 1

THE CONTRACT AND THE CONTRACT DOCUMENTS

(A) The Contract: The Contract between Design/Builder and Owner, of which this Agreement is a part, consists of the Contract Documents. The Contract shall be effective on the date this Agreement is effective.

(B) The Contract Documents: The Contract Documents consist of this Agreement, the Design Scope Specification, all Design Documents hereafter prepared by Design/Builder and approved by Owner in accordance with this Agreement, Change Orders and Field Orders issued hereafter, any other written amendments executed by Owner and Design/Builder, as well as the following (if any): all of which are hereby incorporated herein by reference and made a part hereof.

(C) Enumerated Documents Form Entire Contract: Documents not specifically enumerated in Paragraph 1(B) of this Agreement are not Contract Documents.

(D) Complete Agreement: The Contract, together with Design/Builder’s and Surety’s performance and payment bonds for the Project, if any, constitute the entire and exclusive agreements between Owner and Design/Builder with reference to the Project. The Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

(E) Contract Interpreted as A Whole: The Contract is intended to be an integral whole and shall be interpreted as internally consistent. Work required by any page, part, or portion of the Contract shall be required.

(F) Provision of All Things Required: Anything that may be required, implied or inferred

by the Contract Documents which make up this Contract, or any one or more of them, shall be provided by Design/Builder for the Contract Price.

(G) Privity Only With Design/Builder: Nothing contained in the Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between Owner and any person except Design/Builder.

(H) Agreed Interpretation of Contract Terms: 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. Headings are used herein solely for convenience.

(I) Term "Include" Intended to Be Encompassing: "Include", "includes", or "including", as used in the Contract, shall be deemed in all cases to be followed by the phrase, "without limitation".

(J) Use Of Singular And Plural: Words or terms used as nouns in the Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

(K) Definition of Material Breaches Not Exhaustive: The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of the 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 the Contract.

(L) Order of Precedence: In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents which make up this Contract, the following shall control:

(1) As between figures given on plans and scaled measurements, the figures shall govern; As between large scale plans and small scale plans, the large scale plans shall govern;

(2) As between plans and specifications, the requirements of the specifications shall govern;

(3) As between this document and the plans or specifications, this document shall govern.

ARTICLE 2 DESIGN/BUILDER'S REPRESENTATIONS

(A) Specific Representations: In order to induce Owner to execute this Agreement and recognizing that Owner is relying thereon, Design/Builder, by executing this Agreement, and without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in this Agreement or the Contract, or implied by operation of law, makes the

following express representations to Owner:

- (1) Design/Builder is professionally and fully qualified to act as the design professional and the general contractor for the Project and is, and will remain, licensed to practice engineering and architecture and general contracting by all public entities having jurisdiction over Design/Builder or the Project;
- (2) Design/Builder will maintain all necessary licenses, permits or other authorization necessary to act as Design/Builder for the Project until Design/Builder's duties hereunder have been fully satisfied;
- (3) Design/Builder has the expertise, experience, and knowledge as well as the necessary plant, personnel and financial capability to perform the Design Services and the Work in accordance with the terms of the Contract;
- (4) Prior to the execution of this Agreement, Design/Builder has visited and inspected the Project site and the local conditions under which the Project is to be designed, constructed and operated, and Design/Builder has performed such tests, if any, as are necessary to determine the conditions under which the Work will be performed, and Design/Builder accepts the conditions of the Work site and has taken those conditions into account in entering into the Contract;
- (5) Design/Builder assumes full responsibility to Owner for the improper acts and omissions of its Subcontractors or others employed or retained by Design/Builder in connection with the Project.

ARTICLE 3 REGULATORY GUIDELINES, REQUIREMENTS AND STANDARDS

(A) Generally: Design/Builder shall perform all Design Services described in, contemplated by, inferable from, or necessary or desirable to achieve the objectives stated in the Design Scope Specification and the Contract, including all Design Services necessary for the Project to be properly constructed by Design/Builder and used, operated and maintained by Owner in accordance with all applicable guidelines, requirements and standards. "Design Services" means any and all architectural, engineering and design services required to be performed by Design/Builder pursuant to the Contract and all labor, materials, supervision, equipment, computers, documents, and all other things necessary for the performance of such services. "Design Scope Specification" means the document prepared by Owner dated _____, which specifies the general scope of the Design Services to be performed by Design/Builder under the Contract. A copy of the Scope of Design / Build Services is attached hereto as Attachment C and is incorporated herein by reference. The Design / Build Services shall be performed within the time provided by the Design Schedule for the performance of Design/Builder's Design Services as provided in Paragraph 3(J) of this Agreement.

(B) Owner's Review of Design Services: Subject to Paragraph 13(G) of this Agreement, Design/Builder shall submit all documents produced as part of the Design Services

to Owner's Representative for review and approval in accordance with the terms of the Contract. However, any such review or approval by Owner or Owner's Representative shall not relieve Design/Builder of or otherwise diminish its obligations under the Contract. Owner may direct Design/Builder to make changes to any such documents in order to conform such documents to Owner's objectives. Any such changes by Design/Builder ordered by Owner shall not relieve Design/Builder of its obligations hereunder unless, and only to the extent that, Design/Builder notifies Owner in writing within seven (7) days of receipt of Owner's directive to make such changes of any adverse impact on schedules, budgets, operational costs, operational performance, satisfaction of regulatory requirements, or other adverse impact that may result from such changes. Failure of Design/Builder to submit its notice within said seven (7) day period shall constitute a waiver by Design/Builder of any claim for an adjustment to the Design Schedule or the Contract Time.

(C) Preparation of Site Information: Design/Builder shall prepare, as necessary, surveys and topographic information including aerial photographs needed to establish line and grade of sewers, location of property lines and easements. Sewer easements, both construction and permanent, shall be referenced to property lines by field surveys, and plans shall include the location of any improvement as it relates to property lines.

(D) Retention of Geotechnical Consultants: In preparing the Design Documents, Design/Builder shall retain an experienced, qualified geotechnical consultant to evaluate all geotechnical considerations relating to the design and construction of the Project. Design/Builder shall be responsible for designing the Project in accordance with the analysis and recommendations of its geotechnical consultant.

(E) Quality of Design Services: Design/Builder shall be responsible for the professional quality, completeness, accuracy, and coordination of Design Documents. Design/Builder shall provide Design Services that will result in an operationally cost-efficient and economical facility that meets all environmental and regulatory requirements as of the date hereof, and uses the most appropriate available technology. Design/Builder shall provide for all testing and inspections required by sound professional architectural and engineering practices and by governmental authorities having jurisdiction over the Project.

(F) Compliance with Laws And Regulatory Requirements: In providing Design Services, Design/Builder shall comply with the lawful requirements of all federal, state, and local authorities having lawful jurisdiction over the Project. Design/Builder shall design the Project to meet all applicable requirements of building control laws and regulations in relation to the design, construction, occupation, and operation of the Project, including, without limitation, environmental standards, fire and safety regulations, and requirements and compliance with all other applicable standards and codes.

(G) Laws and Regulations: The Design/Builder's attention is directed to the fact that all applicable Federal, State, and County laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract Documents the same as though herein written out in full. The Design/Builder shall keep himself fully informed of all laws, ordinances, and regulations of the Federal, State, and County in any manner affecting those engaged or employed in the Work or the materials used in the

Work or in any way affecting the conduct of the Work and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or inconsistency should be discovered in this Contract, or in the Drawings or Specifications herein referred to, in relation to any such law, regulation, ordinance, order, or decree, he shall herewith report the same, in writing, to the Owner . He shall at all times himself observe and comply with all such laws, ordinances, and regulations, and shall protect and indemnify the County and its agents against any such law, ordinance, regulation, order, or decree, whether by himself or by his employees.

(H) **Applicable Requirements:** The work shall comply with the Contract Documents and with all applicable codes, laws, and regulations of the County, State, or Federal agencies which may have cognizance of any part of the Work. In the event of any conflict between the terms of this Contract and such codes, laws, and regulations, the codes, laws, and/or regulations shall prevail. If the Design/Builder performs any work knowing it to be contrary to such codes, laws, or regulations, and without such notice to the County, he shall assume full responsibility therefor and shall bear any and all costs necessary to correct the Work.

(I) **Duty to Correct Errors:** Design/Builder shall, without additional compensation, immediately correct any errors, omissions or deficiencies in its Design Services and Design Documents. **Schedule of Design Services:** Design/Builder shall submit for Owner's approval the Design Schedule for the performance of Design/Builder's Design Services which shall include allowance for reasonable time required for Owner's review of submissions and for approvals of authorities having jurisdiction over the Project. The Design Schedule, when approved by Owner, shall not, except for good cause, be exceeded by Design/Builder. Should Design/Builder at any time during the course of performing the Contract, have any reason to believe that it will be unable to meet any completion date in accordance with the Design Schedule, it shall immediately notify Owner's Representative in writing. In such notice, Design/Builder shall state the reason for the delay including the party responsible, if any, and the steps being taken to remedy or minimize the impact of the delay. Failure of Design/Builder to submit such notice shall constitute a waiver by Design/Builder of any claim for an adjustment to the Contract Price, the Design Schedule, or the Contract Time. All extensions of time shall be governed by Articles 16 and 17 of this Agreement. Subject to the provisions of Paragraph 13(G) of this Agreement, Owner shall review and approve, where appropriate, the Design Schedule, or any portion thereof.

ARTICLE 4 PRELIMINARY CONSULTATION AND PROJECT ANALYSIS

(A) **Determining The Project Objectives:** Prior to the preparation of the Preliminary Design as required by Article 5 below, Design/Builder shall first consult in detail with Owner, and shall carefully analyze any information furnished by Owner concerning requirements of the Project including, but not limited to, any design, construction, scheduling, budgetary or operational requirements, limitations, and objectives, as well as the Design Scope Specification.

(B) **Report on Project Requirements and Objectives:** Based on its study and analysis, and no later than ten (10) days after the effective date of the Contract, Design/Builder shall prepare and submit to Owner a written report detailing Design/Builder's understanding and

analysis of the Project requirements and identifying any design, construction, scheduling, budgetary, operational, or other problems which may result from said requirements. The written report of Design/Builder shall also include proposed solutions, including design alternatives if appropriate, addressing each of the identified problems. Design/Builder shall review such report with Owner and shall implement such changes as Owner may require as provided in Paragraph 3(B) of this Agreement.

ARTICLE 5 PRELIMINARY DESIGN

(A) **Time For Preliminary Design:** Not later than one hundred and twenty (120) calendar days after the Notice to Proceed date the Design/Builder shall review with Owner the written report required by Paragraph 4(B) above, Design/Builder shall prepare and submit to Owner a Preliminary Design for the Project.

(B) **Contents Of Preliminary Design:** The Preliminary Design shall address all requirements of the Project and shall include, without limitation, the following:

- (1) Preliminary drawings which illustrate each of the basic components of the Project including the size, scale, location, dimensions, and character of each building structure;
- (2) Preliminary drawings which illustrate each exterior view of the Project;
- (3) Preliminary drawings, which illustrate a floor plan for each room, office, and functional area of the Project and the dimensions thereof;
- (4) Preliminary drawings and specifications illustrating and describing the architectural, electrical, mechanical, structural, and manufacturing systems of the Project;
- (5) A written description of the materials and equipment to be incorporated into the Project and the location of same;
- (6) Any other documents or things required to illustrate, describe or depict the Preliminary Design and the conformity of same with the requirements of the Design Scope Specification and the Contract.

(C) **To Be Reviewed with Owner:** Design/Builder shall review with Owner the Preliminary Design and shall incorporate any changes ordered by Owner with respect to said Preliminary Design or with respect to the requirements of the Project.

(D) **Authorization to Proceed with Detailed Design:** After review of the Preliminary Design and incorporation of any changes ordered by Owner, Owner shall authorize Design/Builder in writing to commence preparing the Detailed Design or such part thereof as directed by Owner.

ARTICLE 6 DETAILED DESIGN

(A) Time for Preparation: Not later than one hundred and eighty calendar days (180) after Owner has authorized Design/Builder to commence with the Detailed Design as provided in Paragraph 5(D) hereinabove, Design/Builder shall prepare and submit to Owner the complete Detailed Design.

(B) The Detailed Design: The Detailed Design shall include all Design Documents which shall describe with specificity all elements, details, components, materials, and other information necessary for the complete construction of the Project and the rendering of the Project fully operational for its intended purposes, including satisfaction of all testing, permitting, qualifications, certifications, validations, and obtaining regulatory approvals by all applicable regulatory authorities required to render the Project and all its components operational and functionally and legally usable for their intended purpose. Subject to the provisions of Paragraph 13(G) of this Agreement, Owner shall review and approve, where appropriate, the Design Documents, or any portion thereof.

(C) Design Documents: Design Documents means all the design documents provided by Design/Builder and approved by Owner pursuant to the Contract including, without limitation, those for use in constructing the Project, performing the Work, and the rendering of the Project fully operational, and shall include, without limitation, detailed plans, drawings, specifications, manuals, and related materials prepared by or on behalf of Design/Builder.

ARTICLE 7 CONSTRUCTION SERVICES

(A) General Intent: Design/Builder shall perform all Work necessary to construct the Project in accordance with the Contract and to render the Project and all its components operational and functionally and legally usable for their intended purpose.

(B) Work Defined: The term "Work" shall mean whatever is done by or required of Design/Builder to perform and complete its duties relating to the construction of the Project under the Contract, including, without limitation, the following:

(1) Construction of the whole and all parts of the Project in full and strict conformity with the Contract;

(2) The provision and furnishing, and prompt payment therefor, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of the Project;

(3) The procurement and furnishing of all necessary building permits and other permits required for the construction of the Project;

- (4) The creation and submission to Owner of detailed as-built drawings depicting all as-built construction;
- (5) The furnishing of any required surety bonds and insurance as required by the Contract;
- (6) The furnishing of all equipment and product warranties, manuals, test results and user guides required by the Contract or otherwise reasonably available to Design/Builder;
- (7) The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 9 below.

ARTICLE 8 TIME FOR CONSTRUCTION: THE CONTRACT TIME

(A) Notice of Commencement: After Owner has approved the Design Documents for the Detailed Design, Owner shall issue a notice to commence the Work directing Design/Builder to proceed with the Work on the date indicated in the notice (the "Commencement Date"). The notice to commence Work shall be issued at least ten (10) days prior to the Commencement Date.

Time for Completion: Design/Builder shall commence the Work on the Commencement Date, and the Work shall be carried out regularly and without interruption. Design/Builder shall substantially complete the Work not later than June 30, 2017 or such other date as may by Change Order be designated (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is _____ calendar days, the "Contract Time". Design/Builder shall achieve Final Completion of the Work no later than _____ calendar days after the Notice to Proceed date.

(B) Contract Term: As allowed by O.C.G.A. §36-60-15.1, this Contract shall commence immediately upon the execution date. This Contract shall terminate without further obligation on the part of the County, with no further renewals, on _____, unless extended by Change Order adopted and approved by the DeKalb County Governing Authority and the Contractor in accordance with the terms of this Contract.

(C) Liquidated Damages For Delay In Substantial Completion: Design/Builder shall pay Owner the sum of \$1,000.00 per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the Scheduled Completion Date. Any sums due and payable hereunder by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Owner prior to Substantial Completion so long as Design/Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Substantial Completion. When Owner reasonably believes that Substantial Completion will be inexcusably delayed, Owner shall be entitled, but not required, to withhold from any amounts otherwise due

to Design/Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

(D) **Liquidated Damages For Delay In Final Completion:** If Design/Builder fails to achieve Final Completion within _____ calendar days from the Notice to Proceed date. Design/Builder shall pay Owner the sum of \$1,000.00 per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by Owner, estimated at the time of executing this Agreement. Such liquidated damages shall apply regardless of whether Design/Builder has been terminated by Owner prior to Final Completion so long as Design/Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in Design/Builder's performance hereunder for matters other than delays in Final Completion. When Owner reasonably believes that Final Completion will be inexcusably delayed; Owner shall be entitled, but not required, to withhold from any amounts otherwise due to Design/Builder an amount then believed by Owner to be adequate to recover liquidated damages applicable to such delays. If and when Design/Builder overcomes the delay in achieving Final Completion, or any part thereof, for which Owner has withheld payment, Owner shall promptly release to Design/Builder those funds withheld, but no longer applicable as liquidated damages.

(F) **Time Is Of The Essence:** All limitations of time set forth herein are material and time is of the essence of the Contract.

Time for Completion and Liquidated Damages:

(1) It is hereby understood and mutually agreed, by and between the Design/Builder and the County, that the date of beginning, rate of progress, and the time for completion of the Work are essential conditions of this Contract; and it is further mutually understood and agreed that the Work embraced in this Contract shall be commenced on a date to be specified in the Notice to Proceed.

(2) The Design/Builder agrees that said work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will insure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Design/Builder and the County, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climate range and usual industrial conditions prevailing in this locality.

(3) If the said Design/Builder shall neglect, fail or refuse to complete the Work within the time herein specified, then the Design/Builder does hereby agree, as a part consideration for the awarding of this Contract, to pay to the County, the amount

specified herein, not as a penalty, but as liquidated damages.

(4) It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite portion and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be the essence of this Contract. Provided, that the Design/Builder shall not be charged with liquidated damages or any excess cost when the delay in completion of the Work due to unforeseeable causes beyond the control and without the fault or negligence of the Design/Builder, including but not restricted to, acts of God, or to the public enemy, acts of the County, acts of another contractor in the performance of the contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather exceeding the average climatic conditions in the area of the Work.

(5) Provided further, that the Design/Builder shall within seven (7) days from the beginning of such delay, notify the County, in writing, of the causes of the delay, who shall ascertain the facts and extent of the delay and notify the Design/Builder within a reasonable time of its decision in the matter.

(6) Where the County has beneficial occupancy of a usable facility prior to the expiration of the specified Contract Time, but where contract work items remain outstanding, the County, at its option, may, in lieu of all or a portion of liquidated damages owed by the Design/Builder, charge the Design/Builder for actual cost of administering the Contract for the period subsequent to expiration of the Contract completion date.

ARTICLE 9

ADDITIONAL DUTIES AND RESPONSIBILITIES OF DESIGN/BUILDER

(A) **Examination of Work by Design/Builder:** It is understood and agreed that the Design/Builder has, by careful examination, satisfied himself as to the nature and location of the Work, the conformation of the ground, the character, quality, and quantity of the facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work or the cost thereof under this Contract. No verbal agreement or conversation with any officer, agent, or employee of the County, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations herein contained.

(B) **Materials, Services, and Facilities:**

(1) The Design/Builder shall at all times employ sufficient labor and equipment for prosecuting the Work to full completion in the manner and time specified. Failure of the Design/Builder to provide adequate labor and equipment may result in default of the Contract. The labor and equipment to be used in the Work by the Design/Builder shall be sufficient to meet the requirements of the Work and shall be such as to produce a satisfactory quality of work, in accordance with accepted industry practices within the time

specified in the Contract.

(2) Materials and equipment shall be so stored and handled as to insure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. No product which has in any way become unfit for the intended purpose shall be incorporated into the Work.

(3) Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, cleaned, and conditioned as directed by the manufacturer.

(4) Materials, supplies, and equipment to be incorporated into the Work shall be new and unused unless otherwise specifically stated in the Contract Documents. The source of supply for all such products shall be submitted to the Owner, together with detailed descriptions thereof in the form of samples, Shop Drawings, tests, or other means necessary to adequately describe the items proposed. If, after trial, it is found that sources of supply, even though previously approved by the Owner, have not furnished products meeting the intent of the Contract Documents, the Design/Builder shall thereafter furnish products from other approved sources, and shall remove completed Work incorporating products which do not meet Contract requirements.

(C) Design/Builder To Perform All Work Required By The Contract: The intent of the Contract is to require complete, correct and timely execution of the design and the Work. Any and all Work that may be required, reasonably implied or reasonably inferred by the Contract, or any part of it, as necessary to produce the intended result shall be provided by Design/Builder in accordance with Article 10 of this Agreement for the Contract Price.

(D) Design/Builder's Obligations: The Design/Builder shall, in good workmanlike manner, do and perform, all work and furnish all supplies and materials, machinery, equipment, facilities, and means, except as herein otherwise expressly specified, necessary, or proper to perform and complete all the Work required by this Contract, within the time herein specified, in accordance with the provisions of this Contract and said Specifications and in accordance with the Drawings of the Work covered by this Contract and any and all supplemental drawings of the Work covered by this Contract. He shall furnish, erect, maintain, and remove such construction, plants, and such temporary works as may be required. He alone shall be responsible for the safety, efficiency, and adequacy of his plants, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation. The Design/Builder shall observe, comply with, and be subject to all terms, conditions, requirements and limitations of the Contract and Specifications, local ordinances, and State and Federal laws; and shall do, carry on, and complete the entire Work.

(E) Strict Compliance With The Contract Documents: All Work performed by Design/Builder shall be in strict compliance with the Contract. "Substantial Compliance" is not strict compliance. Any Work not in strict compliance with the Contract is defective.

(F) Supervision Of The Work: The Work shall be strictly supervised and directed using Design/Builder's best and highest skill and effort, Design/Builder bearing full responsibility for any

and all acts or omissions of those engaged in the Work on behalf of Design/Builder.

(G) **Warranty Of Workmanship And Materials:** Design/Builder warrants and guarantees to Owner that all labor furnished to progress the Work under the Contract will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only first-class results in strict compliance with the Contract, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Contract, and that the Work will be of high quality, free from faults and defects and in strict conformance with the Contract. Any and all Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Design/Builder's warranty.

(H) **Commencement of Guarantee and Warranty:** Special or specific guarantees and warranties which are required by the Contract to run for a fixed period of time shall commence running on the date of Substantial Completion of all Work.

(I) **Design/Builder's Schedule of Construction:** Design/Builder, within fifteen (15) days after the Commencement Date, shall submit to Owner, for its information, and comply with, Design/Builder's Schedule of Construction for completing the Work by the Scheduled Completion Date. The Schedule of Construction shall reflect the performance of all Work on week days and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to Owner. The Schedule of Construction shall be revised at least monthly 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 Owner. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Design/Builder, and failure to strictly comply with said requirements shall constitute a material breach of the Contract.

(J) **Record Copy of Contract Documents:** Design/Builder shall continuously maintain at the site, for the benefit of Owner, an updated copy of the Contract, including one record copy of the Contract Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Design/Builder shall maintain at the site, for the benefit of Owner, a copy of all Shop Drawings, Product Data, Samples, and other Submittals. Upon Final Completion of the Work, and/or upon Owner's request, all of the documents described in this Paragraph shall be finally updated and delivered to Owner and shall become the property of Owner.

(K) **Review and Approval of Submittals:** Design/Builder shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that the Project will be constructed in a timely fashion in strict compliance with the Contract.

(L) **Owner's Option To Review Submittals:** Owner shall, in its discretion, have the right to review and approve Submittals, and if Owner so elects, Design/Builder shall not perform any portion of the Work as to which Owner has required Submittal and review until such Submittal has been approved by Owner's Representative. Approval by Owner, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of the Contract nor shall such approvals relieve Design/Builder of any of its responsibilities or warranties under the Contract. If Owner elects to review Submittals, Design/Builder shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any

approval or rejection, and the reason for any approval or rejection. Design/Builder shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to Owner. Shop Drawings and other Submittals from Design/Builder do not constitute a part of the Contract.

(M) Procurement and Review of Warranties: Design/Builder shall procure from all Subcontractors and Suppliers and shall transmit in writing to the Owner, all warranties required by the Contract. Design/Builder shall review all such warranties and shall certify to Owner that the warranties are in strict compliance with the requirements of the Contract.

(N) Procurement of Operations and Maintenance Documentation: Design/Builder shall prepare or procure and shall transmit to Owner all documentation required by the Contract regarding the operation and recommended maintenance programs relating to the various elements of the Work.

(O) As-Built Drawings: Design/Builder shall prepare and provide to Owner a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Work in strict compliance with the requirements of the Contract. The Design/Builder shall, upon completion of the Work, furnish a marked set of Drawings showing the field changes, as actually installed and as specified under sections of the Specifications, and deliver them to the Owner.

(P) Compliance with Labor Laws: Design/Builder shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

(Q) Inspection and Testing of Materials: Unless otherwise specifically provided for, the inspection and testing of materials and finished articles to be incorporated in the Work at the site shall be made by bureaus, laboratories, or agencies approved by the Owner. The cost of such inspection and testing shall be paid by the Design/Builder. The Design/Builder shall furnish evidence satisfactory to the Owner that the material and finished articles have passed the required tests prior to the incorporation of such materials and finished articles in the Work.

(R) Inspection of Work:

(1) The Design/Builder shall, at all times, permit and facilitate inspection of the Work by authorized representatives of the Owner and public authorities having jurisdiction in connection with the Work of this Contract. The presence or observations of the Owner or its representative at the site of the Work shall not be construed to, in any manner, relieve the Design/Builder of this responsibility for strict compliance with the provisions of the Contract Documents.

(2) If the specifications, County's instructions, laws, ordinances, or a public authority require any work to be specially tested or approved, the Design/Builder shall give the Owner timely notice of its readiness for observation or inspection. If the inspection is by another authority, then the Owner shall be advised of the date fixed for such inspection.

Required certificates of inspection shall be secured by the Design/Builder. Design/Builder having secured all certificates of inspection will deliver same to the Owner upon completion. If any work should be covered up without approval or consent of the Owner, it shall, if required by the Owner, be uncovered for examination at the Design/Builder's expense.

(3) Should any disagreement or difference arise as to the estimate, quantities, or classifications or as to the meaning of the Drawings or Specifications, or any point concerning the character, acceptability, and nature of the several kinds of work, any materials and construction thereof, the decisions of the Owner shall be final and conclusive and binding upon all parties to the Contract.

(S) Owner's Regulations and Applicable Laws: Design/Builder shall, during the course of the Work, comply with any regulations or guidelines prescribed by Owner. Design/Builder warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Design/Builder in connection with the Work to be performed under the Contract.

(T) Compliance with Construction Regulations: Design/Builder shall perform the Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Design/Builder, and Design/Builder shall indemnify and hold Owner harmless from all loss, damages, and expense, including attorney's fees, resulting from any such violation or alleged violation.

(U) Permits, Licenses and Notices: All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Design/Builder. Design/Builder shall notify Owner's Representative when it has received said permits, licenses and authorizations and upon receipt shall supply Owner with copies of same. The originals of said permits, licenses and authorizations shall be delivered to Owner upon completion of the Work, and receipt of such documents by Owner shall be a condition precedent to final payment. Design/Builder shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Work. The County will not charge the Design/Builder for permits and inspections obtained from the County.

(V) Conditions to Site Access: While on Owner's property, all Design/Builder's employees and Subcontractors shall confine themselves to areas designated by Owner's Representative and will be subject to Owner's badge and pass requirements, if any, in effect at the site of the Work.

(W) Protection of Work, Property, and Persons

(1) The Design/Builder will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected

thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, lakes, drainage ways, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

(2) The Design/Builder will comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the Work, all necessary warning, safeguards for devices and safety and protection of the Work, the public, and adjoining property. He will notify owners of adjacent utilities when prosecution of the Work may affect them. The Design/Builder will remedy all damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by the Design/Builder, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

(3) The Design/Builder shall, prior to commencing other on-site work, accurately locate utilities within the structure and above and below ground utilities and structures which may be affected by the Work, using whatever means may be appropriate. The Design/Builder shall mark the location of existing utilities and structures, not otherwise readily visible, with flagging, stakes, barricades, or other suitable means, and shall preserve and protect all utilities and structures not designated for removal, relocation, or replacement in the course of construction. He shall notify the Owner promptly on discovery of any conflict between the Contract Documents and any existing facility.

(4) In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, or unanticipated conditions where delay would substantially impact the time or cost of work, the Design/Builder, upon notification to the Owner, shall act to prevent threatened damage, injury, or loss. Any claim for compensation or extension of time by the Design/Builder due to such extra work shall be submitted to the Owner within ten (10) days of the date of performing such work or deviations in the manner prescribed for a Change Order.

(5) All existing utilities, both public and private, including sewer, gas, water, electrical, and telephone services, etc., shall be protected and their operation shall be maintained through the course of the Work. Any temporary shutdown of an existing service shall be arranged between the Design/Builder and the responsible agency. The Design/Builder shall assume full responsibility and hold the County harmless from the result of any damage that may occur as a result of the Design/Builder's activities.

(X) **Repair of Collateral Damages:** Unless otherwise instructed by Owner, Design/Builder shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Design/Builder's performance of the Work.

(Y) **Cleaning Up:** The Design/Builder shall at all times keep the premises free from accumulation of waste materials or rubbish caused by Design/Builder's employees or work. Upon completion of the Work, the Design/Builder shall remove all his plants, tools, materials, and other articles from the property of the County.

- (Z) **Access to Work:** The County shall at all times have access to the Work wherever it is in preparation or progress and the Design/Builder shall provide proper facilities for such access without formality or other procedures.
- (AA) **Decisions Regarding Aesthetic Effect:** Owner's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of the Contract.
- (BB) **Design/Builder to Remain an Independent Contractor:** In the performance of the Contract, Design/Builder's status as an independent contractor shall not be modified or diminished by reason of any instructions issued by Owner or Owner's Representative to Design/Builder or any of Design/Builder's employees, Subcontractors, or representatives.
- (CC) **Assignments:** The Design/Builder shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without written consent of the County.

ARTICLE 10 CONTRACT PRICE

- (A) **Contract Price:** Owner shall pay, and Design/Builder shall accept, as full and complete payment for the Design Services, the performance of all Work required by the Contract, and the performance of all requirements of this Agreement, the Contract Price. The Contract Price shall be a sum in the amount of _____.

ARTICLE 11 PAYMENT OF THE CONTRACT PRICE

- (A) **Payment Procedure:** Owner shall pay the Contract Price to Design/Builder in accordance with the procedures set forth in this Article 11.

Partial payments to the Design/Builder shall be made monthly, based on the value of work completed as provided in the Contract Documents, plus the value of materials and equipment suitably stored, insured and protected at the construction site.

Payment to the Design/Builder shall be made within fifteen (15) days of submission by the Design/Builder of a duly certified and approved estimate of work performed during the preceding calendar month, less the amount of retainage. The estimate shall be submitted on or before the fifteenth (15th) day following the month in which the Work was performed. The amount of retainage shall be as follows:

- (1) Ten (10%) percent of each progress payment shall be withheld as retainage until the value of fifty (50%) percent of the Contract Price, including change orders and other authorized additions provided in the Contract is due;
- (2) When fifty (50%) percent of the contract value, as described above, becomes due and the manner of completion of the contract work and its progress are reasonably satisfactory to the County, the withholding of retainage shall be discontinued. If after discontinuing the retention, the County determines that the Work is unsatisfactory or

has fallen behind schedule, retention may be resumed at the previous level.

- (3) When the Work is substantially complete (operational or beneficial occupancy) and the County determines the Work to be reasonably acceptable, the Design/Builder shall submit an invoice or other documents as may be required and receive payment thereof within thirty (30) days. If there are any remaining incomplete minor items, an amount equal to two hundred (200%) percent of the value of each item, as determined by the County, shall be withheld until such items are completed.
 - (4) This Contract is governed by O.C.G.A. § 13-10-2, which requires that the Design/Builder, within ten (10) days of receipt of retainage from DeKalb County, pass through payments to Subcontractors and reduce each Subcontractor's retainage accordingly. The Code provision also requires Subcontractors to pass through payments to Lower Tier Subcontractors and reduce each lower tier contractor's retainage. Therefore, DeKalb County, in its discretion, may require the Design/Builder to submit satisfactory evidence that all payrolls, material bills, or other indebtedness connected with the Work have been paid before making any payment. Within sixty (60) days after the Work is fully completed and accepted by the County, the balance due hereunder shall be paid; provided, however, that final payment shall not be made until said Design/Builder shall have completed all work necessary and reasonably incidental to the Contract, including final cleanup and restoration.
 - (5) Owner shall be entitled to rely upon the accuracy and completeness of the information furnished by Design/Builder in connection with its request for payment. Owner shall have the right, however, upon demand, to make a detailed examination, audit or inspection of Design/Builder's books and records for the purpose of verifying the accuracy and completeness of such information. In the event Owner determines that Design/Builder has been paid any sums not due Design/Builder, same shall be reimbursed by Design/Builder to Owner within forty-eight (48) hours of demand by Owner.
 - (6) Notwithstanding any other provision in the Contract Documents, final payment shall not be made to Design/Builder until Design/Builder has fully performed all of its obligations under the Contract and the Design Services and the Work are fully complete.
- (B) **Owner's Review of Pay Requests:** Owner shall have the right to review all pay requests and the Design Services and the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work and the Design Services is as represented in the pay request and as required by the Contract.
- (C) **Conditions Precedent To Payment:** In addition to all other conditions precedent contained herein, it shall be a condition precedent to payment of any pay request that Design/Builder have submitted updated schedules for the performance of its Work and Design Services as required by this Agreement and that Design/Builder shall have furnished to Owner properly executed waivers of lien, in a form acceptable to Owner, from all Subcontractors, material men, Suppliers or others having lien rights, wherein they shall acknowledge receipt of all sums due pursuant to all prior pay requests and waive and relinquish any liens or lien rights

relating thereto.

- (D) Title Passes Upon Payment: Design/Builder warrants and represents that upon payment of any pay request submitted by Design/Builder, title to all Work covered by the pay request shall immediately pass to Owner. All equipment, materials, and work covered by progress payments shall, upon payment thereof, become the sole property of the County, but this provision shall not be construed as relieving the Design/Builder from the sole responsibility for the care and protection of materials and work upon which payments have been made, or the restoration of any damaged work.
- (E) Payment Not a Waiver or Acceptance: No payment to Design/Builder, nor any use or occupancy of the Project by Owner, shall be interpreted or construed to constitute acceptance of any Work not in strict compliance with the Contract, and Design/Builder expressly accepts the risk that defective Work may not be detected (1) during any inspection by Owner, (2) prior to making of any payment to Design/Builder, or (3) before Owner's occupancy of the Project.
- (F) Withholding of Payment: Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to Design/Builder in an amount then believed by Owner to be adequate to cover the penalties, damages, and potential losses resulting or likely to result from:
- (1) The quality of a portion, or all, of Design/Builder's Work not being in accordance with the requirements of this Contract;
 - (2) The quantity of Design/Builder's Work not being as represented in Design/Builder's pay request, or otherwise;
 - (3) Design/Builder's rate of progress being such that, in Owner's opinion, Substantial Completion, Final Completion, or both, may be inexcusably delayed;
 - (4) Design/Builder's failure to use Contract funds, previously paid Design/Builder by Owner, to pay Design/Builder's Project-related obligations including, but not limited to, Subcontractors, laborers and material and equipment Suppliers;
 - (5) Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
 - (6) Claims made, or likely to be made, against Owner or its property;
 - (7) Loss caused by Design/Builder; Design/Builder's failure or refusal to perform any of its obligations to Owner. In the event that Owner makes written demand upon Design/Builder for amounts previously paid by Owner as contemplated in this Paragraph 11(H), Design/Builder shall promptly comply with such demand.
- (G) Unexcused Failure to Pay: If Owner, without cause or basis hereunder, fails to pay

Design/Builder any amounts due and payable to Design/Builder within thirty (30) days after the date established herein for payment of such amounts, then Design/Builder may suspend its Design Services or, as applicable, the Work until payment is made, provided that Design/Builder first gives ten (10) days' written notice to Owner of its intent. Any payment due hereunder which is not made within thirty (30) days after the date due shall bear interest at the rate of 55 percent (55 %) per annum.

(H) Payments to Design/Builder:

- (I) Cost Breakdown - The Design/Builder shall be prepared to submit a cost breakdown immediately after the opening of Bids. Cost breakdown shall be based on values of parts of the Work as divided according to sections of the Specifications, and shall be further subdivided into labor and materials.

ARTICLE 12 SUBSTANTIAL AND FINAL COMPLETION

- (A) Substantial Completion: "Substantial Completion" means that stage in the progression of the Work, as approved by Owner in writing, when the Project is sufficiently complete in accordance with the Contract that Owner can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by Owner of all necessary certificates of occupancy or other authorizations for the use and occupancy of the Project required by any governmental or regulatory authority. Owner reserves the right to occupy and use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.
- (B) Determination of Substantial Completion: When Design/Builder believes that the Work is substantially complete, Design/Builder shall notify Owner in writing and shall submit to Owner a list of items remaining to be completed or corrected. Owner will perform an inspection and if the Work is substantially complete in the opinion of Owner, Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of Owner and Design/Builder for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the date, 30 days hence, within which Design/Builder shall complete any items of incomplete or defective Work. The Certificate of Substantial Completion shall be submitted to Design/Builder for its written acceptance of the responsibilities assigned to it in such certificate.
- (C) Final Completion: "Final Completion" means the completion of all Design Services and all Work required by, and in strict compliance with, the Contract, including Design/Builder's provision to Owner of all documents and things required to be provided by the Contract.
- (D) Determination of Final Completion: When Design/Builder believes that all of the Work is finally complete, and Design/Builder is ready for a final inspection, Design/Builder shall so

notify Owner in writing. Owner will then make final inspection of the Work and, if the Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then Owner will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

(E) Conditions Precedent to Final Payment: Prior to being entitled to receive final payment, and as a condition precedent thereto, Design/Builder shall furnish Owner, in the form and manner required by Owner, the following:

- (1) An affidavit that all of Design/Builder's obligations to Subcontractors, laborers, equipment or material Suppliers, or other third parties in connection with the Project, have been paid or otherwise satisfied;
- (2) If required by Owner, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might have a claim against Owner or Owner's property;
 - (3) If applicable, consent(s) of Surety to final payment;
 - (4) A complete set of the as-built drawings and the record set of Contract Documents;
- (5) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a contractor, or expressly required herein, as a part of or prior to Project closeout.

(F) Acceptance of Final Payment a Waiver: Acceptance by Design/Builder of final payment shall constitute a waiver and release of all claims against Owner by Design/Builder except for those claims previously made in writing against Owner by Design/Builder, pending at the time of final payment and specifically identified on Design/Builder's pay request for final payment as unsettled at the time it submits its pay request.

(G) Final Payment:

(1) Before final payment to the Design/Builder of the percentage retained by the County, the following requirements shall be complied with:

- (a) Final Inspection: Upon notice from the Design/Builder that his work is completed, the Owner shall make a final inspection of the Work, and shall notify the Design/Builder of all instances where his work fails to comply with the Drawings and Specifications, as well as any defects he may discover. The Design/Builder shall immediately make such alterations as are necessary to make the Work comply with the Drawings and Specifications. Failure of the Owner to notify the Design/Builder of any defect or deficiency in the Work and/or failure of the Work to comply with the Drawings and Specifications shall not release or discharge the Design/Builder from any of its duties or obligations under this Agreement.

(b) **Final Payment:** When the Work under this Contract is completed, a final payment request shall be submitted representing the original Contract Price and Change Orders to the Contract. The final payment shall not be due until the Design/Builder shall have completed all work necessary and reasonably incidental to the Contract, including final clean-up.

(2) Acceptance of the Work and the making of final payment shall not constitute a waiver of any claims by the County. Payments otherwise due the Design/Builder may be withheld by the County because of defective work not remedied and unadjusted damage to others by the Design/Builder or Subcontractors, vendors, or laborers.

(3) Requests for final payment must be submitted within sixty (60) days after the Work has been completed and accepted by the County. All requests for final payment are subject to final approval and audit by the Board of Commissioners of DeKalb County.

ARTICLE 13 OWNER'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, Owner shall undertake to perform the following:

(A) **Provide Project Information:** Owner shall provide Design/Builder with information regarding Owner's requirements for the Project including any desired or required design or construction schedule.

(B) **Review of Documents:** Owner shall review any documents submitted by Design/Builder requiring Owner's decision, and shall render any required decisions pertaining thereto.

(C) **Provide Notice of Defects:** In the event Owner knows of any material fault or defect in the Work, nonconformance with the Contract, or of any errors, omissions or inconsistencies in the Design Documents, then Owner shall give prompt notice thereof to Design/Builder.

(D) **Access to the Site and the Work:** Owner shall provide Design/Builder access to the site and to the Work, and shall provide Design/Builder with such information, existing and reasonably available, necessary to Design/Builder's performance of the Contract as Design/Builder may request. **Cooperation To Secure Permits, Licenses, Approvals, And Authorizations:** Owner shall cooperate with Design/Builder in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

(E) **Timely Performance:** Owner shall perform the duties set forth in this Article 13 in a reasonably expeditious fashion so as to permit the orderly and timely progress of Design/Builder's Design Services and of the Work.

(F) **Owner's Reviews, Inspections, Approvals, And Payments Not a Waiver:** Owner's review, inspection, or approval of any Work, Design Documents, Submittals, or pay requests by Design/Builder shall be solely for the purpose of determining whether such Work and such

documents are generally consistent with Owner's construction program and requirements. No review, inspection, or approval by Owner of such Work or documents shall relieve Design/Builder of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Work. Approval by any governmental or other regulatory agency or other governing body of any Work, Design Documents, or Contract Documents shall not relieve Design/Builder of responsibility for the strict performance of its obligations under the Contract. Payment by Owner pursuant to the Contract shall not constitute a waiver of any of Owner's rights under the Contract or at law, and Design/Builder expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by Owner.

(G) Delay or Forbearance Not Waiver: Owner's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Design/Builder under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

(H) Documents Requested by Design/Builder: Owner shall furnish to Design/Builder, prior to the execution of this Agreement, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Design/Builder only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, Owner does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefor. If Design/Builder requests in writing, Owner shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

(I) Approvals and Easements: Owner shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Work. Design/Builder shall render such assistance as Owner may request in obtaining such easements, certificates of occupancy, and the like.

(J) Right to Stop Work: In the event Design/Builder fails or refuses to perform the Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, Owner may, at its option, instruct Design/Builder to cease and desist from performing further Work, or any part thereof. Upon receipt of such instruction from Owner in writing, Design/Builder shall immediately cease and desist as instructed by Owner and shall not proceed further until the cause for Owner's instructions has been corrected, no longer exists, or Owner instructs that the Work may resume.

(K) Owner's Right to Perform Work: In the event Owner issues such instructions to stop Work, and in the further event that Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to Owner that the cause of such instructions will be eliminated or corrected, then Owner shall have the right to carry out the Work with its own forces, or with the forces of other contractors, and Design/Builder shall be fully responsible for the costs incurred in correcting any defective or deficient Work. The rights set forth in Paragraph 13(K) and this Paragraph 13(L) are in addition to, and without prejudice to, any other rights or remedies Owner may have against Design/Builder, including the rights to terminate or withhold payment as provided herein.

(L) **Owner's Representative:** "Owner's Representative" means the individual named by Owner, in writing, to act on Owner's behalf in the administration of the Contract.

ARTICLE 14 PROJECT DOCUMENTATION

(A) **Maintenance of Project-Related Records:** Design/Builder shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

(B) **Availability of Project-Related Records to Owner:** All Project Records which are in the possession of Design/Builder or Design/Builders Subcontractors shall be made available to Owner for inspection and copying upon Owner's request at any time. Additionally, such records shall be made available upon request by Owner to any state, federal or other regulatory authorities, and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, tape or videotape recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Design/Builder.

ARTICLE 15 PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

(A) **Subcontractor Defined:** A "Subcontractor" means an entity which has a direct contract with Design/Builder to perform a portion of the Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing specially fabricated equipment and materials for the Project. The Design/Builder understands and agrees that it shall be a breach of this Contract to subcontract any portion of the Work on this Project unless the Work and the contractor proposed to perform it have been declared in the Proposal to the Contract; or the Design/Builder shall have obtained written approval from the County.

THE DESIGN/BUILDER FURTHER UNDERSTANDS AND AGREES THAT ANY WORK ON THIS PROJECT WHICH THE DESIGN/BUILDER SECURES IN VIOLATION OF THIS PROVISION SHALL BE DEEMED A GRATUITY FROM THE DESIGN/BUILDER FOR WHICH DEKALB COUNTY SHALL NOT BE OBLIGATED TO PAY.

Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the County.

(B) **Supplier Defined:** A "Supplier" means an entity providing only equipment or materials for the performance of the Work.

(C) **Objections to Subcontractors:** Design/Builder shall furnish Owner, in writing, the names of persons or entities proposed by Design/Builder to act as Subcontractors on the Project. Design/Builder shall provide such information regarding such proposed Subcontractors as Owner deems necessary. Design/Builder shall not enter into a subcontract with an intended

Subcontractor with reference to whom Owner objects. Any consent or failure to reject by Owner shall in no way relieve Design/Builder of any of its duties or warranties under the Contract.

(D) Terms of Subcontracts: All subcontracts and purchase orders with Subcontractors shall afford Design/Builder rights against the Subcontractor which correspond to those rights afforded to Owner against Design/Builder herein, including those rights of Contract suspension, termination, and stop Work orders as set forth herein. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between Owner and any Subcontractor of Design/Builder and a provision to this effect shall be inserted into all agreements between Design/Builder and its Subcontractors.

(E) Design/Builder Responsible For Acts of Its Subcontractors: Should Design/Builder subcontract all or any part of the Work, such subcontracting of the Work shall not relieve Design/Builder from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Design/Builder shall be responsible for all and any acts, defaults, omissions or negligence of its Subcontractors, Suppliers, and consultants.

(F) Removal of Subcontractors and Personnel: If, at any time during the course of the Project, Owner reasonably determines that the performance of any Subcontractor or any member of Design/Builder's staff working on the Project is unsatisfactory, Owner may require Design/Builder to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to Owner for delays or inefficiencies the change may cause.

(G) Design/Builder's Personnel:

(1) The Design/Builder will supervise and direct the Work. He will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. An experienced Superintendent and necessary assistants competent to supervise the particular types of work involved shall be assigned to the Project by the Design/Builder, and shall be available at all times when work is in progress. The name of the Superintendent shall be submitted with qualifications of same prior to start of the Work and shall be approved by the Owner prior to start of the Work. The Superintendent so named by the Design/Builder shall be employed by the Design/Builder and shall have served in a supervisory capacity on at least one Project of like description and size performed by the Design/Builder during the previous twelve months. Under no circumstances shall an employee of any Subcontractor serve as Project Superintendent. The Superintendent shall represent the Design/Builder, and all directions given to the Superintendent shall be as binding as if given to the Design/Builder.

(2) Only persons skilled in the type of work which they are to perform shall be employed. The Design/Builder shall, at all times, maintain discipline and good order among his employees, and shall not employ on the Work any unfit person or persons or anyone unskilled in the work assigned him.

(3)

**ARTICLE 16
CHANGES AND EXTENSIONS OF TIME**

(A) Definition of Change Order: "Change Order" shall mean a written order to the Design/Builder authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Price or Contract Time, as approved by the Board of Commissioners of DeKalb County, or exempted from Board approval for Contract Price changes up to the amount of five thousand dollars (\$5,000.00), or five percent (5%) of the Contract as originally executed, whichever is less.

Design/Builder acknowledges that Change Orders may require the approval of the DeKalb County, Georgia Board of Commissioners. Design/Builder agrees that Owner may have no less than thirty-one (31) days in which to seek approval by said Board of any proposed or required Change Order. In no event, and under no circumstances, shall Design/Builder make any claim for delay, acceleration, interference, or other claim for damages, cost or expense arising out of, or relating to, the time required to secure the approval or rejection of any Change Order, so long as said approval or rejection is made by the Board within thirty-one (31) days after submission of a proposed Change Order by Design/Builder.

(B) Changes in the Work:

(1) The County may at any time, as the need arises, order changes within the scope of the Work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, an adjustment may be authorized by Change Order.

(2) The Owner, also, may at any time, by issuing a Field Order make changes in the details of the Work. The Design/Builder shall proceed with the performance of any changes in the Work so ordered by the Owner unless the Design/Builder believes that such Field Order entitles him to a change in Contract Price or Time, or both, in which event he shall give the Owner written notice thereof within fifteen days after the receipt of the ordered change, and the Design/Builder shall not execute such changes pending the receipt of an executed Change Order or further instruction from the County.

(3) The Contract Price may be changed only by a Change Order. The value of any work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below.

(a) Unit prices previously approved.

(b) An agreed sum.

(c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the Work. In addition, there shall be added an amount agreed upon but not to exceed fifteen percent of the actual cost of such work to cover the cost of general overhead and profit.

(C) Modification: This Agreement may be modified or amended by the County to reduce the scope of work or Project description upon seven (7) days written notice; the written notice shall be sent to the Design/Builder addressed as follows:

All notices sent to the Design/Builder’s address shall be binding upon the Design/Builder unless said address is changed by the Design/Builder in writing to the County.

(D) Continuing Duty to Perform Work and Make Payment; In the event the parties are unable to agree on the terms of a Change Order, then Design/Builder shall continue to diligently perform the Design Services and the Work, including any change directed by Owner by Change Order, and shall keep thorough records of the cost of performance of such Change Order.

(E) Changes in Unit Prices: If unit prices are provided in the Contract, and if the quantities contemplated are changed in a proposed Change Order such that an application of the unit prices to the quantities of Work proposed will cause substantial inequity to Owner or to Design/Builder, the applicable unit prices shall be equitably adjusted.

(F) Minor Changes: Owner shall have authority to order minor changes in the Work not involving a change in the Contract Price nor extension of the Contract Time and not inconsistent with the intent of the Contract. Such minor changes shall be made by written Field Order, and Design/Builder shall promptly carry out such written Field Orders.

(G) Effect of Executed Change Order: The execution of a Change Order by Design/Builder shall constitute conclusive evidence of Design/Builder's agreement to the ordered changes in the Design Services or the Work and the Contract Time, if any, as thus amended.

(H) Consent of Surety: Design/Builder shall notify and obtain the consent and approval of Design/Builder’s surety with reference to all Change Orders if such notice, consent or approvals a r e required by Owner, Design/Builder’s surety or by law. Design/Builder’s execution of the Change Order shall constitute Design/Builder’s warranty to 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.

(I) Fiduciary Relationship: Design/Builder recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Design/Builder and Owner and agrees that it shall at all times in good faith use its best efforts to advance Owner's interests and agrees to perform the Design Services and the Work in the best professional manner.

**ARTICLE 17
CLAIMS BY DESIGN/BUILDER**

(A) Terms and Conditions of Claims: Claims by Design/Builder against Owner are subject to the terms and conditions of this Article 17, and strict compliance herewith shall be a condition

precedent to any liability of Owner therefor.

(B) Notice of Claim: All Design/Builder claims, disputes and other matters in question against Owner arising out of or related to the Contract or the breach thereof, including without limitation claims in respect of changes in the Contract Price or Contract Time, shall be initiated by a written notice of claim submitted to Owner. Such written notice of claim shall be received by Owner no later than seven (7) days after the event, or the first appearance of the circumstances, causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim including the amount claimed. Design/Builder agrees and acknowledges that its failure to provide written notice of a claim as set forth herein shall constitute a waiver of any claim for additional compensation or time extension related thereto.

(C) Documentation in Support of Claims: Upon discovering an event or condition forming the basis of a claim for an increase in the Contract Price or an extension of the Contract Time, Design/Builder shall, until the claim is resolved, commence to maintain separate records evidencing all costs and delays incurred in connection with the event or condition forming the basis for the claim. Formal Written Claim: No later than thirty (30) days after the date of the written notice of claim, Design/Builder shall submit a formal written claim which shall include at least the following information: (1) a concise statement of the occurrence(s) supporting the claim, dispute or other matter, and the relief sought; (2) identification of the facts giving rise to the claim dispute or other matter; (3) the date Design/Builder discovered the occurrence(s); (4) a detailed schedule identifying all costs resulting from the claim, dispute or other matter; (5) documentation supporting the schedule; (6) identification of any impact the claim, dispute or other matter has on the critical path schedule; and (7) all correspondence, internal memoranda, progress notes, and other documentation relating to the events which form the basis of the claim, dispute or other matter. The claim shall be verified as to its truthfulness and accuracy, under oath, by an officer of the Design/Builder. Other information or documents shall be submitted to Owner within ten (10) days after written request by Owner. The failure to provide a claim as set forth herein, or the failure to provide such other documents or information requested by Owner within ten (10) days after the written request shall constitute a waiver of any claim for additional compensation or time extension related thereto.

(D) Continuous Duty to Provide Documentation: Design/Builder shall provide, and continue to provide, to Owner all such documentation, including cost and time records, as and when Owner may request so that Owner may evaluate Design/Builder's claim.

(E) Duty to Continue Performance: Design/Builder and Owner shall continue their performance hereunder regardless of the existence of any claims submitted by Design/Builder.

(F) Claims for Increase in Contract Price: In the event Design/Builder seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of Owner therefor, Design/Builder shall strictly comply with the requirements of Paragraph 17(B) above and such notice shall be given by Design/Builder before proceeding to execute any additional or changed Work. Failure of the condition precedent to occur shall constitute a waiver by Design/Builder of any claim.

(G) **Limit of Owner's Liability for Increased Costs:** In connection with any claim by Design/Builder against Owner for compensation in excess of the Contract Price, any liability of Owner shall be strictly limited to the Cost of the Work and Services as defined and allowed in Paragraph 10(A) hereinabove and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Design/Builder or its Subcontractors. Owner shall not be liable to Design/Builder for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which Owner would not be liable to Design/Builder under the terms of the Contract. As a condition precedent to Owner's liability to Design/Builder for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Design/Builder and such claims must have been submitted to Owner by Design/Builder in strict compliance with all the requirements of this Article 17. Owner shall not be liable to Design/Builder for claims of third parties including Subcontractors, unless and until the liability of Design/ Builder therefor has been established in a court of competent jurisdiction.

(H) **Claims for Increase in Contract Time:** If Design/Builder 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 Owner or someone acting in Owner's behalf, or by changes ordered in the Design Services or the Work, unusually bad weather not reasonably anticipatable, fire or other Acts of God, then the date for achieving Substantial Completion, or, as applicable, Final Completion, shall, subject to the provisions of Paragraph 17(J) below, be appropriately adjusted by Owner upon the written notice and claim of Design/Builder to Owner for such reasonable time as Owner may determine. A task is critical within the meaning of this Paragraph 17(I) if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. As a condition precedent to any right to an extension of time, Design/Builder shall strictly comply with the requirements of Paragraph 17(B) above and such notice shall be given by Design/Builder before proceeding to execute any additional or changed Design Services or Work. If Design/Builder fails to give such notice, any claim for an extension of time shall be waived. In the event the delay to Design/Builder is a continuing one, only one notice and claim for additional time shall be necessary, provided the continuing nature of the delay is indicated in the notice and claim.

(I) **Owner's Right to Order Acceleration and to Deny Claimed and Appropriate Time Extensions, in Whole or in Part:** Design/Builder acknowledges and agrees that Substantial Completion of the Work by or before the Scheduled Completion Date is, or may be, of substantial importance to Owner.

(1) Owner shall accordingly have the right in its sole discretion to order Design/Builder to accelerate its progress in such a manner as to achieve Substantial Completion on or before such date as Owner may reasonably direct and, upon receipt, Design/Builder shall comply with such order.

(2) In the event that Design/Builder is otherwise entitled to an extension of Contract Time and has made claim therefor in accordance with Paragraph 17(I) above, Owner shall have the right in its sole discretion to deny all, or any part, of such extension of Contract Time by written notice to Design/Builder provided within seven (7) days of receipt of Design/Builder's claim. Should Owner deny Design/Builder's claim for an

extension of Contract Time under this Subparagraph (2), either in whole or in part, Design/Builder shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date.

(J) Claims Resolved By Change Order: The resolution of any claim under this Article 17 shall be reflected by a Change Order executed by Owner and Design/Builder.

ARTICLE 18 UNCOVERING AND CORRECTING WORK

(A) Design/Builder not to Cover Work Contrary to Requirements: If any of the Work is covered, concealed or obscured contrary to the written request of Owner, or contrary to any provision of the Contract, said Work shall, if required by Owner, be uncovered for inspection and shall be properly replaced at Design/Builder's expense without change in the Contract Time.

(B) Owner's Right to Order Uncovering of Any Work: If any of the Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 18(A) above, it shall, if required by Owner, be uncovered for inspection. If such Work conforms strictly with the Contract, the cost of uncovering and proper replacement shall be charged to Owner. If such Work does not strictly conform with the Contract, Design/Builder shall pay the cost of uncovering and proper replacement.

(C) Guarantee and Correction of Work: The Design/Builder shall guarantee all work to have been accomplished in conformance with the Contract Documents. Neither the final certificate of payment nor any provision of the Contract Documents, nor partial or entire occupancy or use of the Work by the County, shall constitute an acceptance of any part of the Work not done in accordance with the Contract Documents, or relieve the Design/Builder of liability for incomplete or faulty materials or workmanship. The Design/Builder shall promptly remedy any omission or defect in the Work and pay for any damage to other Replacement or facilities resulting from such omission or defect which shall appear within a period of twelve (12) months from the date of final completion, unless a longer period is elsewhere specified. In the event that the Design/Builder should fail to make repairs, adjustments, or other remedy that may be made necessary by such defects, the County may do so and charge the Design/Builder the cost thereby incurred. The Performance Bond shall remain in full force and effect through all warranties contained in the Contract Documents.

(D) Duty To Correct Defective Work Discovered After Completion: In addition to its warranty obligations set forth elsewhere herein, Design/Builder shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Work for a period of twelve (12) months following Final Completion upon written direction from Owner. This obligation shall survive final payment by Owner and termination of the Contract.

(E) No Period of Limitation Established: Nothing contained in Paragraphs 18(C) and 18(D) shall establish any period of limitation with respect to other obligations which Design/Builder has under the Contract. Establishment of the twelve (12) month time period in Paragraphs 18(C) or 18(D) above relates only to the duty of Design/Builder to specifically correct the Work.

(F) **Owner's Option To Accept Defective Work:** Owner may, but shall in no event be required to, choose to accept defective or nonconforming Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Work. Owner shall be entitled to such reduction in the Contract Price regardless of whether Owner has, in fact, removed and corrected such defective Work. If the unpaid balance of the Contract Price, if any, is insufficient to compensate Owner for the acceptance of defective or nonconforming Work, Design/Builder shall, upon written demand from Owner, pay Owner such additional compensation for accepting defective or nonconforming Work.

ARTICLE 19 SUSPENSION AND TERMINATION

(A) **Suspension Of Performance:** Owner may for any reason whatsoever suspend performance under the Contract. Owner shall give written notice of such suspension to Design/Builder specifying when such suspension is to become effective.

(B) **Ceasing Performance Upon Suspension:** From and upon the effective date of any Suspension ordered by Owner, Design/Builder shall incur no further expense or obligations in connection with the Contract, and Design/Builder shall cease its performance. Design/Builder shall also, at Owner's direction, either suspend or assign to Owner any of its open or outstanding subcontracts or purchase orders.

(C) **Claim For Costs Of Suspension:** In the event Owner directs a suspension of performance under this Article 19, through no fault of Design/Builder, and provided Design/Builder submits a proper claim as provided in this Agreement, Owner shall pay Design/Builder as full compensation for such suspension Design/Builder's reasonable costs, actually incurred and paid, of:

- i. Demobilization and remobilization, including such costs paid to Subcontractors;
- ii. Preserving and protecting Work in place;
- iii. Storage of materials or equipment purchased for the Project, including insurance thereon;
- iv. Performing in a later, or during a longer, time frame than that contemplated by this Contract.

(D) **Resumption Of Work After Suspension:** If Owner lifts the suspension it shall do so in writing, and Design/Builder shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Design/Builder has exercised its right of termination as provided herein.

(E) **County's Right to Suspend or Terminate:**

i If the Design/Builder is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Design/Builder or for any of his property, or if he files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workers or suitable materials or equipment, payments to Subcontractors or for labor, materials or equipment, or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work, or if he otherwise violates any provision of the Contract Documents, then the County may, without prejudice to any other right or remedy and after giving the Design/Builder and his surety a maximum of seven days from delivery of a written notice, declare the Contract in default, take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Design/Builder, and call upon the surety to finish the Work by whatever method deemed expedient.

ii Where Design/Builder's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Design/Builder then existing or which may therefore accrue. Any retention or payment of moneys due Design/Builder by Owner will not release Design/Builder from liability. If the Design/Builder can establish or it is otherwise determined that the Design/Builder was not in default or that the failure to perform is excusable a termination for default will be considered to have been a termination for the convenience of the Owner and the rights and obligations of the parties governed accordingly.

iii Upon seven days' written notice to Design/Builder, Owner may, for its own convenience and at its sole option, without cause and without prejudice to any other right or remedy of Owner, elect to terminate the Contract. In such case, Design/Builder shall be paid (without duplication of any items):

(a) For completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work;

(b) For expenses sustained in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with Uncompleted Work;

(c) For amounts paid in settlement of terminated contracts with Subcontractors and Suppliers;

(d) Reasonable expenses directly attributable to termination including, but not limited to, fees and charges of engineers, architects, attorneys and other professionals, and court costs;

(e) Design/Builder shall not be paid on account of anticipatory profits or overhead or consequential damages.

(F) Termination of Agreement. The County may unilaterally terminate this Agreement, in whole or in part, for the County’s convenience, or because of failure of the Design/Builder to fulfill the obligations of this Agreement in any respect. The County shall terminate by delivering to the Design/Builder, with at least a thirty (30) day notice, a Notice of Termination specifying the nature, extent, and effective date of termination. If terminated by the County, the written notice shall be sent to the Design/Builder, addressed as follows:

(G) All notices sent to the above address shall be binding upon the Design/Builder unless said address is changed by the Design/Builder in writing to the County. If this Agreement is so terminated, the Design/Builder shall be paid as provided hereinbefore.

**ARTICLE 20
OWNERSHIP OF DOCUMENTS**

(A) Ownership of Documents. All documents, including drawings, estimates, specifications, and data are and remain the property of the County. The Design/Builder agrees that the County may reuse any and all plans, specifications, drawings, estimates, or any other data or documents described herein in its sole discretion without first obtaining permission of the Design/Builder and without any payment of any monies to the Design/Builder therefor. However, any reuse of the documents by the County on a different site shall be at its risk and the Design/Builder shall have no liability where such documents are reused. Any documents furnished by Owner shall remain the property of Owner. Design/Builder may be permitted to retain copies of the Design Documents and Contract Documents and any documents furnished by Owner for its records with approval in writing of Owner; provided, however, that in no event shall Design/Builder use, or permit to be used, any portion or all of such documents on other Projects without Owner’s prior written authorization.

**ARTICLE 21
INDEMNITY**

(A) From Personal Injury Or Damage To Tangible Property: Design/Builder shall indemnify and hold Owner and its affiliates, officers, directors and employees harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys’ fees and expenses, in connection with Design/Builder’s performance of this Contract, provided that such claims, liability, damage, loss, cost or expense is due to sickness, personal injury, disease or death, or to loss or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, to the extent caused by Design/Builder or anyone for whose acts Design/ Builder may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by Owner.

(B) From Violations Of Laws, Environmental Requirements, Performance Guidelines, And Licensing Requirements: Design/Builder shall indemnify and hold harmless Owner and its affiliates, officers, directors, and employees from and against all claims, liabilities, damages, losses, costs, expenses (including reasonable attorney's fees and expenses, and fees and expenses of experts) for bodily injury, including death, or damage to or loss of property, or any other type or form of loss occurring or sustained or resulting from:

- (1) Any violation by Design/Builder, its Subcontractors, representatives, employees, and agents of any municipal, state or federal laws, rules, or regulations applicable to the performance of its obligations under the Contract;
- (2) Environmental violations or contamination from hazardous substances, hazardous wastes and emissions or other substances or chemicals regulated by any applicable environmental laws or regulations and resulting from any willful misconduct, negligent act or omission, or legal violation by Design/Builder, its Subcontractors, Suppliers, representatives, employees, or agents;
- (3) The failure of any of Design/Builder's employees, agents, representatives, Suppliers, or Subcontractors to obtain and maintain the required skills, licenses, certificates and permits mandated by applicable federal, state or local governing authorities with jurisdiction over construction, fabrication, environmental, health and safety matters on the Project.

(C) Hazardous Materials: In the event Design/Builder discovers hazardous or contaminated materials, including but not limited to asbestos, PCBs, petroleum, hazardous waste, or radioactive material, Design/Builder shall stop all Work in connection with such hazardous condition and in any area affected thereby, and notify Owner of the discovery of said condition. Design/Builder shall strictly comply with all applicable laws, regulations, rules or other promulgations by governing bodies, agencies, authorities or organizations having jurisdiction over the Project or the discovery of said hazardous or contaminated material. Design/Builder shall secure the Work site to prevent access by unauthorized personnel. If Design/Builder fails to comply with this Paragraph 21(C) or contaminated, hazardous or suspected contaminated or hazardous material is transported (either on or off site) without notice to Owner, such materials shall become the property of Design/Builder and Design/Builder shall be solely responsible for all costs and fines associated therewith.

(D) Indemnification Agreement. The Design/Builder shall be responsible from the time of signing the Contract, or from the time of the beginning of the first work, whichever shall be the earlier, for all injury or damage of any kind resulting from this work to persons or property, including employees and property of the County. The Design/Builder shall exonerate, indemnify, and save harmless the County and its affiliates, officers, directors and employees from and against all claims or actions, and all expenses incidental to the defense of any such claims, litigation, and actions, based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the performance of this Contract or by conditions created thereby or arising out of or any way connected with work performed under this Contract and shall assume and pay for, without cost to the County, the defense of any and all claims, litigations, and actions suffered through any

act or omission of the Design/Builder, or any Subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them. The Design/Builder expressly agrees to defend, through legal counsel acceptable to the County, against any claims brought or actions filed against the County, where such claim or action involves, in whole or in part, the subject of the indemnity contained herein, whether such claims or actions are rightfully or wrongfully brought or filed.

ARTICLE 22 INSURANCE

The Contractor shall, without expense to the County, provide certificates of insurance, and copies of signed insurance policies including declarations pages from companies that are authorized to engage in the insurance business in the state of Georgia and are otherwise acceptable to the County Finance Director or his/her designee, attached hereto as Attachment H. Such insurance shall be placed with admitted insurers that maintain an A.M. Best's rating of not less than A (Excellent) with a Financial Size Category of VII or better with coverage forms acceptable to Contractor. The insurance described below shall be maintained uninterrupted for the duration of the project, including any warranty periods, and shall protect Contractor, and others as required by contract, for liabilities in connection with work performed by or on behalf of Contractor, its agents, representatives, employees or Contractors.

- (1) *Workers Compensation Insurance.* Statutory workers compensation insurance is to be provided in compliance with the requirements of Georgia law with limits not less than the following:

Employer's liability insurance by accident, each accident	\$1,000,000
Employer's liability insurance by disease, policy limit	\$1,000,000
Employer's liability insurance by disease, each employee	\$1,000,000

- (2) **Commercial General Liability Insurance.** Commercial general liability insurance is to be provided with limits not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage liability
\$1,000,000 personal and advertising injury liability
\$2,000,000 general aggregate
\$2,000,000 products-completed operations aggregate
\$ 100,000 damage to rented premises (each occurrence)
\$ 5,000 medical expense (any one person)

- (3) *Umbrella or Excess Insurance.* Umbrella or excess insurance is to be provided with General Liability, Auto Liability and Employers Liability scheduled as underlying policies with limits not less than the following:

\$5,000,000 per occurrence
\$5,000,000 aggregate

- (4) *Comprehensive Automobile Liability Insurance.* Comprehensive automobile liability insurance with form coverage is to be provided for all owned, non-owned and hired vehicles with combined single limit of \$1,000,000. Automobile liability insurance shall

be written on ISO Business Auto Coverage Form CA 0001 (1990 edition or later), or a substitute form providing equivalent coverage, and shall cover liability for bodily injury and property damage arising from the use or operation of any automobile, including those owned, hired or otherwise operated or used by or on behalf of Contractor. The policy must include Broadened Pollution Liability Endorsement CA9948 12 93.

- A. The County, its elected officials, officers, employees and agents, hereinafter referred to in this article and in the article entitled "Certificates of Insurance" as "the County and its officers" are to be named as additional insured on all policies of insurance except worker's compensation insurance with no cross suits exclusion. The County and its officers shall be included as additional insureds under commercial general liability and commercial umbrella insurance, for liabilities arising out of both the ongoing and completed operations of Contractor. Such additional insured coverage shall be endorsed to Contractor's policy by attachment of ISO Additional Insured Endorsement forms CG 20 10 10 01 (ongoing operations) and CG 20 37 10 01 (products-completed operations), or form(s) providing equivalent coverage.
- B. All coverages required of the Contractor will be primary over any insurance or self-insurance program carried by the County.
- C. If the Contractor is a joint venture involving two (2) or more entities, then each independent entity will satisfy the limits and coverages specified here or the joint venture will be a named insured under each respective policy specified.
- D. In addition to procuring and maintaining commercial general liability insurance, automobile liability and commercial umbrella insurance, for the Contract Term, Contractor shall continue to procure and maintain the products-completed operations liability insurance coverage and commercial umbrella insurance after the Work is substantially complete for the entire Contract Term or for the applicable five-year statutory limitation, whichever is greater. For such period of time, all terms and conditions of such coverage shall remain unchanged, including the limits specified herein and the requirement to provide the County with coverage as an additional insured.
- E. Contractor agrees to waive all rights of subrogation and other rights of recovery against the County and its officers and shall cause each Subcontractor to waive all rights of subrogation for all coverage.
- F. Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the County to identify a deficiency from evidence provided will not be construed as a waiver of the Contractor's obligation to maintain such coverage.
- G. Contractor understands and agrees that the purchase of insurance in no way limits the liability of the Contractor.

Certificates of Insurance

- H. Certificates shall state that the policy or policies shall not expire, be cancelled or altered without at least sixty (60) days prior written notice to the County. Policies and Certificates of Insurance listing the County and its officers as additional insureds (except for workers' compensation

insurance) shall conform to all terms and conditions (including coverage of the indemnification and hold harmless agreement) contained in this Contract.

- I. The Contractor agrees to name the County and its officers as additional insured on the commercial general liability insurance, using the ISO Additional Insured Endorsement forms CG20101001 (ongoing operations) and CG20371001 (products-completed operations) forms, or form(s) providing equivalent coverage.
- J. Certificates of Insurance must contain the policy number, policy limits, and policy expiration date of all policies issued in accordance with this Contract; the location and operations to which the insurance applies. Certificates must be provided annually for the duration of the project. If applicable, a specific statement must be included that blasting coverage is included to the extent such risk is present; that Contractor's protective coverage applies to any Subcontractor's operations; and Contractor's contractual liability insurance coverage applies to any Subcontractor.
- K. This insurance for the County as the additional insured shall be as broad as the coverage provided for the named-insured Contractor. It shall apply as primary insurance before any other insurance or self-insurance, including any deductible, non-contributory, and waiver of subrogation provided to the County as the additional insured.
- L. The Contractor shall be wholly responsible for securing certificates of insurance coverage as set forth above from all Subcontractors who are engaged in the Work.
- M. If the County shall so request, the Contractor will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.
- N. Contractor shall be responsible and have the financial wherewithal to cover any deductibles or retentions included on the certificate of insurance.
- O. Such certificates should be sent to the County and must identify the "Certificate Holder" as follows:

DeKalb County, Georgia
 Director of Purchasing & Contracting
 The Maloof Center
 1300 Commerce Drive, 2nd Floor
 Decatur, Georgia 30030

BUILDERS' RISK INSURANCE COVERAGE

DeKalb County shall procure and maintain Builders Risk Insurance on the entire work which provides "All-risk" form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism, malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than caused by flood), and such other perils or causes of loss as may be specifically required by Supplementary Conditions) until Final Completion and Acceptance of the

Project. Such policy of insurance shall contain at least the following sub-limits of insurance and deductibles:

Sub-limits:

Property in Transit	\$1,000,000
Property in Offsite Storage	\$1,000,000
Plans & Blueprints	\$25,000
Debris Removal	25% of Insured Physical Loss
Delay in Completion / Soft Cost	TBD
Ordinance of Law (Increased Cost of Construction)	\$1,000,000
Flood and Earthquake	TBD – Full Contract Value
Deductibles:	
Flood and Earthquake	\$25,000
Water Damage other than Flood	\$100,000
All other Perils	\$10,000

ARTICLE 23 SURETY BONDS

(A) **Contract Security:** The Design/Builder shall furnish a Contract Performance Bond and a Payment Bond, each equal to one hundred percent (100%) of the Contract Price. Bonds given shall meet the requirements of the law of the State of Georgia including, but not limited to, O.C.G.A. §§ 13-10-1 and 36-91-21 et seq. The surety on each Bond shall be a surety company satisfactory to the County and listed in the Federal Register and licensed to write surety insurance in the State of Georgia.

Within ten (10) days from the date of Notice of Award of this Contract, the Design/Builder, as Principal, and , a surety company listed in the Federal Register and licensed to write surety insurance in the State of Georgia, as surety, shall give a Contract Performance Bond and a Payment Bond, each in the amount of for the use of all persons doing work or furnishing skills, tools, machinery, or materials under or for the purpose of this Contract, in accordance with the provisions of the law of the State of Georgia including, but not limited to, O.C.G.A. §§ 13-10-1 and 36-91-21 et seq. The life of these bonds shall extend through the life of this Contract including a sixty (60) day maintenance period (where applicable) and a twelve month guarantee period after the completion of work performed under this Contract.

It is further agreed between the parties hereto that if at any time after the execution of this Agreement and the surety bonds for its faithful performance, the County shall deem the surety or sureties upon such bonds to be unsatisfactory, or if, for any reason, such bonds cease to be adequate to cover the performance of the Work, the Design/Builder shall, at its expense within five days after the receipt of notice from the County to do so, furnish additional bond or bonds in such form and amount and with such surety or sureties as shall be satisfactory to the County.

In such event no further payment to the Design/Builder shall be deemed to be due under this agreement until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the County.

**ARTICLE 24
MISCELLANEOUS PROVISIONS**

(A) Georgia Laws Govern: This Agreement shall be governed by and construed and enforced in accordance with the laws of Georgia.

(B) Venue: This Agreement shall be deemed to have been made and performed in DeKalb County, Georgia. For the purposes of venue, all suits or causes of action arising out of this Agreement shall be brought in the Superior Court of DeKalb County, Georgia shall have sole and exclusive jurisdiction.

(C) Accuracy of Work: The Design/Builder shall be responsible for the accuracy of the work and any error and/or omission made by the Design/Builder in any phase of the work under this Agreement.

(D) Additional Work: If the Design/Builder is asked by the County to perform work beyond the scope of this Agreement for which payment is desired, he shall notify the County in writing, state that the work is considered outside the basic scope of work of this Agreement, give a proposed cost for the additional work, and obtain the approval in writing from the County prior to performing the additional work for which he is to be paid. The County shall in no way be held liable for any work performed under this section which has not first been approved in writing by the County. Any claim for additional work must be made in strict accordance with Article 17.

(E) Successors and Assigns: The County and the Design/Builder each binds himself and his partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, the Design/Builder shall not assign, sublet, or transfer his interest in this Agreement without the written consent of the County. Nothing herein shall be construed as creating any personal liability on the part of any officers or agent of the County, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to this Agreement.

(F) Notices: Any notice required to be given herein shall be deemed to have been given to the other party if (1) given by first class mail, registered or express mail, courier service, or hand delivery; or (2) by telex or fax, provided that such notice is also confirmed by first class mail, registered or express mail, courier service, or hand delivery to the following addresses:

TO OWNER:

ATTN: _____

TO DESIGN/BUILDER:

ATTN: _____

All notices shall be effective upon receipt.

(G) **Reviews and Acceptance:** Work performed by the Design/Builder shall be subject to review and acceptance in stages as required by the County. Acceptance shall not relieve the Design/Builder of his professional obligation to correct, at his own expense, any errors in the Work.

(H) **County Representative:** The County may designate a representative through whom the Design/Builder will contact the County. In the event of such designation, said representative shall be consulted and his written recommendation obtained before any request for extra work is presented to the DeKalb County Board of Commissioners. Payments to the Design/Builder shall be made only upon itemized bill submitted to and approved by said representative.

(I) **Sole Agreement:** This Agreement constitutes the sole agreement between the parties. No representations oral or written not incorporated herein shall be binding on the parties. No amendment or modifications of this Agreement shall be enforceable unless approved in writing by the County.

(J) **Controlling Provisions:** In the event of a conflict between the County's RFP No. and the Design/Builder's response thereto, the provisions of the County's RFP shall govern. The provisions of this Agreement shall control over any conflicting provisions contained in the Design/Builder's response.

(K) **Publicity:** No information relative to the existence or the details of the Design Services or the Work shall be released by Design/Builder, either before or after completion of the Project, for publication, advertising or any commercial purposes without Owner's prior written consent.

(L) **Severability:** In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

(M) **Attorneys' Fees:** In the event that Design/Builder breaches any provision of this Contract, and in the event Owner retains any attorney to seek enforcement of said Contract, or in the event Owner institutes litigation against Design/Builder arising out of or relating to the Contract, Owner shall be entitled to recover from Design/Builder its reasonable attorneys' fees, court costs, expert witness fees, and other related expenses.

(N) **Prohibited Interests:** No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract, or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory, or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

(O) **Weather Conditions:** The Design/Builder will be required to protect all work and materials against damage or injury from the weather. If, in the opinion of the Owner, any work or materials shall have been damaged or injured by reason of failure to protect such, all such materials or work shall be removed and replaced at the expense of the Design/Builder.

(P) **Royalties and Patents:** The Design/Builder shall hold and save the County and its officers, agents, servants, and employees, harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the County, unless otherwise specifically stipulated in the Contract Documents.

(Q) **Submittal Period for Products and Substitutions:** Substitutions: Where items of equipment or materials are specifically identified herein by a manufacturer's name, model, or catalog number, only such specific item may be used in the Base Bid. If the Design/Builder wishes to use items of equipment or materials other than those named in his Base Bid, the Design/Builder shall apply in writing for the Owner's approval of substitution at least ten (10) days prior to opening of bids, submitting with his request for approval complete descriptive and technical data on the items or item he proposes to furnish. Approved substitutions will be listed in the Addendum issued to all Design/Builders prior to opening of bids.

(R) **Measurements and Dimensions:** Before ordering material or doing work which is dependent for proper size or installation upon coordination with conditions, the Design/Builder shall verify all dimensions by taking measurements at the building and shall be responsible for the correctness of same. No consideration will be given any claim based on the differences between the actual dimensions and those indicated on the Drawings.

(S) **Storage Facilities and Work Areas:** The Design/Builder shall cooperate with the County

in any required use of its property and arrange for storage of materials on job site in such areas as are mutually agreed upon. The Design/Builder shall allot suitable and proper space to his Subcontractors for the storing of their materials and for the erection of their sheds and tool houses. Should it be necessary at any time to move materials, sheds, or storage platforms, the Design/Builder shall move same as and when directed, at his own expense.

(T) Replacement on City or Public Property: Design/Builder shall pay for cost of any pavement or sidewalk repairs necessitated by work under this Contract, and any inspection fees required by local authorities.

(U) Manufacturers' Certifications: The Owner may require, and the Design/Builder shall furnish if required to do so, certificates from manufacturers to the effect that the products or materials furnished by them for use in the Work comply with the applicable specified requirements for the materials or products being furnished.

(V) Samples: The Design/Builder shall furnish with reasonable promptness all samples as directed by the Owner for approval for conformance with the design concept of the Project and for compliance with the information stated in the Contract Documents. The Work shall be in accordance with approved samples.

(W) Maintenance Manual: Design/Builder shall, prior to completion of Contract, deliver to the Owner two copies of a manual, assembled and bound, presenting for the County's guidance full details for care and maintenance of visible surfaces and of equipment included in Contract. Design/Builder shall, for this manual, obtain from Subcontractors literature of manufacturers relating to equipment, including motors; also furnish cuts, wiring diagrams, instruction sheets and other information pertaining to same that will be useful to the County in over-all operation and maintenance. Where the above-described manuals and data are called for under separate sections of the Specifications, they are to be included in the manual described in this Article.

(X) Definitions of Terms: Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

“Addenda” shall mean written or graphic instruments issued prior to the execution of the agreement which modify or interpret the Contract Documents by additions, deletions, clarifications, or corrections.

“Bid” or “Proposal” shall mean the offer or Proposal of the Design/Builder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

“Bidder” or “Proposer” shall mean any person, firm, or corporation submitting a Bid or Proposal for the Work.

“Bonds” shall mean Bid, Performance, and Payment Bonds and other instruments of security, furnished by the Design/Builder and his surety in accordance with the Contract Documents. “Contract Time” shall mean the number of calendar days stated in the Contract Documents for the completion of the Work.

“County” shall mean DeKalb County, Georgia.

“Design/Builder” shall mean one firm to both design and construct the Project.

“Drawings” shall mean the part of the Contract Documents which show largely through graphical presentation the characteristics and scope of the Work to be performed and which have been prepared by Design/Builder and approved by the Owner.

“Field Order” shall mean a written order effecting a change in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Owner to the Design/Builder during construction.

“Notice of Award” shall mean the written notice of the acceptance of the Bid or Proposal from the County to the successful Design/Builder as evidenced by return receipts of registered or certified letters.

“Notice to Proceed” shall mean written communication issued by the County to the Design/Builder authorizing him to proceed with the Work and establishing the date of commencement of the Work as evidenced by official receipt of certified mail or acknowledgment of personal delivery.

“Owner” shall mean DeKalb County, Georgia.

“Project” shall mean the undertaking to be performed as provided in the Contract Documents.

“Shall” is mandatory; “may” is permissive.

“Shop Drawings” shall mean all drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Design/Builder, a Subcontractor, manufacturer, Supplier, or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

“Specifications” shall mean a part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards, and workmanship specified for this Project.

“Supplementary Conditions” shall mean a part of the Contract Documents consisting of terms and conditions as may be required by the Owner.

“Superintendent” shall mean the Design/Builder’s authorized on-job representative designated in writing by the Design/Builder prior to commencement of any work. “Suppliers” shall mean any person, supplier, or organization who furnishes materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

“Work” of the Design/Builder or Subcontractor shall include all labor, material,

equipment, transportation, skill, tools, machinery and other equipment, and things useful or necessary in order to complete the Contract.

(Y) Specifications:

(1) The Specifications, the Drawings accompanying them, and the other Contract Documents shall be supplementary to each other, and any material, workmanship, and/or service which may be in one, but not called for in the others, shall be as binding as if indicated, called for, or implied by all.

(2) The Design/Builder will be held responsible to furnish all labor and materials necessary to complete the Work as indicated by the Drawings and Specifications.

(3) Unless otherwise stipulated, the Design/Builder shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the execution and completion of the Work. The Design/Builder shall be responsible for entire Work and every part thereof.

(4) Each section or type of work is described separately in the Specifications; however, should any item of material, equipment, work, or combinations of such be required in one section, and not be described in that section and a similar item described in another section, that description shall apply regardless of the section under which it is described.

(5) Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported to the Owner, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Design/Builder after his discovery of such discrepancies, inconsistencies, or ambiguities shall be done at the Design/Builder's risk.

(6) Upon award of the Contract, the Design/Builder shall furnish such Contract Drawings and Specifications as may be required for completion of the Project. Any prints and Specifications in excess of these shall be furnished at cost at the Design/Builder's expense.

(Z) Drawings and Specifications:

(1) The intent of the Drawings and Specifications is that the Design/Builder shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy, or operation by the County.

(2) In case of conflict between the Drawings and Specifications, the Specifications shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and

detailed drawings shall govern over general drawings.

(3) The Owner may (without changing the scope of the Work) furnish the Design/Builder additional instructions and detail drawings, as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Design/Builder shall carry out the Work in accordance with the additional detail drawings and instructions.

(4) Abridging: Attention is directed to the fact that the detailed Specifications and separate sections may be written in short or abridged form. In regard to every section of the Specifications and all parts thereof, mention therein, or indications on the Drawings of articles, materials, operations, or methods requires that the Design/Builder:

- (a) Provide each item mentioned and indicated, of quality or subject to qualifications noted.
- (b) Perform according to conditions stated, each operation prescribed.
- (c) Provide therefor all necessary labor, equipment, and incidentals.

(5) Wording: Whenever in these Specifications or on the Drawings the words "directed," "required," "permitted," "ordered," or words of like import are used, it shall be understood that the direction, requirement, permission, or order of the County is intended, and similar words, "approved," "acceptable," "satisfactory," or words of like import shall mean approved by, acceptable to, or satisfactory to the County.

(6) Specification Sections: For convenience of reference and to facilitate the letting of contracts and subcontracts, these Specifications are separated into titled sections. Such separation shall not, however, operate to make the County an arbiter to establish limits to the contracts between the Design/Builder and Subcontractors, nor shall such separation be interpreted as superseding normal union jurisdictions.

(7) Language: Notwithstanding the appearance of such language in the various sections of the Specifications as, "The Paving Contractor," "The Grading Contractor," etc., the Design/Builder is responsible to the County for the entire Contract and the execution of all work referred to in the Contract Documents.

(AA) Present Documents Govern: The Design/Builder shall in no case claim a waiver of any specification requirements on the basis of previous approval of material or workmanship on other jobs of like nature or on the basis of what might be considered "standard" for material or workmanship in any particular location. The Contract Documents for this job shall govern the Work.

(BB) Design/Builder's Shop Drawings:

- (1) The approved Drawings will be supplemented by such Shop Drawings as are

needed to adequately control the Work. It is mutually agreed that all authorized alterations affecting the requirements and information given on the approved Drawings shall be in writing.

(2) Shop Drawings to be furnished by the Design/Builder for any structure shall consist of such detailed drawings as may be required for the prosecution of the Work.

(3) Shop Drawings must be approved by the Owner before the work in question is performed. Drawings for false work, centering, and form work may also be required, and in such cases shall be likewise subjected to approval unless approval be waived. It is expressly understood, however, that approval of the Design/Builder's Shop Drawings does not relieve the Design/Builder of any responsibility for accuracy of dimensions and details. It is mutually agreed that the Design/Builder shall be responsible for agreement and conformity of his Shop Drawings with the approved Drawings and Specifications.

(4) It is the responsibility of the Design/Builder to check all Shop Drawings before same are submitted to the Owner for approval. Shop Drawings which have not been checked and approved by the Design/Builder will not be approved.

(5) Shop Drawings shall be submitted only by the Design/Builder who shall indicate by a signed stamp on the drawings that he has checked the Shop Drawings and that the work shown on them is in accordance with Contract requirements and has been checked for dimensions and relationship with work of all other trades involved. Under no conditions shall Shop Drawings be accepted from anyone other than the Design/Builder.

(6) The Design/Builder shall furnish the Owner with at least six copies of all Shop Drawings for approval. Two finally approved copies will be returned to the Design/Builder for his use.

(7) The Contract Price shall include the cost of furnishing all Shop Drawings and the Design/Builder will be allowed no extra compensation for such drawings.

(8) The approval of such Shop Drawings shall not relieve the Design/Builder from responsibility for deviations from Drawings or the Specifications unless he has in writing called attention to such deviations, and the Owner has approved the changes or deviations in writing at the time of submission, nor shall it relieve him from the responsibility for errors of any kind in Shop Drawings. When the Design/Builder does call such deviations to the attention of the Owner, he shall state in his letter whether or not such deviations involve any extra cost. If this is not mentioned, it will be assumed that no extra cost is involved for making the change.

(CC) Instructions, Changes, Etc.:

(1) All changes, alterations, or instructions in regard to any feature of the Work that differ from the Drawings and Specifications must be approved in writing by Change Order in all cases, and no verbal orders will be regarded as a basis for claims for extra

work.

(2) If the Design/Builder claims that any instruction by Drawings or otherwise involves extra cost or an extension of time, he shall notify the Owner in writing within ten (10) days after the receipt of such instructions and in any event before proceeding to execute the Work. Thereafter, the procedure shall be the same as that described for changes in the Work. No such claim shall be valid unless made in accordance with the terms of this section.

(3) No claims for extra cost will be considered based on an escalation of material prices throughout the period of the Contract.

(4) No extra work is to be performed or any changes made that involves any extra cost or extension of time unless approved by the Owner and authorized by Change Order.

(DD) Requests for Substitutions: Requests for substitutions of proprietary products or of a particular manufacturer or vendor must be accompanied by documentary proof of equality, and difference in price and deliveries, if any, in form of certified quotations from Suppliers of both specified and proposed equipment. The item proposed for substitution shall be equal to or superior to the specified item or items, in construction, efficiency, and utility in the opinion of the Owner. The opinion of the Owner shall be final and no substitute material or article shall be purchased or installed without such written approval.

In case of a difference in price, the County shall receive all benefits of the difference in cost involved in any substitution, when lower, and the Contract altered by Change Order to credit the County with any savings to be obtained. However, the County shall not be charged for any additional cost in case of a price difference.

(EE) Authority of the Design/Builder:

(1) The Design/Builder shall perform all of the Work herein specified under the general direction, and to the entire satisfaction, approval, and acceptance of the Owner. The Owner shall decide all questions relating to measurements of quantities, the character of the Work performed, and as to whether the rate of progress is such that the Work will be completed within the time limit of the Contract. All questions as to the meaning of these Specifications will be decided by the Owner.

(2) The approval of the Owner of any materials, plants, equipment, Drawings, or of any other items executed, or proposed by the Design/Builder, shall be construed only to constitute an approval of general design. Such approval shall not relieve the Design/Builder from the performance of the Work in accordance with the Contract Documents, or from any duty, obligations, performance guarantee, or other liability imposed upon him by the provisions of the Contract.

(FF) Rejections of Work and Materials:

(1) All materials and equipment furnished and all work done that is not in accordance

with the Drawings or Specifications or that is defective will be rejected. All rejected materials, equipment, or work shall be removed immediately. If rejected materials, equipment, or work is not removed within forty-eight hours from the date of letter of notification, the Owner shall have the right and authority to stop the Design/Builder and his work immediately, and/or shall have the right to arrange for the removal of said rejected materials, equipment, or work at the cost and expense of the Design/Builder. All rejected materials, equipment, or work shall be replaced with other material, equipment, or work which conforms with the Drawings and Specifications at no additional cost to the County.

(2) Inspection of the Work shall not relieve the Design/Builder of any of his obligations to fulfill his Contract and defective work shall be made good regardless of whether such work, material, or equipment has been previously inspected by the Owner and accepted or estimated for payment. The failure of the Owner to condemn improper materials or workmanship shall not be considered as a waiver of any defect which may be discovered later, or for work actually defective. All work, material, and/or equipment shall be guaranteed against defects for a period of one year from date of Project acceptance as established by the County. The warranty requirement set forth herein shall be in addition to any and all other warranty requirements set forth in the Contract Documents.

(GG) Lines, Grades, and Measurements:

(1) Such stakes and markings as the Owner may set for either its or the Design/Builder's guidance shall be preserved by the Design/Builder. Failure to protect such stakes or markings, or gross negligence on the Design/Builder's part resulting in loss of same, may result in the Design/Builder being charged for their replacement.

(2) The Design/Builder must exercise proper care and caution to verify the grades and figures given him before proceeding with the Work, and shall be responsible for any damage or defective work caused by his failure of such care and caution. He shall promptly notify the Owner of any errors or discrepancies he may discover in order that the proper corrections may be made.

(HH) Land and Rights-of-Way:

(1) Prior to entering on any land or right-of-way, the Design/Builder shall ascertain the requirements of applicable permits or easements obtained by the County, and shall conduct his work in accordance with requirements thereof including the giving of notice. The Design/Builder shall be fully responsible for performing work to the requirements of any permit or easement granting entity even though such requirements may exceed or be more stringent than that otherwise required by the Contract Documents, and shall compensate the County fully for any loss or expense arising from failure of the Design/Builder to perform as required by such entity.

(2) The Design/Builder shall provide at his own expense and without liability to the County any additional land and access thereto that the Design/Builder may desire for

temporary construction facilities, or for storage of materials.

(II) Prior Use by County: Prior to completion of the Work, the County may take over operation and/or use of the uncompleted Project or portions thereof. Such prior use of facilities by the County shall not be deemed as acceptance of any work or relieve the Design/Builder from any of the requirements of the Contract Documents.

(JJ) Barricades:

(1) Lanterns: Design/Builder shall provide continuously burning lanterns at all barricades and at protective barriers around excavations so that the public is adequately warned of such hazards. Lanterns shall remain lighted from sundown to sunrise and at all other times when the labor forces are not on the job site.

(2) Access to Site: Delivery of construction materials and equipment shall be only from locations approved by the County.

(KK) Schedules, Reports, and Records:

(1) The Design/Builder shall submit to the Owner such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the Owner may request concerning work performed or to be performed.

(2) Prior to the first partial payment estimate, the Design/Builder shall submit schedules showing the order in which he proposes to carry on the Work, including dates at which he will start the various parts of the Work, estimated date of completion of each part; and, as applicable, the dates at which special detail drawings will be required, and respective dates for submission of Shop Drawings, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

(3) The Design/Builder shall also submit a schedule of payments that he anticipates he will earn during the course of the Work.

(LL) SUPPLEMENTARY CONDITIONS:

(1) SCOPE

Furnish, erect, and maintain temporary facilities and perform temporary work required in the performance of this Contract, including those shown and specified.

(2) USE OF TEMPORARY FACILITIES

Design/Builder may be required by the County to provide and maintain a suitable office on the site for his own use and for the use of representatives of the County.

(3) MAINTENANCE AND REMOVAL

(a) Utilities and Furnishings: Design/Builder shall furnish sufficient heat, artificial light, ventilation and janitor's service, and shall also provide a table or desk, plan rack and chairs, all for the use of those visiting the job, in addition to such furnishings as he provides for his own use.

(b) Location and Removal: Temporary offices and other structures shall be located where approved by the County, and shall be removed from the premises upon completion of the Contract or earlier if so directed by the County. They shall remain the property of the Design/Builder.

(4) FIELD OFFICES

(a) Design/Builder and his Subcontractors shall provide such additional offices, storage shanties, tool sheds and other temporary buildings as required for their own use and those employed on the Work.

(5) TOILET AND WASHING FACILITIES

(a) Toilet Building: Design/Builder may be required by the County, at the beginning of work, to provide on premises suitable and adequate temporary toilets and enclosure for use of workers on the job; maintain same in sanitary condition; remove same at completion of building operations and/or when directed.

(b) Sanitary Regulations: Do not allow any sanitary nuisances to be committed in or about work; enforce sanitary regulations of local and State Health Authorities.

(6) UTILITIES DURING CONSTRUCTION

(a) Utilities: Design/Builder shall furnish all utilities and pay for all utility bills used during construction. Utilities shall include electric power or fuel of any sort used for heating, etc., and water.

(7) CONNECTIONS TO UTILITIES

(a) Design/Builder shall provide all temporary connections to utilities when not provided by the utility company or others.

(8) TELEPHONE

(a) Design/Builder shall, if required by the County, install and maintain at his own expense, a job telephone for duration of the Contract.

(8) TEMPORARY HEAT

- (a) The Design/Builder shall provide at his own expense temporary heat as necessary to protect all work and materials against injury from dampness and cold. Fuel, equipment and method of heating shall not present a fire hazard and shall be satisfactory to the County. See requirements in detail Specifications for temperatures to be maintained for application of work under the various trades.

(MM) NOTICE TO DESIGN/BUILDER AND SUBCONTRACTORS

The Georgia Legislature has enacted a new Code provision, designated O.C.G.A. § 13- 10-80, governing progress payments and retainage for public works contracts. It is applicable to contracts which, when awarded exceed \$150,000.00 in value or forty-five (45) days in duration, and establishes mandatory guidelines by which payments received from DeKalb County in this contract must be passed through the subcontractors. For your information, its provisions are set out below:

13-10-80. Periodic Progress Payments; Retainage; Exceptions; Minimal Standard of this Code Section.

- (a) As used in this Code section, the term:
- (1) "Contractor" means a person having a direct contract with the Owner.
 - (2) "Lower tier subcontractor" means a person other than the Design/Builder having a direct contract with a subcontractor.
 - (3) "Owner" means the state, any county, municipal corporation, authority, board of education, or other public board, public body, department, agency, instrumentality, or political subdivision of the state.
 - (4) "Owner's authorized contract representative" means the architect or engineer in charge of the Project for the owner or such other contract representative or officer as designated in the contract documents as the party representing the Owner's interest regarding administration and oversight of the Project.
- (b) "Subcontractor" means a person other than an Owner having a direct contract with the contractor.n any contract for the performance of any construction Project entered into on or after July 1, 1985, with an owner, as defined in paragraph (3) of subsection (a) of this Code section, such contract shall provide for the following:
- (1) After work has commenced at the construction site, progress payments

to be made on some periodic basis, and at least monthly, based on the value of work completed as may be provided in the contract documents plus the value of materials and equipment suitably stored, insured, and protected at the construction site, and at the owner's discretion such materials and equipment suitably stored, insured, and protected off site at a location approved by the owner's authorized contract representative when allowed by the contract documents, less retainage; and

- (2)(A) Retainage to a maximum of ten (10%) percent of each progress payment; provided, however, that, when fifty (50%) percent of the contract value including change orders and other additions to the contract value provided for by the contract documents is due and the manner of completion of the contract work and its progress are reasonably satisfactory to the Owner's authorized contract representative, the Owner shall withhold no more retainage. At the discretion of the Owner and with the approval of the Design/Builder, the retainage of each subcontractor may be released separately as the subcontractor completes his work.
- (B) If, after discontinuing the retention, the Owner's authorized contract representative determines that the work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level. If retention is resumed by an owner, the Design/Builder and subcontractors shall be entitled to resume withholding retainage accordingly.
- (C) At substantial completion of the work or such other standard of completion as may be provided in the contract documents and as the Owner's authorized contract representative determines the work to be reasonably satisfactory, the owner shall within thirty (30) days after invoice and other appropriate documentation as may be required by the contract documents are provided pay the retainage to the Design/Builder. If at that time there are any remaining incomplete minor items, an amount equal to two hundred (200%) percent of the value of each item as determined by the Owner's authorized contract representative shall be withheld until such item or items are completed. The reduced retainage shall be shared by the Design/Builder and subcontractors as their interests may appear. The Design/Builder shall, within ten (10) days from the Design/Builder's receipt of retainage from the Owner, pass through payments to subcontractors and shall reduce each subcontractor's retainage in the same manner as the Design/Builder's retainage is reduced by the Owner, provided that the value of each subcontractor's work complete and in place equals fifty (50%) percent of his subcontract value, including approved change orders and other additions to the subcontract value and provided, further, that the work of the subcontractor is proceeding satisfactorily and the subcontractor has

provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his work including any warranty work as the Design/Builder in his reasonable discretion may require, including, but not limited to, a payment and performance bond.

- (D) The subcontractor shall, within ten (10) days from the subcontractor's receipt of retainage from the Design/Builder, pass through payments to lower tier subcontractors and shall reduce each lower tier subcontractor's retainage in the same manner as the subcontractor's retainage is reduced by the Design/Builder, provided that the value of each lower tier subcontractor's work complete and in place equals fifty (50%) percent of his subcontract value, including approved change orders and other additions to the subcontract value and provided, further, that the work of the lower tier subcontractor is proceeding satisfactorily and the lower tier subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his work including any warranty work as the subcontractor in his reasonable discretion may require, including, but not limited to, a payment and performance bond.

(c) This Code section shall not apply to:

- (1) Any contracts let by the Department of Transportation of this State for the construction, improvement, or maintenance of roads or highways in this State or purposes incidental thereto; or
- (2) Any contracts whose value or duration at the time of the award does not exceed \$150,000.00 or forty-five (45) days in duration.

- (d) Contract and subcontract provisions inconsistent with the benefits extended to Design/Builders, subcontractors, and lower tier subcontractors by this Code section shall be unenforceable; provided, however, that nothing in this Code section shall render unenforceable any contracts or subcontract provisions allowing greater benefits to be extended to such Design/Builders, subcontractors, or lower tier subcontractors, the provisions and benefits of this Code section being minimal only. Nothing shall preclude a payor under this Code section, prior to making a payment, from requiring the payee to submit satisfactory evidence that all payrolls, material bills, and other indebtedness connected with the work have been paid. (Code 1981, '13-10-2, enacted by Ga. L. 1985, p. 1043, '1.)

(NN) GEORGIA OPEN RECORDS ACT

Without regard to any designation made by the person or entity entering this Agreement, DeKalb County considers all information submitted in response to the Agreement to be a public

record that will be disclosed upon request pursuant to the Georgia Open Records Act O.C.G.A. § 50-18-70 et seq., after contacting the person or entity making the submission, unless a court order is presented with the Agreement.

(OO) FIRST SOURCE JOBS ORDINANCE

The DeKalb County First Source Jobs Ordinance requires contractors or beneficiaries entering into any type of agreement with the County, including purchase orders, regardless of what they may be called, for the procurement or disposal of supplies, services, construction Projects, professional or consultant services, which is funded in whole or part with County funds or County administered funds in which the contractor is to receive \$50,000 or more in County expenditures or committed expenditures and recipient of urban redevelopment action grants or community development block funds administered in the amount of \$50,000 or more make a good faith effort to hire DeKalb County residents for at least 50% of jobs using the First Source Registry (candidate database). The work to be performed under this contract is subject to the provisions of the DeKalb County First Source Jobs Ordinance. For more information on this Ordinance requirement, please contact DeKalb Workforce Development at 404.687.3400.

(PP) CONTRACTOR AND SUBCONTRACTOR EVIDENCE OF COMPLIANCE

- (1) County contracts for the physical performance of services within the state of Georgia shall include the following provisions in accordance with O.C.G.A. § 13-10-91, as amended:
 - a. the contractor has registered with and is authorized to use the federal work authorization program to verify information on all newly hired employees or subcontractors;
 - b. by affidavit, the contractor must attest to the contractor's name, address, user identification number, date of authorization, and verification of the continual participation throughout the contract period, and
 - c. the affidavit shall become a part of the covered contract and must be attached.
- (2) No contractor or subcontractor who enters into a contract with the County or a contractor of the County shall enter into such a contract or subcontract in connection with the physical performance of services within Georgia unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all newly hired employees. Any employee, contractor, or subcontractor of such contractor or subcontractor shall also be required to satisfy the requirements of O.C.G.A. § 13-10-91, as amended.
- (3) Upon contracting with a new subcontractor, a contractor or subcontractor shall, as a condition of any contract or subcontract entered into pursuant to O.C.G.A. § 13-10-91, as amended, agree to provide the County with notice of the identity of any and all subsequent subcontractors hired or contracted by the contractor or subcontractor. Such notice shall be provided within five (5) business days of entering into a contract or

agreement for hire with any subcontractor. Such notice shall include an affidavit from each subsequent contractor attesting to the subcontractor's name, address, user identification number, and date of authorization to use the federal work authorization program.

- (4) An affidavit shall be considered an open public record; provided, however, that any information protected from public disclosure by federal law or by Article 4 of Chapter 18 of Title 50 shall be redacted. Affidavits shall be maintained by the County for five years from the date of receipt.
- (5) To verify compliance, the contractor agrees to participate in random audits conducted by the Commissioner of the Georgia Department of Labor. The results of the audits shall be published on the www.open.georgia.gov website, and on the Department of Labor's website no later than December 31 of each year.
- (6) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement in an affidavit submitted pursuant to O.C.G.A. § 13-10-91 shall be guilty of a violation of Code § 16-10-20 and, upon conviction, shall be punished as provided in such section. Contractors and subcontractors convicted for false statements based on a violation of such section shall be prohibited from bidding on or entering into any public contract for twelve (12) months following such conviction.

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties duly authorized representatives, as indicated by their signatures below, have set their hands and caused their seals to be affixed hereupon on this _____ day of _____, 20__.

[DESIGN BUILDER]

DEKALB COUNTY, GEORGIA

By: _____ (CORPORATE SEAL)
Signature

_____ by Dir.(SEAL)
Lee May
Interim Chief Executive
Officer DeKalb County,
Georgia

Name (Typed or Printed)

Title

ATTEST:

ATTEST:

Signature

BARBARA H. SANDERS, CCC
Clerk of the Chief Executive Officer and
Board of Commissioners of
DeKalb County, Georgia

Name (Typed or Printed)

APPROVED AS TO SUBSTANCE:

APPROVED AS TO FORM:

Department Director

County Attorney Signature

ATTACHMENT R
GENERAL REQUIREMENTS

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GR-1 DEFINITIONS OF TERMS

The section captions contained in this Contract are for convenience only and do not in any way limit or amplify any term or provision hereof. The use of the terms "hereof," "hereunder" and "herein" shall refer to this Contract as a whole, inclusive of the Attachments, except when noted otherwise. The use of the masculine or neuter genders herein shall include the masculine, feminine and neuter genders and the singular form shall include the plural when the context so requires. The following terms shall have the meanings indicated:

“Addendum” or “Addenda” shall mean written or graphic instruments issued prior to the execution of the Contract, which modify or interpret the Work, or the Invitation to Bid by additions, deletions, clarifications, or corrections.

“Bid” shall mean the offer of the Bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

“Bid Document Package” shall consist of documents entitled as follows: Acknowledgement of Contractor, Advertisement for Bids, Instructions to Bidders, Addenda, Business License, Utility Systems Contractor’s License, Utility Manager’s Certificate, Utility Foreman’s Certificate, General Contractor’s License, Bidder’s Lump Sum Cost, First Source Jobs Ordinance Acknowledgment, LSBE Program Information Sheet with LSBE Exhibits, Certificate of Corporate Bidder, Certificate of Authority/Joint Venture, Bidder’s Affidavit of Compliance with O.C.G.A.13-10-91, Reference and Release Form, Preferred Employee Tracking Form, Subcontractor Tracking Form, Bid Bond and Power of Attorney, Public Works Construction Affidavit and Oath of Successful Bidder, Authority of Engineer & Construction Manager, Owner Controlled Insurance Program Bidding Instructions, Technical Specifications, and Drawings.

“Bidder” shall mean any person, firm, or corporation submitting a Bid for the Work.

“Bonds” shall mean bid, performance, and payment bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract.

“Change Order” includes the term “amendment” and shall mean a written order authorizing a change in the Work, if applicable, and an adjustment in the Contract Price, Contract Time or Contract Term, as adopted and approved by the Contractor and the DeKalb County Governing Authority, or the Chief Executive Officer, if exempted from Governing Authority adoption and approval in accordance with the express terms of this Contract.

“Construction Manager” shall mean an individual, partnership, or corporation performing construction management services for the County as an independent contractor.

“Contract” or “Agreement” shall consist of the written Contract executed by the parties, all attachments to the Contract, Change Orders, Field Orders, and the Bid Document Package. The intent of these documents is for the Contractor to furnish all materials, appliances, tools, labor and services of every kind necessary for the proper execution of the Work, and the terms and conditions of payment therefore.

“Contract Price” shall mean the total monies payable to the Contractor under the terms and conditions of the Contract.

“Contract Time” shall mean the number of days stated in the Contract for the completion of the Work.

“Contract Term” shall mean the length of time the Contract shall remain in effect.

“Contractor” or “General Contractor” shall mean the individual, firm, joint venture or corporation undertaking the execution of the Work as an independent contractor under the terms of the Contract and acting through his or its agents or employees.

“County” shall mean DeKalb County, Georgia.

“Day(s)” shall mean calendar day(s).

“Engineer” shall mean an individual, partnership, or corporation performing professional engineering service for the County as an independent contractor. For the purpose of this document the term Engineer may refer to the Design Engineer or the Construction Manager.

“Drawings” shall mean the part of the Contract which shows, largely through graphical presentation, the characteristics and scope of the Work to be performed and which have been prepared or approved by the County. The Drawings are included in the Bid Document Package.

“Field Order” shall mean a written order issued by an authorized County official/employee to the Contractor during construction effecting a change in the Work by authorizing an addition, deletion, or revision in the Work within the general scope of the Work not involving an adjustment in the Contract Price or a change to the Contract Time or Term. No Field Order shall be valid or effective unless it is signed by the County employee(s) who has been authorized in writing by the Chief Executive Officer or his/her designee to execute Field Orders.

“Notice of Award” shall mean a written notice of the acceptance of the Bid from the County to the successful Bidder.

“Notice to Proceed” shall mean a written communication issued by the County authorizing the Contractor to proceed with the Work and establishing the date of commencement of the Work. The effective date of the Notice to Proceed shall be the date set forth on the Notice to Proceed.

“Project” shall mean the undertaking to be performed as provided in the Contract.

“Shall” is mandatory; “may” is permissive.

“Specifications” or “Technical Specifications” shall mean a part of the Contract consisting of written descriptions of a technical nature regarding materials, equipment, construction systems, standards, and workmanship specified for this Project.

“Subcontractor” shall mean any person, firm, or corporation having a direct contract with the

Contractor or with any other Subcontractor for the performance of a part of the Work.

“Submittals” shall mean all shop drawings, diagrams, illustrations, brochures, schedules, samples, and other data which are prepared by the Contractor, a Subcontractor, manufacturer, Supplier, or distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

“Substantial Completion” or “Substantial Completion of the Work” shall mean that date determined by the County when the construction of the Project or an expressly stipulated part thereof is sufficiently completed, in accordance with the Contract, so that the Project or stipulated part can be fully utilized for the purposes for which it is intended.

“Superintendent” shall mean the Contractor’s authorized on-the-job representative designated in writing by the Contractor prior to commencement of any work.

“Supplier” shall mean any person, supplier, or organization who furnishes materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

“Work” shall have the meaning assigned to that term in the article in the Contract entitled Scope of Work.”

GR-2 PRIOR USE BY COUNTY

Prior to completion of the Work, the County may take over operation and/or use of the Project or portions thereof. Such prior use of facilities by the County shall not be deemed as acceptance of any Work or relieve the Contractor from any of the requirements of the Contract.

GR-3 CONTRACTOR’S OBLIGATIONS

A. The Contractor shall, in good workmanlike manner, do and perform all work and furnish all supplies and materials, machinery, equipment, facilities, and all things necessary or proper to perform and complete all the Work within the time herein specified and in accordance with the provisions of this Contract, the Specifications, the Drawings, and any and all supplemental drawings pertaining to the Work. Contractor shall furnish, erect, maintain, and remove such construction, plants, and such temporary works as may be required. Contractor alone shall be responsible for the safety, efficiency, and adequacy of its plant, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation. The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements and limitations imposed by the Contract and local ordinances, and state and federal laws; and shall do, carry on, and complete the entire Work.

B. Representations of Contractor.

1. Independent Contractor. The Contractor represents that it is an independent contractor, competent, knowledgeable, and familiar with the type of work contemplated by this Contract. The Contractor agrees and understands that neither it nor any of its agents or employees may act in the name of the County except and unless specifically authorized in writing by the County to do so. The Contractor shall furnish construction administration and management services and use the Contractor's

best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the County.

2. **Familiarity with Project.** Contractor represents that it has: (a) visited and examined the Site(s), (b) taken into account local conditions and observed conditions that affect the Project, the Work, or the cost thereof, (c) investigated the labor situation related to the Project, (d) examined the superintendence of the Project, the Work, the time of completion, and other relevant matters, and (e) has taken these into consideration in submitting his bid.

3. **Responsibility to Coordinate.** Contractor acknowledges its responsibility to coordinate the Work with that of any separate contractors to be selected for the installation of other work within the Project, or in the proximity of the Project. Contractor expressly agrees to schedule and, with the assistance of the County, coordinate the Work with such separate contractors and to permit each phase of the Project to be completed on schedule.

4. **Project Delivery.** Contractor shall construct the Project in accordance with the Contract Documents, and Contractor shall deliver the Project completed in accordance with the Contract Documents, free from defects, and within the Contract Time.

5. **Contractor's Warranty as to Performance.** The Contractor warrants that he is familiar with the codes applicable to the Work and that he has the skill, knowledge, competence, organization, and plan to execute the Work promptly and efficiently in compliance with the requirements of the Contract Documents. The Contractor has the obligation to keep a competent superintendent on the Work during its progress, to employ only skilled workers, and to enforce strict discipline and good order among his employees. The Contractor is responsible for seeing that the Work is installed in accordance with the Contract Documents. Failure or omission on the part of the County, representatives of the County, or agents of the County either to discover or to bring to the attention of the Contractor any deviation from, omission from, or noncompliance with the Contract Documents shall not be used by the Contractor or its surety as a defense for failure on his part to install the Work in accordance with the Contract Documents or for any other neglect to fulfill requirements of the Contract; neither shall the presence of any one, or all, or any of the foregoing at the Site or the fact that any one, or all, or any of the foregoing may have examined the Work or any part of the Work be used as a defense by the Contractor against a claim for failure on his part to install the Work in accordance with the Contract Documents or for any neglect to fulfill requirements of the Contract. No requirement of this Contract may be altered or waived except by Change Order.

6. **Contractor's General Duties.**

a. **Construction Staging and Construction Services.** The Contractor shall provide and pay for all labor, materials, equipment, transportation, construction, resources, work, and services necessary or incidental to completing the Work for each phase of the Project in a proper and timely manner in accordance with the Contract Documents and applicable laws.

b. **Supervision and Direction.** Contractor shall supervise and direct the Work using diligent skill and attention. Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures.

c. **Enforce Discipline.** Contractor shall at all times enforce strict discipline and good order among its employees, Subcontractors, and others performing the Work, and shall not employ or permit the employment of unfit persons or persons not skilled in the task assigned to them.

d. **Security Clearances.** Where work is required within a specially secured controlled access environment, work shall be performed by personnel who have passed a security screening.

e. **Maintain Records.** Contractor shall keep Owner informed of the progress of the Work. Contractor shall maintain records of the cost for the Work pursuant to and in compliance with GASB 34 accounting requirements and such other methods as County may require, including complete backup documentation for all pay applications.

f. **Answer Questions.** Contractor, with reasonable promptness and in accordance with time limits set by the County, shall answer the County's questions and provide the County with requested Project information.

g. **Acts and Omissions.** Employees of or Subcontractors to the Contractor shall perform the Work required by this Contract. The Contractor is responsible to the County for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons.

h. **Meetings with the County.** Contractor shall schedule and conduct meetings with the County, Engineer & Construction Manager, separate contractors, and appropriate Subcontractors, not less than biweekly, for the purpose of discussing the status and progress of the Work. Additional meetings shall be held as often as the County reasonably determines.

i. **Schedule and Coordination Meetings.** Contractor shall schedule and conduct meetings as necessary with Subcontractors, Suppliers, and other appropriate Project team members to coordinate and schedule the Work.

j. **Audit.** At the request of the County, the Contractor shall allow the County the opportunity to select an auditor to examine and inspect the Project and the Contractor's books, records, and any and all accounts and similar data related to the Project. The County shall bear the cost of such audit. The auditor may sign a confidentiality agreement before conducting any such audit. Notwithstanding such agreement, Contractor understands and agrees that all Project records are subject to the Georgia Open Records Act.

GR-4 AUTHORITY OF THE COUNTY

A. The Contractor shall perform all of the Work under the general direction, and to the entire satisfaction, approval, and acceptance of the County. The County shall decide all questions relating to measurements of quantities, the character and acceptability of the Work performed, and as to whether the rate of progress is such that the Work will be completed within the time limit of the Contract. All questions as to the meaning of the Drawings and the Specifications will be decided by the County.

B. The approval of the County of any materials, plant, equipment, Drawings, or of any other items executed, or proposed by the Contractor, shall be construed only to constitute an approval of general design. Such approval shall not relieve the Contractor from the

performance of the Work in accordance with the Contract, or from any duty, obligations, performance guarantee, or other liability imposed upon him by the provisions of the Contract.

- C. Whenever in this Contract, the words “directed,” “required,” “permitted,” “ordered,” or words of like import are used, it shall be understood that the direction, requirement, permission, or order of the County is intended, and similar words, “approved,” “acceptable,” “satisfactory,” or words of like import shall mean approved by, acceptable to, or satisfactory to the County.
- D. The County reserves the right to suspend the Work at any time or from time to time at the County's sole discretion, upon giving Contractor five days advanced written notice thereof. If the County exercises this right and then resumes the Work covered hereby, Contractor shall be entitled upon timely claim to a Change Order, to payment by Owner of any reasonable Actual Costs actually incurred by Contractor in connection with the suspension and resumption of the Work, as well as an extension in the time for performance of the Work to the extent Contractor is delayed by the County's suspension.
- E. The County reserves the right, for itself and for any designated construction inspector retained by the County, upon observation of apparent nonconforming Work, to immediately stop the affected Work at any time by oral direction at the County's sole discretion, with notice to be provided to the Contractor within 72 hours. If the Work is later determined to be in fact conforming Work, then Contractor, for the period commencing 72 hours after the issuance of the initial stop work order, shall be entitled, upon timely claim to a Change Order, to payment by County of any reasonable actual costs actually incurred by Contractor in connection with the stop Work order and resumption of the Work, as well as an extension in the time for performance of the Work to the extent Contractor is delayed by County's stop Work order beyond the initial 72 hours.
- F. The County reserves the right to perform construction or operations related to the Project with separate contractors on this site.

GR-5 CHANGES IN THE WORK, FIELD ORDERS, AND CHANGE ORDERS

- A. All changes, alterations, or instructions in regard to any feature of the Work that differ from the Drawings and Specifications must be approved in writing by Field Order or Change Order in all cases. No verbal instruction or order will be regarded as a basis for a claim for extra compensation or time.
- B. If a minor change in the Work is found to be necessary due to actual field conditions, the Contractor shall submit detailed drawings and written notification of the problems necessitating such departure for approval by the County before making the change. If the Contractor fails to make such request, no excuse will be entertained thereafter for Contractor's failure to carry out the Work in the required manner and to provide required guarantees, warranties, and Bonds, and Contractor shall not be entitled to any

- change in the Contract Price, Contract Time or the Contract Term.
- C. The County may at any time, by issuing a Field Order, make changes in the details of the Work. The Contractor shall proceed with the performance of any changes in the Work so ordered by the County unless such Field Order entitles the Contractor to a change in Contract Price, Time, and/or Term, in which event the Contractor shall give the County written notice thereof within fifteen (15) days after the receipt of the ordered change, and the Contractor shall not execute such changes until it receives an executed Change Order from the County. No extra cost or extension of time shall be allowed unless approved by the County and authorized by execution of a Change Order.
 - D. The County may at any time order changes within the scope of the Work without invalidating the Contract.
 - E. No claims for extra cost or time will be considered based on an escalation of prices throughout the Contract Term. The value of any work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one of the following methods in the order of precedence listed below.
 - (1) Unit prices per the approved Schedule of Values (SOV) for the Project.
 - (2) An agreed lump sum.
 - (3) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the changed Work. In addition, there shall be added an amount agreed upon but not to exceed fifteen percent (15%) of the actual cost of such work to cover the cost of general overhead and profit.
 - F. The parties' execution of any Change Order constitutes a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct or indirect costs associated with such change and any and all adjustment to the Contract Price and the construction schedule. In the event a Change Order increases the Contract Price, Contractor must include the Work covered by such Change Orders in requests for payment as if such Work were originally part of the Contract.

GR-6 TIME FOR COMPLETION

- A. The Contractor understands and agrees that the date of the beginning of Work, rate of progress, and time for completion of the Work are essential conditions of this Contract.
- B. The Contractor agrees that the Work shall be executed regularly, diligently, and uninterrupted at such rate of progress as will insure its full completion thereof within the Contract Time. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the completion of the Work described herein is a reasonable time for the completion of the same, taking into consideration the average climate range and usual industrial conditions prevailing in this locality.

- C. If extraordinary adverse weather conditions are the basis for a claim for additional time, such claim shall be supported by the attachment of records of the National Oceanic and Atmospheric Administration showing meaningful variances from historic trends thereby substantiating the fact that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction activities. The Contractor shall be entitled to an extension of the Contract Time only for extraordinary adverse weather conditions that unavoidably delay activities scheduled at that time, and then only for the number of days of delay which are due solely to such extraordinary adverse weather conditions. The Contractor is not entitled to any costs associated with extraordinary adverse weather conditions.
- D. The County shall not be liable to the Contractor or any Subcontractor for claims or damages of any nature caused by or arising out of delays, regardless of cause. The sole remedy against the County for delays shall be the allowance of additional time for completion of the Work, the amount of which shall be based on actual and unavoidable delay.

GR-7 SCHEDULES, REPORTS, AND RECORDS

- A. The Contractor shall submit to the County such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the County may request concerning the Work performed or to be performed. The Contractor shall also submit a schedule of payments that he anticipates earning during the course of the Work.
- B. That Contractor shall coordinate and hold a meeting with its major Subcontractors and the County to discuss the Project schedule. Such meeting shall be held prior to Commencement of the Work under this Contract, but in no event later than ten (10) days after execution of this Contract by all parties. At that meeting, the Contractor shall present a draft Project schedule, and the Contractor and its Subcontractors shall, in collaboration with the County, assist in the preparation of a detailed and specific construction schedule. The Contractor shall be responsible for preparing and updating such schedule, which shall be complete in all respects and shall, when approved by the County, become the Construction Schedule and be automatically incorporated into the Contract and shall not be changed without the prior written consent of the County. The Construction Schedule shall not exceed the Contract Time, shall be revised and updated at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract, shall utilize Critical Path Method (CPM) software that is compatible with County software, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule shall be cost-loaded.
- C. The Construction Schedule shall, in such detail as the County may require, show the order in which Contractor will carry on the Work, including dates on which the various parts of the Work will start, and the estimated date of completion of each part. It shall also depict all requisite shop drawing submittals and approvals, manufacturing,

- fabrication, the installation of materials, supplies and equipment, testing, start-up, and training.
- D. The Contractor shall prepare and keep current, for the County's approval, a schedule of submittals which is coordinated with the Construction Schedule and allows the County reasonable time to review submittals. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the County.
- E. In the event the County determines that the performance of the Work has not progressed or reached the level of completion required by the Contract, the County will have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime; (2) supplying additional manpower, equipment, and facilities; and (3) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures must continue until the progress of the Work complies with the stage of completion required by the Contract and the Construction Schedule. The County's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule. The Contractor is not entitled to an adjustment in the Contract Price for undertaking Extraordinary Measures required by the County. The County may exercise the rights furnished the County under or pursuant to this paragraph as frequently as the County deems necessary to ensure that the Contractor's performance of the Work will comply with the completion date set forth in the Contract as the Contract Time.
- F. **An updated County approved cost loaded schedule and an updated Schedule of Submittals shall be presented with each partial payment request. Lack of such an updated schedule and/or an updated Schedule of Submittals will delay processing of the pay request until receipt of the updated schedule and/or an updated Schedule of Submittals.**
- G. **If the schedule reflects a completion date prior to the completion date established by the Contract Agreement, this shall afford no basis to claim for delay should the Contractor not complete the Work prior to the Projected completion date. Instead all "float" between the completion date in the Contractor's schedule and the completion date established in the Contract Agreement shall belong to and be exclusively available to the County. Should a change order be executed with a revised completion date, the progress schedule shall be revised to reflect the new completion date.**
- H. Project Coordination Meetings: Contractor shall participate in Project Coordination Meetings to be held on the site monthly, or more often if conditions warrant or are specified otherwise, to establish the current state of completion and revise the schedule as necessary. The Project Coordination Meeting will be conducted by the County and the Construction Manager.
- I. Contractor's Responsibilities
1. Implement the detailed Near Term Schedule of activities to the fullest extent possible between Project Coordination Meetings.

2. The Contractor shall provide a copy of the Contractor's Daily Report to the Construction Manager by 10:00 a.m. of the day following the Report date. This Daily Report will contain, as a minimum, the weather conditions; number of workers by craft, including supervision and management personnel on site; active and inactive equipment on site; work accomplished by scheduled activity item; problems; and visitors to the jobsite.
3. If a current activity or series of activities on the Overall Progress Schedule (OPS) is behind schedule and if the late status is not due to an excusable delay for which a time extension would be forthcoming, the Contractor shall attempt to reschedule the activity to be consistent with the OPS so as not to delay any of the Contract milestones. The Contractor agrees that:
 - a. The Contractor shall attempt to expedite the activity completion so as to have it agree with the OPS. Such measures as the Contractor may choose shall be made explicit during the Project Coordination Meeting.
 - b. If, within two weeks of identification of such behind-schedule activity, the Contractor is not successful in restoring the activity to an on schedule status, the Contractor shall:
 - (1) Carry out the activity with the scheduled crew on an overtime basis until the activity is complete or back on schedule.
 - (2) Increase the crew size or add shifts so the activity can be completed as scheduled.
 - (3) Commit to overtime or increased crew sizes for subsequent activities, or some combination of the above as deemed suitable by the Construction Manager.

These actions shall be taken at no increase in the Contract amount.
4. Maintain a current copy of all construction schedules on prominent display in the Contractor's field office at the Project site.
5. Cooperate with the County or County's representative in all aspects of the Project Scheduling System. Failure to implement the Project Scheduling System or to provide specified schedules, diagrams and reports, or to implement actions to re-establish progress consistent with the OPS may be causes for withholding of payment.

GR-8 COUNTY'S RIGHT TO SUSPEND OR TERMINATE WORK

- A. *Termination for Convenience.* County may, for its own convenience and at its sole option, without cause and without prejudice to any other right or remedy of County, elect to terminate the Contract by delivering to the Contractor, at the address listed in the Notices article of this Contract, a written notice of termination specifying the effective date of termination. Such notice shall be delivered to Contractor at least thirty (30) days prior to the effective date of termination.
 1. Upon receipt of a written notice pursuant to Paragraph A, the Contractor shall:
 - (i) stop the Services or the Work (as applicable);
 - (ii) place no further orders or Subcontracts for materials, labor, services or equipment; and
 - (iii) terminate all material and equipment orders and Subcontracts to the extent terminable (unless otherwise directed by County in writing) and advise the County of all materials, equipment and

other items which cannot be canceled or which are already delivered and allow County to participate in the salvage or disposition thereof.

2. If the County terminates this Contract pursuant to this Paragraph A, Contractor shall, as soon as practical after receiving notice of termination, submit to the County an Application for Payment showing all of the costs incurred by Contractor in the performance of the Work terminated through the date of receipt of the notice of termination. The phrase "costs incurred by Contractor in the performance of the Work terminated" as used herein shall be deemed to include:

- (i) Subcontract costs of Work completed;
- (ii) Cancellation fees in regard to equipment and materials ordered;
- (iii) Cost of all materials and equipment ordered which cannot be cancelled; less actual proceeds received upon the disposition thereof;
- (iv) Work accomplished;
- (v) Permit, engineering, bond and inspection fees;
- (vi) Other direct costs actually incurred by Contractor that can be demonstrated by invoice, canceled check, or other appropriate documentation;
- (vii) General condition costs and profit incurred only through the date of termination.

3. **Acceptance of Payment.** Acceptance of payment by the Contractor shall constitute a waiver of all further claims by Contractor against County under the Contract, and shall be Contractor's exclusive remedy for termination of the Contract. Notwithstanding anything to the contrary contained in the Contract Documents, in no event shall Contractor be entitled to any payment on account of accident or lost profits or consequential damages in connection with any termination of the Contract, or otherwise in connection with the Contract.

4. **Condition Precedent to Payment.** As a condition precedent to receiving the payment set forth above, Contractor shall deliver to the County all papers, documents, assignments and agreements relating to the Project

5. **Assignment of Rights Subcontracts.** If requested, Contractor shall assign to the County or to an entity of the County's choice any or all of Contractor's contractual rights in respect thereof, so that the assignee shall be fully vested with all rights and benefits of Contractor under such papers, documents and agreements, together with releases and waivers of lien in the same manner as would be required upon Final Completion. The County may also request the assignment from Contractor to County to the entity of the County's choice of any or all Subcontractors and Supplier agreements entered into by Contractor and in that event the assignee shall be solely obligated to the Subcontractors and Suppliers under such contracts or agreements for all sums payable thereunder and not previously paid by the County to Contractor.

6. **Cessation of Entitlement.** Upon the Contractor's assignment of agreements, contracts, subcontracts and/or Owner's payment of monies due Contractor as provided in Subparagraph 5 above, Contractor shall be entitled to no further compensation of any kind from Owner and shall have no further obligation with regard to the assigned

agreements, contracts, or subcontracts .

- B. *Termination for Default.* If the Contractor is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or applicable laws, or if he fails to supply sufficient skilled workers or suitable materials or equipment, make payments to Subcontractors or for labor, materials or equipment, or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the Work, or if he otherwise violates any provision of the Contract, then the County may, without prejudice to any other right or remedy, and after giving the Contractor and his surety a maximum of seven (7) days from delivery of a written notice, declare the Contract in default and terminate this Contract. In that event, the County may take possession of the Project and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor. The County may cause the Work to be completed and corrected by whatever method it deems expedient. If called upon by the County to finish the Work, the Contractor's surety shall promptly do so. In any case, the Contractor and its surety shall be liable to the County for any and all damages and costs incurred by the County as a result of any default by the Contractor, including without limitation all costs of completion or correction of the Work, liquidated damages, attorneys' fees, expert fees, and other costs of dispute resolution. Termination of this Contract pursuant to this paragraph may result in disqualification of the Contractor from bidding on future County contracts for a period of time not to exceed five (5) years.
- C. If Contractor's services are terminated by the County pursuant to paragraph A or B in this General Requirement, the termination will not affect any rights or remedies of the County then existing or which may thereafter accrue against Contractor or its surety. Any retention or payment of moneys due Contractor by County will not release Contractor from liability. In the event Contractor is terminated for default under the terms hereof and it is later determined that the Contractor was not in default or that the failure to perform is excusable, a termination for default will be considered to have been a termination for the convenience of the County, and the rights and obligations of the parties shall be governed accordingly in accordance with Paragraph A of this General Requirement.
- D. Except as otherwise provided in this General Requirement, neither party shall be entitled to recover lost profits, special, consequential or punitive damages, attorney's fees or costs from the other party to this Contract by reason of a Termination under paragraph A or B in this General Requirement or for any reason whatsoever.
- E. The parties' obligations pursuant to this General Requirement shall survive any Acceptance of Work, or expiration or termination of this Contract.

GR-9 FINAL INSPECTION**A. Substantial Completion**

1. Preliminary Procedures: Before requesting inspection for certification of Substantial Completion, complete the following. List exceptions in request:
 - a. In Application for Payment that coincides with, or first follows, date Substantial Completion is claimed, show 100 percent completion for portion of Work claimed as substantially complete:
 - Include supporting documentation for completion as indicated in these Contract Documents and a statement showing an accounting of changes to Contract Sum.
 - If 100 percent completion cannot be shown, include a list of incomplete items, value of incomplete construction, and reasons Work is not complete.
 - b. Advise the Owner of pending insurance changeover requirements.
 - c. Submit specific warranties, workmanship bonds, maintenance agreements, final certifications, and similar documents.
 - d. Obtain and submit releases enabling Owner unrestricted use of Work and access to services and utilities. Include occupancy permits, operating certificates, and similar releases.
 - e. Submit record drawings based on field run survey, maintenance manuals, final Project photographs, damage or settlement surveys, property surveys, and similar final record information.
 - f. Deliver tools, spare parts, extra stock, and similar items.
 - g. Make final changeover of permanent locks and transmit keys to Owner. Advise Owner's personnel of changeover in security provisions.
 - h. Performing all tests as described in the specifications.
 - i. Demonstrating to the County and Construction Manager operation of all equipment, and making adjustments of gates, valves, and other equipment.
 - j. Paving, grassing and restoration of the Work area.
 - k. Discontinue and remove temporary facilities from site, along with mockups, construction tools, and similar elements.
 - l. Complete final cleanup requirements, including touchup painting.
 - m. Touch up and otherwise repair and restore marred, exposed finishes.
2. Inspection Procedures: On receipt of a request for inspection, Construction Manager will either proceed with inspection or advise Contractor of unfilled requirements. Construction Manager will prepare Certificate of Substantial Completion following inspection or advise Contractor of construction that must be completed or corrected before certificate will be issued.
 - a. Construction Manager will repeat inspection when requested and assured that Work is substantially complete.
 - b. Results of completed inspection will form basis of requirements for final acceptance.

B. Final Acceptance

1. **Preliminary Procedures:** Before requesting final inspection, in writing, for certification of final acceptance and final payment, complete the following and list exceptions if any in the request.
 - a. Submit final payment request with releases and supporting documentation not previously submitted and accepted. Include insurance certificates for products and completed operations where required.
 - b. Submit an updated final statement, accounting for final additional changes to Contract Sum.
 - c. Final acceptance of the Work will not be granted and the retained percentage will not be due or payable until the Contractor has furnished the County proper and satisfactory evidence (under oath) that all claims for labor employed and materials used in the construction of the Work under this Contract have been settled, and that no legal claims can be filed against the County for such labor or materials.
 - d. Before final payment can be made, the Contractor must certify, by affidavit to the County, that all payrolls, materials bills, and other indebtedness connected with the Work have been paid.
 - e. The making of the final payment shall constitute a waiver of all claims by the County, other than those for faulty Work covered by and appearing within the warranty period.
 - f. The acceptance of final payment shall constitute a waiver of all claims by the Contractor, except those previously made in writing and still unsettled.
 - g. Submit a certified copy of Construction Manager's final inspection list of items to be completed or corrected, endorsed and dated by Construction Manager. The certified copy of list shall state that each item has been completed or otherwise resolved for acceptance and shall be endorsed and dated by the Construction Manager.
 - h. Submit final meter readings for utilities, a measured record of stored fuel, and similar data as of date of Substantial Completion or when Owner took possession of and assumed responsibility for corresponding elements of Work.
 - i. Submit consent of surety to final payment.
 - j. Submit evidence of final, continuing insurance coverage complying with insurance requirements.
 - k. Submit a final liquidated damages settlement statement.
2. **Final Acceptance:** Upon completion of all Work required, the Contractor shall request, in writing, a final inspection. When the Construction Manager and County find the Work of the Contractor complete and acceptable, in accordance with the provisions of the Contract Documents, the Construction Manager will recommend to the County that the job be accepted.
3. **Re-inspection Procedure:** Construction Manager will re-inspect Work upon receipt of notice that Work, including inspection list items from earlier inspections, has

been completed, except for items whose completion is delayed under circumstances acceptable to Construction Manager.

- a. Upon completion of re-inspection, Construction Manager will prepare a certificate of final acceptance. If Work is incomplete, Construction Manager will advise Contractor of Work that is incomplete or of obligations that have not been fulfilled but are required for final acceptance.
 - b. If necessary, re-inspection will be repeated.
4. The Contractor will be notified in writing by the County of the acceptance of segments of the Work and/or the final acceptance of the Work, as defined in the Contract Documents. The date of acceptance of segments of the Work and/or date of final acceptance shall be the termination date for the Contractor's liability for physical properties of the facilities and the beginning of the respective warranty periods.

GR-10 WARRANTIES, GUARANTEES AND CORRECTION OF WORK

- A. The Contractor warrants to the County that materials and equipment furnished under the Contract will be new and of good quality, unless otherwise required or permitted by the Contract; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform to the requirements of the Contract. Work not conforming to these requirements, including substitutions not properly approved and authorized, is considered defective. The County, in its sole discretion, may exclude from the Contractor's warranty; remedies for damage or defect which the County determines were caused by abuse; modifications not executed by the Contractor; improper or insufficient maintenance; improper operation; and normal wear and tear and normal usage.
- B. Upon the completion of the Work, and as a condition of final payment, the Contractor shall guarantee in writing that all Work has been accomplished in conformance with the Contract. If required by the County, the Contractor shall also furnish additional satisfactory evidence as to the kind and quality of materials and equipment.
- C. The Contractor shall promptly, and in no event later than 48 hours after receiving written demand from the County, remedy any error, omission, defect, or non-compliance in the Work discovered by the County during construction or at any time thereafter until one year after the final completion of the Work. Nothing herein shall be deemed to shorten any statutory period of limitation otherwise applicable to any legal action by the County against the Contractor.
- D. Contractor shall pay for any damage caused by any omission or defect in the Work, including without limitation, any damage to other Replacement or facilities. In the event that the Contractor should fail to timely make repairs, adjustments, or other remedy that may be made necessary by such defects, the County may do so, and charge the Contractor the cost thereby incurred.
- E. All warranties and guaranties shall extend for the greatest of one (1) full year

commencing on the dates of Substantial Completion of the Project or such longer period of time as is required by the Contract. The one (1) year period shall be extended with respect to portions of the Work first performed after Substantial Completion for a period of one (1) year after the actual performance of the Work. If any defect or deviation should exist, develop, be discovered or appear within such one (1) year period, the Contractor, at its sole cost and expense and immediately upon demand, shall fully and completely repair, correct, and eliminate such defect. The foregoing warranties and guarantees are cumulative of and in addition to, and not restrictive of or in lieu of, any and all other warranties and guarantees provided for or required by law. No one or more of the warranties contained herein shall be deemed to alter or limit any other. The Performance Bond shall remain in full force and effect throughout the applicable guarantee period set forth in this paragraph.

- F. Neither the final payment nor any provision of the Contract, nor partial or entire occupancy or use of the Work by the County, shall constitute an acceptance of any part of the Work that is not in accordance with the Contract or relieve the Contractor of liability for incomplete or faulty materials or workmanship.
- G. All manufacturer warranties and guarantees shall be delivered to the County prior to Substantial Completion and such delivery shall be a condition precedent to the issuance of the Certificate of Substantial Completion. Before final payment, the Contractor shall assign and transfer to the County all guarantees, warranties and agreements from all contractors, Subcontractors, vendors, Suppliers, or manufacturers regarding their performance, quality of workmanship or quality of materials supplied in connection with the Work. The Contractor represents and warrants that all such guarantees, warranties and agreements will be freely assignable to the County, and that upon final completion of the Work, all such guarantees, warranties and agreements shall be in place and enforceable by the County in accordance with their terms. Contractor's obligations pursuant to this General Requirement shall survive any acceptance of Work, or termination or expiration of this Contract.

GR-11 CONTRACTOR'S PERSONNEL AND INDEPENDENT CONTRACTOR STATUS

- A. The Contractor will supervise and direct the Work, including the Work of all Subcontractors. Contractor will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. An experienced Superintendent and necessary assistants competent to supervise the particular types of work involved shall be assigned to the Project by the Contractor, and shall be available at all times when work is in progress. The name of the Superintendent shall be submitted with qualifications of same prior to the start of the Work. If approved by the County, the Superintendent so named by the Contractor shall be employed by the Contractor and shall have served in a supervisory capacity on at least one Project of like description and size performed by the Contractor during the previous twelve months. Under no circumstances shall an employee of any Subcontractor serve as the Superintendent, unless approved by the County prior to being named Superintendent. The Project Director, Project Manager – Area 1, Project Manager – Area 2, and General Superintendent so named by the Contractor shall be those individuals named in

response to RFQ 12-700009 Application for Pre-Qualification of General Construction Contractor to Bid on Snapfinger Advanced Wastewater Treatment Facilities Expansion – Phase 2.

The Superintendent shall represent the Contractor, and all directions given to the Superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

- B. The Contractor shall not change key members of its staff without the prior consent of the County, unless such staff members prove to be unsatisfactory to the Contractor and cease to be in its employ. If the Contractor intends to change a key staff member (defined as certain full-time personnel stationed at the site including Project Manager, Superintendent, Project Engineer, Assistant Project Manager, Assistant Superintendent, or Assistant Project Engineer) it shall give the County written notice at least fifteen (15) days prior to the intended change. The written notice shall include a description of qualifications for the new proposed key staff member. The County shall have the right to approve or disapprove the proposed key staff member.
- C. Only persons skilled in the type of work which they are to perform shall be employed. The Contractor shall, at all times, maintain discipline and good order among his employees, and shall not employ any unfit person or persons or anyone unskilled in the work assigned him.
- D. The relationship between the County and the Contractor shall be that of owner and independent contractor. Other than the consideration set forth herein, the Contractor, its officers, agents, servants, employees, and any Subcontractors shall not be entitled to any County employee benefits including, but not limited to social security, insurance, paid annual leave, sick leave, worker's compensation, free parking or retirement benefits. All services provided by Contractor shall be by employees of Contractor or its Subcontractors and subject to supervision by Contractor. No officer or employee of Contractor or any Subcontractor shall be deemed an officer or employee of the County. Personnel policies, tax responsibilities, social security payments, health insurance, employee benefits and other administrative policies, procedures or requirements applicable to the Work or services rendered under this Contract shall be those of the Contractor, not the County.

GR-12 SUBCONTRACTING

- A. The Contractor understands and agrees that it shall be a breach of this Contract to subcontract any portion of the Work on this Project unless
 - 1. The Work and the Subcontractor proposed to perform it have been declared in the Bid to the Contract; or
 - 2. The Contractor shall have obtained advance written approval from the County.

- B. The Contractor further understands and agrees that any work on this Project, which the Contractor secures in violation of this General Requirement, shall be deemed a donation from the Contractor for which the County shall not be obligated to pay. Nothing contained in this Contract shall create any contractual relation between any Subcontractor and the County. Upon request, Contractor shall provide the County with copies of each of its contract(s) and amendments with each Subcontractor.
- C. Nothing contained in this Contract shall create, nor be interpreted to create privity, or any other relationship whatsoever, between the County and any person, or entity or than Contractor.

GR-13 ASSIGNMENTS

The Contractor agrees it shall not sublet, assign, transfer, pledge, convey, sell, or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm, or corporation without the previous written consent of the County. If the County consents to any such assignment or transfer, then the Contractor binds itself, its partners, successors and assigns to all covenants of this Contract.

GR-14 INDEMNIFICATION AND HOLD HARMLESS

- A. The Contractor shall be responsible from the execution date or from the time of the beginning of the Work, whichever shall be the earlier, for all injury or damage of any kind resulting from the Work, to persons or property, including employees and property of the County. The Contractor shall exonerate, indemnify, and save harmless the County, its elected officials, officers, employees, agents and servants, hereinafter collectively referred to in this General Requirement as “the County Indemnitees,” from and against all claims or actions based upon or arising out of any damage or injury (including without limitation any injury or death to persons and any damage to property) due to claims or liability to a third party that are caused by or sustained in connection with the performance of this Contract or by conditions created thereby or arising out of or any way connected with Work performed under this Contract, as well as all expenses incidental to the defense of any such claims, litigation, and actions. Furthermore, Contractor shall assume and pay for, without cost to the County Indemnitees, the defense of any and all claims, litigation, and actions suffered through any act or omission of the Contractor, or any Subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them. Notwithstanding any language or provision in this Contract, Contractor shall not be required to indemnify any County Indemnitee against claims, actions, or expenses based upon or arising out of the County Indemnitee’s sole negligence.
- B. As between the County Indemnitees and the Contractor as the other party, the Contractor shall assume responsibility and liability for any damage, loss, or injury, including death, of any kind or nature whatever to person or property, resulting from any kind of claim made by Contractor’s employees, agents, vendors, Suppliers or Subcontractors caused by or resulting from the performance of Work under this Contract, or caused by or resulting from any error, omission, or the negligent or intentional act of the Contractor, vendors, Suppliers, or Subcontractors, or any of their

officers, agents, servants, or employees. The Contractor shall defend, indemnify, and hold harmless the County Indemnitees from and against any and all claims, loss, damage, charge, or expense to which they or any of them may be put or subjected by reason of any such damage, loss, or injury.

- C. The Contractor expressly agrees to provide a full and complete defense against any claims brought or actions filed against the County Indemnitees, where such claim or action involves, in whole or in part, the subject of the indemnity contained in this Contract, whether such claims or actions are rightfully or wrongfully brought or filed. The County has the sole discretion to choose the counsel who will provide the defense.
- D. No provision of this Contract and nothing herein shall be construed as creating any individual or personal liability on the part of any elected official, officer, employee, agent or servant of the County, nor shall the Contract be construed as giving any rights or benefits hereunder to anyone other than the parties to this Contract.
- E. The parties agree that Contractor shall be liable for all fines or civil penalties, which may be imposed by any local, federal or state department or regulatory agency that are a result of Contractor's performance of the Work under this Contract. Contractor shall pay the costs of contesting any such fines. The parties' obligations pursuant to this General Requirement shall survive any acceptance of Work, or termination or expiration of this Contract.
- F. The indemnifications set forth above does not extend beyond the scope of this Contract and the Work undertaken thereunder. Nor does this indemnification extend to claims for loses or injuries or damages incurred directly by the County Indemnitees due to breach, negligence or default by the County Indemnitor under the terms and conditions of this Contract. Indemnification does not extend to claims for loses or injuries or damages incurred by the County Indemnitees due to any negligent act, error, or omission of a design professional in the performance of professional services that fails to meet the applicable professional standard of care, skill and ability as employed by others in their profession.

GR-15 ROYALTIES AND PATENTS

The Contractor shall hold and save the County and its elected officials, officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented, unpatented or copyrighted invention, process, method, article, materials, or appliance manufactured or used in the performance of the Contract, including its use by the County, unless otherwise specifically stipulated in the Contract.

GR-16 LAWS AND REGULATIONS

- A. The Contractor's attention is directed to the fact that all applicable federal, state, and County laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract the same as though

herein written out in full. The Contractor shall keep itself and its employees and Subcontractors fully informed of all laws, ordinances, and regulations in any manner affecting those engaged or employed in the Work or the materials used in the Work or in any way affecting the conduct of the Work and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If Contractor discovers any discrepancy or inconsistency in this Contract or in the Drawings or Specifications in relation to any such law, regulation, ordinance, order, or decree, Contractor shall promptly report the same, in writing, to the County. Contractor shall at all times observe and comply with all such laws, ordinances, and regulations, and shall protect and indemnify the County and its agents against any all damages and claims arising out of any violation of such law, ordinance, regulation, order, or decree, whether by Contractor or its employees or Subcontractors.

- B. Contractor shall not discriminate against any person in its operations, activities or performance of Work under this Contract. Contractor shall affirmatively comply with all applicable provisions of federal, state and local equal employment laws and shall not engage in or commit any discriminatory practice against any person based on race, age, religion, color, gender, national origin, physical or mental disability, or political affiliation. Contractor shall maintain a Drug Free Workplace.

GR-17 PERMITS AND INSPECTION FEES

- A. Permits shall be secured by the Contractor, and inspections will be required, but the County will not charge the Contractor for permits and inspections obtained from the County. The Contractor shall secure and pay for any permits and inspection fees required by any other governmental entity or agency.
- B. Prior to execution of this Contract, Contractor shall provide the County with a copy of its current, valid business license. If Contractor is not a Georgia corporation, Contractor shall submit a certificate of authority to transact business in the state of Georgia and a copy of their valid business license issued by their home jurisdiction. Contractor shall provide the County with copies of all other required licenses, certifications and permits for the Contractor and/or all of Contractor's employees, personnel, agents or Subcontractors performing services that require licensure by the federal government, the State of Georgia, or the County. Contractor hereby warrants and represents that at all times during the Contract Term it shall maintain in good standing all required licenses, certifications, and permits required under federal, state and local laws necessary to perform the services required by this Contract.

GR-18 LAND AND RIGHTS-OF-WAY

Prior to entering on any land or right-of-way, the Contractor shall ascertain the requirements of applicable permits or easements obtained by the County, and shall conduct his work in accordance with requirements thereof, including the giving of notice. The Contractor shall be fully responsible for performing work to the requirements of any permit or easement granting entity, even though such requirements may exceed or be more stringent than that otherwise required by the Contract, and shall compensate the County fully for any loss or expense arising from failure of the Contractor to perform

as required by such entity. The Contractor shall provide, at its own expense without liability to the County, any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

GR-19 PROTECTION OF WORK, PROPERTY, AND PERSONS

- A. The Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor shall take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Project and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, lakes, drainage ways, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.
- B. The Contractor shall erect and maintain, as required by the conditions and progress of the Work, all necessary warning safeguards for devices and the safety and protection of the Work, the public and adjoining property.
- C. If existing utilities or structures are indicated by the Contract, no warranty is made as to the accuracy or completeness of such indication or the information provided regarding such utilities or structures. The Contractor shall comply with all applicable state law concerning the marking and location of existing utilities. The Contractor shall, prior to commencing other on-site work, accurately locate above and below ground utilities and structures, which may be affected by the Work, using whatever means may be appropriate, and shall verify the nature and condition of such utilities and structures. The Contractor shall mark the location of existing utilities and structures, if they are not otherwise readily visible, with flagging, stakes, barricades, or other suitable means, and shall preserve and protect all utilities and structures not designated for removal, relocation, or replacement in the course of construction. Contractor shall notify the County promptly of discovery of any conflict between the Contract and any existing facility.
- D. All existing utilities, both public and private, including but not limited to, sewer, gas, water, electrical, and telephone services, shall be protected and their operation shall be maintained through the course of the Work. Any temporary shutdown of an existing service shall be arranged between the Contractor and the responsible agency. The Contractor shall assume full responsibility and hold the County harmless from the result of any damage that may occur as a result of the Contractor's activities in this regard.
- E. In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, or unanticipated conditions where delay would substantially impact the time or cost of work, the Contractor, upon notification to the County, shall act to prevent threatened damage, injury, or loss. Any claim for compensation or extension of time by the Contractor due to such extra work shall be submitted to the County within ten (10) days of the date of performing such work or deviations in the manner

prescribed for a Change Order.

GR-20 PROHIBITED INTERESTS

No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract, or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory, or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

GR-21 FIRST SOURCE JOBS ORDINANCE

The Contractor is required to comply with the DeKalb County First Source Jobs Ordinance, Code of DeKalb County as Revised 1988, section 2-231 *et seq.*, and among other things, is required to make a good faith effort to hire DeKalb County residents for at least fifty percent 50% of all jobs created by an Eligible Project, as that term is defined in the First Source Ordinance, using the First Source Registry.

GR-22 FOREIGN CORPORATIONS

In the event the Contractor is a foreign corporation, partnership, or sole proprietorship, the Contractor hereby irrevocably appoints the Georgia Secretary of State as its agent for service of all legal process for the purposes of this Contract only.

GR-23 SPECIFICATIONS AND DRAWINGS

- A. The Specifications, the Drawings and the Contract shall be supplementary to each other, and any material, workmanship, and/or service which may be in one, but not called for in the others, shall be as binding as if indicated, called for, or implied by all.
- B. Each section or type of work is described separately in the Technical Specifications; however, should any item of material, equipment, work, or combinations of such be required in one section, and not be described in that section and a similar item described in another section, that description shall apply regardless of the section under which it is described.
- C. Any discrepancies found between the Drawings and Specifications and site conditions, or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported to the County, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies, or ambiguities shall be done at the Contractor's risk.

- D. Upon award of the Contract, the Contractor will be supplied, free of charge, up to three complete sets of the Contract Drawings and Specifications. Any prints and Specifications in excess of these shall be furnished at cost at the Contractor's expense.
- E. The Contractor shall furnish, with reasonable promptness, all samples as directed by the County for approval for conformance with the design concept of the Project and for compliance with the information stated in the Contract. The Work shall be in accordance with approved samples.
- F. The County may, without changing the scope of the Work, furnish the Contractor additional instructions and detail drawings, as necessary to carry out the Work required by the Contract. The additional drawings and instructions thus supplied will become a part of the Contract. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions.
- G. Attention is directed to the fact that the detailed Specifications and separate sections may be written in short or abridged form. In regard to every section of the Specifications and all parts thereof, mentioned therein, or indications on the Drawings of articles, materials, operations, or methods, requires that the Contractor:
- (1) Provide each item mentioned and indicated of a quality or subject to qualifications noted;
 - (2) Perform according to conditions stated, each operation prescribed; and
 - (3) Provide therefore all necessary labor, equipment, and incidentals.
- H. For convenience of reference and to facilitate the letting of contracts and subcontracts, these Specifications are separated into titled sections. Such separation shall not, however, operate to make the County an arbiter to establish limits for the contracts between the Contractor and Subcontractors.
- I. Notwithstanding the appearance of such language in the various sections of the Specifications as, "The Paving Contractor," "The Grading Contractor," etc., the Contractor is responsible to the County for the entire Contract and the execution of all Work referred to in the Contract.

GR-24 CONTRACTOR'S SUBMITTALS

- A. The Contractor shall submit all Submittals to the official or employee so designated by the chief executive officer all Submittals as required under the Specifications and in such time and manner that will allow at least 21 days for the County's review, pursuant to the Construction Schedule. No portion of the Work shall commence until all Submittals relating to such portion have been approved by the County.

- B. The approved Drawings will be supplemented by such shop drawings as are needed to adequately control the Work. Shop Drawings, product data, samples and other Submittals are not parts of the Contract. The purpose of their submittal is to demonstrate for those portions of the Work for which Submittals are required by the Contract, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract. Informational Submittals, upon which a County employee, the Architect or Engineer, if retained by the County in connection with the Project, is not expected to take responsive action, may be so identified in the Contract. Submittals which are not required by the Contract may be returned by the County without action. The approval of a Submittal shall not authorize any deviation from or alteration of the Drawings or Specifications absent a Change Order or Field Order.
- C. Shop drawings to be furnished by the Contractor for any structure shall consist of such detailed drawings as may be required for the execution of the Work.
- D. Drawings for false work, centering, and form work may also be required per the Specifications and in such cases shall be likewise subjected to approval unless approval is waived.
- E. The County's review will be within reasonable promptness as to cause no delay in the Work. Approval of the Contractor's Submittals does not relieve the Contractor of any responsibility for accuracy of dimensions and details or from otherwise ensuring that the Work complies with the requirements of the Contract. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of Submittals with the Drawings and Specifications. The County will review and approve or take other appropriate action upon the Contractor's Submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract. Review of submittals is not conducted for the purpose of determining the accuracy and completeness of details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract. The County's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The County's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- F. It is the responsibility of the Contractor to check all Submittals before same are submitted to the County for approval. Submittals which have not been checked and approved by the Contractor will not be reviewed by the County.
- G. Submittals shall be submitted only by the Contractor who shall indicate by a signed stamp on the drawings that he has checked the Submittals and that the work shown on them is in accordance with Contract requirements and has been checked for dimensions and relationship with work of all other trades involved. Under no conditions shall Submittals be accepted from anyone other than the Contractor.

- H. The Contractor shall furnish the County with Submittals in accordance with Division 1 of the Specifications. The Contract Price shall include the cost of furnishing all Submittals and the Contractor will be allowed no extra compensation for such drawings.
- I. The approval of such Submittals shall not relieve the Contractor from responsibility for deviations from Drawings or the Specifications unless he has in writing called attention to such deviations, and the County has approved the changes or deviations in writing at the time of submission, nor shall it relieve him from the responsibility for errors of any kind in Submittals. When the Contractor does call such deviations to the attention of the County, he shall state in writing whether or not such deviations involve any extra cost. If this is not mentioned, it will be assumed that no extra cost is involved for making the change.
- J. The Contractor shall prepare and maintain a log of all Submittals which includes, at a minimum, the submittal number, revision number, description, responsible company, proposed submittal date, date actually submitted, date approved, any comments received, approval status, and resubmittal information. The log shall be updated at least on a monthly basis and made available to the County for review upon request.

GR-25 AS-BUILT DRAWINGS

The Contractor shall maintain a red-lined set of drawings on site during the progress of the Work, indicating upon occurrence any Field Orders, Change Orders and the location of the portion of the Work or equipment actually installed. The Contractor shall note and record all vertical and horizontal as-built conditions upon occurrence during the life of the contract. The Contractor shall, upon completion of the Work, furnish a marked set of reproducible drawings indicating any field changes and the location of Work as actually installed, if different from the requirements of the Contract, and deliver them to the County in hard copy as well as an electronic copy compatible with the County's software and hardware system. Upon completion of the warranty period, the Contractor shall furnish a marked set of Drawings showing any additional changes made during the warranty period.

GR-26 EXAMINATION OF WORK BY CONTRACTOR

It is understood and agreed that the Contractor has, by careful examination, satisfied himself as to the nature and location of the Work, the configuration of the surface and sub-surface conditions, the character, quality, and quantity of the facilities needed preliminary to and during the prosecution of the Work, the general and local conditions, and all other matters which can in any way affect the Work or the cost thereof under this Contract. Contractor's failure to appropriately familiarize himself with all reasonably known conditions shall provide no basis for an extension of the Contract Time and adjustment to the Contract Sum.

GR-27 INSPECTION AND TESTING OF MATERIALS

Unless otherwise specifically provided for, the inspection and testing of materials and finished articles to be incorporated in the Work as required by the Specifications shall be made by the Contractor, or bureaus, laboratories, or agencies approved by the County. The cost of such inspection

and testing shall be paid by the Contractor. Materials and finished articles shall have passed the required tests prior to the incorporation of such materials and finished articles in the Work. The County may require, and the Contractor shall furnish if required to do so, certificates from manufacturers to the effect that the products or materials furnished by them for use in the Work comply with the applicable specified requirements for the materials or products being furnished.

GR-28 INSPECTION OF WORK

- A. The Contractor shall, at all times, permit and facilitate inspection of the Work by authorized representatives of the County and public authorities having jurisdiction in connection with the Work of this Contract. The presence or observations of the County or its representative at the site of the Work shall not be construed to, in any manner, to relieve the Contractor of its responsibility for strict compliance with the provisions of the Contract.
- B. If the Drawings, Specifications, County's instructions, laws, ordinances, or a public authority require any work to be specially tested or approved, the Contractor shall give the County timely notice of its readiness for observation or inspection. Contractor shall provide written notification request a minimum of 24 hours in advance of requested inspection for the purpose to allow inspection parties time to arrange and schedule requested inspections. The inspectors will at all times perform inspections as quickly and as diligently as permissible. If the inspection is by another authority, then the County shall be advised of the date fixed for such inspection. Required certificates of inspection shall be secured by the Contractor. Contractor, having secured all certificates of inspection, will deliver same to the County upon completion. If any Work should be covered up without approval or consent of the County, it shall, if required by the County, be uncovered for examination at the Contractor's expense. The recovering of such Work after inspection shall be at Contractor's expense.
- C. Should any disagreement or difference arise as to the estimate, quantities, or classifications or as to the meaning of the Drawings or Specifications, or any point concerning the character, acceptability, and nature of the several kinds of work, any materials and construction thereof, the decisions of the County shall be final and conclusive and binding upon all parties to the Contract.
- D. If the County determines that portions of the Work require additional testing, inspection or approval beyond the requirements of the Specifications, the County will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the County, and the Contractor shall give timely notice to the County of when and where tests and inspections are to be made so that the County may be present for such procedures. Such costs to the Contractor, except as provided below, shall be reimbursed using one of the Contract Allowances.
- E. If such procedures for testing or inspection reveal failure of the portions of the Work to comply with requirements established by the Contract, all costs made necessary by such failure including those of repeated procedures shall be at the Contractor's expense.

- F. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract, be secured by the Contractor and promptly delivered to the County or the Architect if one is retained by the County in connection with the Project. Tests or inspections conducted, pursuant to the Contract, shall be made promptly to avoid unreasonable delay in the Work.

GR-29 REQUESTS FOR SUBSTITUTIONS

- A. Requests for substitutions of proprietary products or of a particular manufacturer, vendor, or Subcontractor must be accompanied by the following documentation:
- (1) Full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution;
 - (2) Reasons the substitution is advantageous or necessary, including benefits to the County and the Work in the event the substitution is acceptable;
 - (3) The adjustment, if any, in the Contract Price, in the event the substitution is acceptable;
 - (4) The adjustment, if any, in the Contract Term or Time and the construction schedule in the event the substitution is acceptable;
 - (5) An affidavit stating that (1) the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings and (2) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified;
 - (6) Proposals for substitutions must be submitted in triplicate to the County in sufficient time to allow the County no less than ten (10) working days for review; and
 - (7) No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.
- B. Substitutions and alternates may be rejected at the County's discretion without explanation and will be considered only under one or more of the following conditions:
- (1) Required for compliance with interpretation of code requirements or insurance regulations then existing;
 - (2) Unavailability of specified products, through no fault of the Contractor; or
 - (3) Subsequent information discloses inability or specified products to perform properly or to fit in designated space;

- (4) Manufacturer/fabricator refuses to certify or guarantee performance of specified product as required; and
 - (5) When in judgment of the County, that a substitution would be substantially to the County's best interests, in terms of costs, time, or other considerations.
- C. Whether or not any proposed substitution is accepted by the County, the Contractor must reimburse the County for any fees charged by the Architect or other consultants for evaluating each proposed substitute. By making requests for substitutions based on the above, the Contractor:
- (1) Represents and warrants that the Contractor has personally investigated the proposed substitute product or Subcontractor and determined that it is equal or superior in all respects to the product or Subcontractor previously specified;
 - (2) Represents and warrants that the Contractor will provide the same warranty for the substituted product or for the workmanship of the substituted Subcontractor, as applicable, that the Contractor would have provided for the product or Subcontractor previously specified;
 - (3) Certifies that the cost data presented, in the form of certified quotations from Suppliers of both specified and proposed equipment is complete and includes all related costs under this Contract, but excludes costs under separate contracts, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
 - (4) Agrees that the Contractor will coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete and in accordance with the Contract in all respects.
- D. Contractor shall not propose an item for substitution unless it is equal to or superior to the specified item or items in construction, efficiency, and utility. The opinion of the County as to the equality or superiority of the item shall be final, and no substitute material or article shall be purchased or installed without the County's written approval.
- E. In case of a difference in price, the County shall receive all benefits of the difference in cost involved in any substitution, when lower, and the Contract altered by Change Order to credit the County with any savings to be obtained. However, the County shall not be charged for any additional cost in the case of a price increase.

GR-30 REJECTIONS OF WORK AND MATERIALS

- A. All Work that is defective or deviates from the Drawings or Specifications will be rejected. All rejected Work shall be replaced immediately with other material, equipment, or work which conforms with the Drawings and Specifications at no additional cost to the County. If rejected Work is not removed within forty-eight hours

from the date of letter of notification, the County shall have the right and authority to stop the Work immediately and/or to arrange for the removal of said rejected Work at the cost and expense of the Contractor.

- B. Inspection of the Work shall not relieve the Contractor of any of its obligations, and defective Work shall be made good regardless of whether it has been previously inspected by the County and accepted or estimated for payment. The failure of the County to reject or condemn improper materials or workmanship shall not be considered as a waiver of any defect that may be discovered later.

GR-31 MATERIALS, SERVICES, AND FACILITIES

- A. The Contractor shall at all times employ sufficient labor and equipment for executing the Work to full completion in the manner and time specified. Failure of the Contractor to provide adequate labor and equipment shall constitute a default of the Contract. The labor and equipment to be used in the Work by the Contractor shall be sufficient to meet the requirements of the Work and shall be such as to produce a satisfactory quality of work in accordance with accepted industry practices and within the Contract Time.
- B. Materials and equipment shall be so stored and handled as to insure the preservation of their quality and fitness for the Work. Stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection. No product which has in any way become unfit for the intended purpose shall be incorporated into the Work.
- C. Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, cleaned, and conditioned as directed by the manufacturer. Contractor shall promptly notify the County of any conflict between the instructions of any manufacturer and the requirements of the Drawings or the Specifications.
- D. Materials, supplies, and equipment to be incorporated into the Work shall be new and unused unless otherwise specifically stated in the Contract. The source of supply for all such products shall be submitted to the County, together with detailed descriptions thereof in the form of samples, shop drawings, tests, or other means necessary to adequately describe the items proposed. Approval by the County of a manufacturer or supplier shall not constitute the approval of materials, supplies, or equipment obtained from such manufacturer or supplier if they do not comply with the requirements of the Contract. If, after trial or installation, it is found that sources of supply, even though previously approved by the County, have not furnished products meeting the intent of the Contract, the Contractor shall thereafter furnish products from other approved sources, and shall remove completed Work incorporating products which do not meet Contract requirements.
- E. The Contractor shall confine operations to areas permitted by law, ordinances, permits and the Contract, and shall not unreasonably encumber the site with materials or equipment. The Contractor shall provide parking for all construction vehicles only within the construction limits as indicated on the drawings or make appropriate

arrangements as permitted by law.

- F. Only materials and equipment which are to be used directly in the Work may be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it must be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is the sole responsibility of the Contractor.
- G. The Contractor and any entity for which the Contractor is responsible must not erect any sign on the Project site without the prior written consent of the County, which may be withheld in the sole discretion of the County.
- H. Contractor must ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, and for emergency response to the site of the Work and all adjacent areas. The Work must be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work are free from debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract, Contractor must use its best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the site of the Work, or the Project.
- I. Without prior approval of the County, the Contractor shall not permit any worker to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the County for such use. Without limitation of any other provision of the Contract, the Contractor shall use its best efforts to comply with all rules and regulations promulgated by the County in connection with the use and occupancy of the Project site, as amended from time to time. The Contractor shall immediately notify the County in writing if during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems that may be caused by such compliance and suggesting alternatives through which the results intended by such portions of the rules and regulations can be achieved. The County may, in the County's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations. The Contractor shall also comply with all insurance requirements applicable to the use and occupancy of the Project site.
- J. Unless otherwise provided in the Contract, Contractor shall provide and maintain a suitable office on the site for its own use and for the use of representatives of the County. Contractor shall furnish sufficient heat, artificial light, ventilation and janitor's service, and shall also provide a table or desk, plan rack and chairs, all for the use of those visiting the job, in addition to such furnishings as he provides for his own use. Temporary offices and other structures shall be located where approved by the County, and shall be removed from the premises upon completion of the Contract or earlier if so directed by the County.
- K. Contractor may be required by the County, at the beginning of Work, to provide, at the

Project site, suitable and adequate temporary toilets and enclosure for use of workers on the job, shall maintain same in sanitary condition, and shall remove same at the completion of construction operations and/or when directed by the County. Contractor shall not allow any sanitary nuisances to be committed in or about the site and shall enforce sanitary regulations of local and state health authorities.

- L. The Contractor shall cooperate with the County in any required use of the property and arrange for storage of materials on the Project site in such areas as are mutually agreed upon. The Contractor shall allot suitable and proper space to its Subcontractors for the storing of their materials and for the erection of their sheds and tool houses. Should it be necessary at any time to move materials, sheds, or storage platforms, the Contractor shall, at its own expense move same as and when directed by the County.
- M. Unless otherwise instructed by the County, the Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by the Contractor's performance of the Work. The County's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of the Contract.

GR-32 UTILITIES DURING CONSTRUCTION

Utility requirements during construction shall be as specified in Section 01500 Construction Facilities and Temporary Controls.

GR-33 TEMPORARY HEAT AND AIR CONDITIONING

Temporary heat and air conditioning required during construction shall be as specified in Section 01500 Construction Facilities and Temporary Controls.

GR-34 MAINTENANCE MANUAL

Operation and Maintenance Manuals shall be as specified in Section 01300 Submittals.

GR-35 WEATHER CONDITIONS

The Contractor will be required to protect all work and materials against damage or injury from the weather. If, in the opinion of the County, any work or materials shall have been damaged or injured by reason of failure to protect such, all such materials or work shall be removed and replaced at the expense of the Contractor.

GR-36 LINES, GRADES, AND MEASUREMENTS

- A. Such stakes and markings as the County may set for either its or the Contractor's guidance shall be preserved by the Contractor. Failure to protect such stakes or markings may, at the County's discretion, shall result in the Contractor being charged for their replacement.

- B. The Contractor must exercise proper care and caution to verify the grades and figures furnished by or on behalf of the County before proceeding with the Work, and shall be responsible for any damage or defective work caused by its failure to exercise such care and caution. Contractor shall promptly notify the County of any errors or discrepancies it may discover in order that the proper corrections may be made.
- C. Before ordering materials or doing work, the Contractor shall measure and verify the dimensions and locations of all existing structures, substrata, and features that affect the Work and shall be responsible for the correctness of same. No consideration will be given any claim based on the differences between the actual dimensions and those indicated on the Drawings. Contractor shall promptly notify the County of any difference which may be found, and shall obtain direction from the County before proceeding with the affected Work.

GR-37 CLEANING UP

- A. The Contractor shall at all times, keep the premises free from accumulation of waste materials or rubbish caused by Contractor's employees or work. Upon completion of the Work, the Contractor shall remove all his plants, tools, materials, and other articles from the property of the County.
- B. If the Contractor fails to clean up, as provided in the Contract, the County may do so, and the cost thereof shall be charged to the Contractor. Contractor shall ensure that neither it, its Subcontractors, nor their employees or agents bring any hazardous materials or other materials/waste regulated by state, federal or local law, which are not commonly used in the construction process or which are not listed in any Specifications for the Project onto the Project site without first obtaining the County's advance written approval. Contractor agrees to ensure that any hazardous materials/waste or other materials/waste regulated by state, federal or local law that Contractor, its Subcontractors or their employees or agents, bring onto or generate at the Project Site are handled in accordance with all applicable laws.
- C. The Contractor shall pay all required material disposal fees and shall dispose of all materials in accordance with all applicable laws and regulations. The Contractor shall be responsible for all costs associated with improper disposal of materials, including any clean-up costs, fines or penalties, whether levied against the Contractor or the County.
- D. In addition to removing rubbish on a periodic basis and leaving the building broom clean, the Contractor shall clean all tile and glass; replace broken glass; remove stains, paint spots, and dirt from all Work; clean and polish all plumbing fixtures and equipment; and remove all temporary protection items. To the maximum extent reasonably possible, the Contractor shall keep the interior of the building free of combustible materials as the Work progresses.
- E. The Contractor shall maintain and keep clean at all times the immediate approach to the

Project site, including the roads abutting the Project site.

GR-38 BARRICADES

- A. Contractor shall provide barricades and protective barriers around excavations, so that the public is adequately warned of such hazards. Lanterns shall remain lighted from sundown to sunrise and at all other times when the labor forces are not on the job site.
- B. Delivery of construction materials and equipment shall be only to locations approved by the County.

GR-39 NO THIRD-PARTY BENEFICIARY

Except as expressly and specifically set forth herein, this Contract shall not be deemed to provide any third-party with any remedy, claim, right of action, or other right.

GR-40 SEVERABILITY

If any provision of this Contract or the application thereof to any person or circumstance shall to any extent be held invalid, then the remainder of this Contract or the application of such provision to persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby, and each provision of this Contract shall be valid and enforced to the fullest extent permitted by law.

GR-41 INTERPRETATION

The laws of the State of Georgia shall govern the construction of this Contract without regard for conflicts of laws. Should any provision of this Contract require judicial interpretation, it is agreed that the court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction, that a document is to be construed more strictly against the party who itself or through its agent prepared same; it being agreed that the agents of all parties have participated in the preparation hereof, and all parties have had an adequate opportunity to consult with legal counsel. In interpreting this Contract in its entirety, the printed provisions of this Contract, and any additions written or typed hereon, shall be given equal weight, and there shall be no inference by operation of law or otherwise; that any provision of this Contract shall be construed against either party hereto.

GR-42 PRIOR CONTRACTS; CONFLICT IN DOCUMENTS

The Contractor may in no case claim a waiver of any specification requirements on the basis of previous approval of material or workmanship on other jobs of like nature or on the basis of what might be considered "standard" for material or workmanship in any particular location. The Contract for this Project shall govern the Work. If any portion of the Contract shall be in conflict with any other portion, the various documents comprising the Contract shall govern in the following order of precedence: Contract, Change Orders or modifications issued after execution of the Contract; the General Requirements of the Contract; the Specifications; the Drawings, as between schedules and information given on the Drawings, the schedules shall govern; as between figures given on Drawings and the scaled measurements, the figures shall govern; as between large-scale Drawings and small-

scale Drawings, the larger scale shall govern; and detailed Drawings shall govern over general Drawings; and the Bid Document Package. As this is a process oriented Project, conflicts between architectural Drawings and Drawings of other engineering disciplines, Drawings of the other engineering disciplines shall govern.

GR-43 ENTIRE AGREEMENT

This Contract constitutes the sole contract between the County and the Contractor. The terms, conditions, and requirements of this Contract may not be modified, except by Change Order or Field Order. No verbal agreement or conversation with any officer, agent, or employee of the County, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations herein contained. No representations, oral or written, shall be binding on the parties unless expressly incorporated herein. No Change Order or Field Order shall be enforceable unless approved by official action of the County as provided by law or in this Contract.

GR-44 COUNTERPARTS

This Contract may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same Contract.

GR-45 VENUE

The courts of DeKalb County, Georgia shall have exclusive jurisdiction to try disputes arising under or by virtue of this Contract.

GR-46 TAXES

- A. Contractor shall pay all sales, consumer, withholding, use and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.
- B. The Contractor shall provide a written tabulation, plus other documentation as may be required, of all taxes, including sales tax, paid by the Contractor to assist the County in obtaining sales and/or use tax refunds for eligible machinery and equipment used for the primary purpose of reducing or eliminating air or water pollution as provided for in Chapter 48-8-3 (36) and (37) of the Official Code of Georgia. Such written tabulation shall be included with each partial payment request. The tabulation shall include the major equipment items, as defined in the Major Equipment Schedule, plus any qualifying equipment purchases with a value greater than \$5,000. Additionally, the tabulation shall be documented with copies of invoices indicating the amount of tax paid, with all blanks completed on the invoice, and with a description of the function of the item included in the tabulation. All taxes shall be paid by the Contractor. All refunds will accrue to the County.

GR-47 INTERRUPTION OF FACILITY OPERATIONS

- A. The Contractor shall schedule the Work such that the Contractor minimizes interruptions to the operation of any existing facility, including water mains and sewers.

Shut downs must be scheduled with the County and mitigation steps taken to prevent upsets or impacts to plant compliance.

- B. The Contractor shall conduct operations in a manner and sequence which will provide for the continued transportation of wastewater flows during construction of this Project. The Contractor shall take all actions required to prevent discharge of sewer flow from the system to the ground or stream. Any construction actions that impede or interrupt flow shall be carefully executed and monitored to prevent surcharging and overflow.
- C. Any damages resulting from surcharging, overflow or back-up caused by the Contractor's operations shall be the Contractor's responsibility. Fines charged the County for overflows caused by the Contractor shall be paid for by the Contractor.

GR-48 DEKALB COUNTY WORK HOURS

Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during DeKalb County Construction Activities work hours (DeKalb County Code of Ordinances Chapter 16, Article VII, Division 2, Section 16-306 (d)). DeKalb County work hours are generally Monday through Friday from 7:00 a.m. through 7:00 p.m. DeKalb County observes the following holidays; **New Year's Day, Martin Luther King, Jr. Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, day after Thanksgiving, and Christmas.** The Contractor will not perform Work outside of DeKalb County work hours without the County's written consent given after prior written notice to the Construction Manager, which shall be submitted at least seven (7) days in advance.

**ATTACHMENT S
ETHICS POLICY**



**Office of Interim Chief Executive Officer
DeKalb County, Georgia**

Lee N. May
Interim CEO

**Executive Order No. 2014-4
New Ethics Policy**

WHEREAS, the citizens of DeKalb County, Georgia are entitled to have complete confidence and the highest degree of trust in their County government; and

WHEREAS, ethical conduct is a key ingredient to sustaining trust with DeKalb County, Georgia residents; and

WHEREAS, the Organizational Act and Code of DeKalb County include rules to ensure ethical conduct by officials and employees; and

WHEREAS, reminding employees of the existing ethical rules and management's need to monitor employee's compliance with those rules shall help to ensure that government conducts itself in an open, honest, and fair manner; and

WHEREAS, training employees annually of the existing ethical rules shall further help to ensure that government continues to conduct itself in an open, honest, and fair manner; and

WHEREAS, the Interim Chief Executive Officer of DeKalb County is charged with the responsibility of ensuring that the County employees serve the best interests of the public at all times; and

WHEREAS, the Interim Chief Executive Officer of DeKalb County believes it is in the best interests of the citizens of DeKalb County to prevent fraud and abuse of office in government;

NOW THEREFORE, I, Lee N. May, Interim Chief Executive Officer of DeKalb County, by virtue of the authority vested in me, do hereby issue the following Executive Order:

June 24, 2014

Section 1: Scope of this Order and Reminder of Existing Rules

This Executive Order applies to all merit-exempt and merit employees subject to the supervisory and administrative control of the Chief Executive Officer (hereinafter referred to as "CEO employees").¹ CEO employees shall adhere to all applicable ethical rules listed in Section 22A of the Organizational Act and the Code of DeKalb County. A copy of Section 22A and the relevant ethics provisions of the Code of DeKalb County referenced by this Executive Order are attached. Violations of these Rules shall not be tolerated.

CEO employees shall adhere to the ethical rules listed in Organizational Act, Section 22A, and the Code of DeKalb County applicable to them. All merit-exempt CEO employees shall comply with the Organizational Act, Section 22A, which includes, but is not limited to the Conflicts of Interest provisions in sections 22A(c)(1), (c)(5), (c)(6), and (e); the Gifts and Gratuities provisions governed by section 22A(c)(2)(a.); Disclosure of Confidential Information covered by section 22A(c)(3); and the Disclosure of Interests provisions of section 22A(d).

All CEO employees in departments under the merit system, as provided in Chapter 20 of the Code of DeKalb County shall comply with that chapter which includes, but is not limited to the ethics rules of Section 20-20, Conflicts of Interest and Section 20-20.1 regarding Financial Disclosure Reports.

Section 2: New Ethical Rules for CEO Merit-Exempt Employees

In addition to the existing ethical rules identified above, all CEO merit-exempt employees shall adhere to the following rules governing each specific area listed below. While Section 20-20 of the Code of DeKalb County contains specific monetary limits for merit employees, the Organizational Act does not contain such specific limits. These new rules are designed to impose specific monetary limits on merit-exempt employees. To the extent that any rule in this Executive Order conflicts with Section 22A of the Organizational Act or applicable provisions of the Code of DeKalb County, the Organizational Act and the applicable provisions of the Code of DeKalb County shall apply. To the extent any rule below is stricter than Section 22A of the Organizational Act and the applicable provisions of the Code of DeKalb County, the stricter rules below shall govern.

1. *Gifts.* A CEO merit-exempt employee may accept gifts² from an Interested Source³, having an aggregate market value of forty dollars (\$40.00) or less per Interested Source

¹This Executive Order cannot and does not apply to employees of the Board of Commissioners and deputies and employees of other elected officers of DeKalb County. This Executive Order does not apply to campaign contributions, donations and any activities a person conducts during the course of seeking nomination or election to any public office as those activities and campaign contributions and donations are regulated by applicable state and federal law.

²"Gift" includes any gratuity, favor, discount, entertainment, trip, hospitality, loan, forbearance or other item having monetary value. It includes services as well as gifts, of training, transportation, travel, lodging, meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. A gift does not include: modest items of prepared food and refreshments such as soft drinks, or coffee or donuts other than as part of a meal; loans from banks or other financial institution on terms generally available to the public; social invitations from persons or entities other than Interested Sources.

per occasion, provided that the aggregate market value of individual gifts received from any single Interested Source shall not exceed one hundred twenty dollars (\$120.00) in a calendar year, except in the following circumstances, which are exceptions to this rule:

- a. *Meals.* CEO merit-exempt employees are allowed to accept reasonable meals and refreshments from an Interested Source furnished in connection with participation at a public, civic, charitable, or non-profit ceremony, event, convention, or conference.
- b. *Travel.* CEO merit-exempt employees may accept "reasonable hosting expenses" from Interested Sources for travel, meals, lodging, and conference fees provided in connection with (1) teaching, (2) a speaking engagement, (3) participation on a professional or civic panel, or (4) attendance at a conference in an official capacity. CEO merit-exempt employees may accept travel from other non-County sources for any official purpose, provided that they disclose the travel payments made or reimbursements received on a Travel Disclosure Report filed with either the Chief Integrity Officer, if created, or the Finance Director or his/her designee. CEO merit-exempt employees may accept travel reimbursements from a County contractor for training if it is part of the County's contract or falls within the exception for gifts of travel to the County.
- c. *Tickets.* CEO merit-exempt employees may accept tickets to concerts, plays, athletic or other entertainment events from an Interested Source only when performing an official duty at the event.
- d. *Honoraria.* CEO merit-exempt employees may not accept personal honoraria from an Interested Source.
- e. *Awards, other exceptions.* CEO merit-exempt employees may accept awards, plaques, certificates, mementos, novelties, or similar items given in recognition of public service; nominal gifts from representatives of other governments; gifts from family members; and gifts accepted on behalf of the County.

Section 3: Chief Executive Officer

As Chief Executive Officer, I am governed by the ethical rules in the Organizational Act of DeKalb County. As such, those rules do not contain specific monetary limits on gifts, and I believe it is important that I set an example for the employees who are under my supervisory and administrative control. As a result, I am choosing to be governed by the ethical rules governing gifts stated in Section 2 of this Executive Order, and I will abide by the rules in Section 2 of this

¹ "Interested Source" means any person or entity who: (a) is seeking official action by the employee or the employee's department; (b) does business or seeks to do business with the county or the employee's department; (c) conducts activities regulated by the employee or the employee's department; (d) has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or (e) is an organization having a majority of its members as described in paragraphs (a) through (d).

Order, in addition to all other applicable provisions and exceptions of this Executive Order, and local and state ethical rules and law.

Section 4: Training

All CEO employees shall comply with these ethical rules and shall receive annual ethics training regarding these rules. Additionally, every CEO employee shall receive a copy of these ethical rules, shall be required to read the rules and sign a form acknowledging his/her obligation to comply with the ethical rules and the potential penalties for failing to do so. Those penalties may include civil action, criminal prosecution, and/or disciplinary action, up to and including termination of employment.

Section 5: Contractors and CEO-sponsored events

1. *Contractors.* To the extent that the Organizational Act, Section 22A, the Code of DeKalb County, and the rules in this Executive Order allow a gift, meal, travel expense, ticket or anything else of value to be purchased for a CEO employee by a contractor doing business with the County, the contractor must provide written disclosure, quarterly, of the exact nature and value of the purchase to either the Chief Integrity Officer, if created, or the Finance Director or his/her designee. Additionally, every contractor who conducts business with the County will receive a copy of these ethical rules at the time of execution of the contract.
2. *CEO-sponsored events.* No violation of Section 2 of this Executive Order has occurred for any solicited sponsorship⁴ from an Interested Source for official events, functions, luncheons, breakfasts, or meetings to honor employees, or further or discuss an official policy or other related County issue of concern to the Chief Executive Officer, so long as within 30 days of the event the Interested Source and/or the Chief Executive Officer discloses in writing to either the Chief Integrity Officer, if created, or the Finance Director or his/her designee, the exact nature and value of each solicited sponsorship. No solicited sponsorship(s) received from any single Interested Source shall exceed ten thousand dollars (\$10,000.00) in a calendar year.

Section 6: Support of the Ethics Board of DeKalb County

I am recommending a midyear budget adjustment to fund the creation of a full-time Chief Integrity Officer ("Integrity Officer"), investigator, and administrative assistant to serve the Ethics Board of DeKalb County ("Ethics Board"). If these additional positions are funded their exact duties will be determined by the Ethics Board. I recommend the Integrity Officer perform the following duties and functions:

1. Educating and training all County elected officials, employees and County officials to have an awareness and understanding of the mandate for and

⁴ A "solicited sponsorship" means a sponsorship that would not have been offered or given had the County employee or official not held the status, authority or duties associated with his/her County position.

- enforcement of ethical conduct and advising of the provisions of the code of ethics of the County;
2. Meeting with and supporting the Ethics Board as necessary;
 3. Advising County elected officials, employees and County officials regarding disclosure statements and reviewing same to ensure full and complete financial reporting;
 4. Urging compliance with the code of ethics by calling to the attention of the Ethics Board any failure to comply or any issues, including the furnishing of false or misleading information, that the Integrity Officer believes should be investigated by the Ethics Board of so that the Board may take such action as it deems appropriate;
 5. Monitoring, valuating and acting upon information obtained from an "ethics hotline" which shall be a County telephone number for the receipt of information about ethical violations. Each complaint, as of the time it is reported, whether by telephone or otherwise, shall be deemed to be a separate pending investigation of a complaint against a public officer or employee as provided by the Georgia Open Records Act;
 6. Notifying the subject of a report of any alleged violation of the ethics code, whether the report is anonymous, made by an identified individual or is written. Such notice shall be given in writing, by facsimile or hand delivery, to the subject of the complaint at the same time and in the same form that any disclosure of information is required by the Georgia Open Records Act;
 7. Notifying the Ethics Board of any report of an alleged violation of the ethics code received by the Integrity Officer;
 8. Reporting, as appropriate, suspected ethical violations to the Ethics Board;
 9. Reporting, as appropriate, suspected criminal violations to state or federal law enforcement agencies; and
 10. Filing with the Ethics Board, the Chief Executive Officer and the Board of Commissioners each January a written report describing the activities of the Integrity Officer in carrying out the goals of his or her office and the code of ethics and reporting on the ethical health of the County.

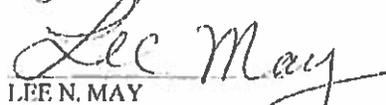
Section 7: Comprehensive and Updated Ethical Rules

While it is understood that amendment to the Code of Ethics in Section 22A of the Organizational Act requires action by the Georgia General Assembly, the newly instituted Government Operations Task Force also is reviewing the ethical standards for County employees and elected officials and will make recommendations for improved rules, if necessary. If and when such recommendations are received, the County Attorney and Executive Assistant are directed to consider such recommendations and to determine if the ethical rules governing DeKalb County need updating or revision. If revisions by the General Assembly are necessary, the County Attorney and Executive Assistant are directed to have such revisions ready to be included in the County's 2015 legislative package. If after such review, the ordinances of DeKalb County also need revision and updating, the Executive Assistant and County Attorney are directed to simultaneously submit such an ordinance to the Chief Executive Officer and each member of the Board of Commissioners for review and possible adoption.

Section 8: Compliance and Effective Date

All CEO employees are hereby directed to comply with the terms of this Executive Order. This Executive Order shall take effect immediately upon signature and publication

SO ORDERED this 25th OF JUNE, 2014.


LEE N. MAY
Interim Chief Executive Officer

ATTEST:


BARBARA H. SANDERS, CCC
Clerk to the Chief Executive Officer
and Board of Commissioners

This Executive Order shall remain in the custody of the County Clerk. Certified copies are available upon request.