



November 3, 2021

REQUEST FOR PROPOSAL  
RP040-21

The Gwinnett County Board of Commissioners is soliciting competitive sealed proposals from qualified contractors for a **Construction Manager (CM) at Risk for the Preconstruction and Construction of Gwinnett County Records Management and Emergency Management Storage Facility** for the Gwinnett County Department of Support Services.

Proposals must be returned in a sealed container marked on the outside with the Request for Proposal number and Company Name. **Proposals will be received until 2:50 P.M. local time on Thursday, December 2, 2021** at the Gwinnett County Financial Services - Purchasing Division – 2<sup>nd</sup> Floor, 75 Langley Drive, Lawrenceville, Georgia 30046. Any proposal received after this date and time will not be accepted. Proposals will be publicly opened and only names of submitting firms will be read at 3:00 P.M. A list of firms submitting proposals will be available the following business day on our website [www.gwinnettcounty.com](http://www.gwinnettcounty.com). A Webex pre-proposal conference is scheduled for **10:00 A.M. on Thursday, November 18, 2021**. All contractors are urged to attend.

Questions regarding proposals should be directed to Chris Duncan, Purchasing Associate III, at [christopher.duncan@gwinnettcounty.com](mailto:christopher.duncan@gwinnettcounty.com) no later than **Friday, November 19, 2021 at 3:00 P.M.** Proposals are legal and binding upon the bidder when submitted. One unbound original, five (5) copies, and one copy on disk/electronic copy should be submitted of the proposal without the cost. Cost should be submitted in one separately sealed envelope with the proposal copies, clearly marked "cost/fee proposal". **Only one cost/fee proposal is necessary in a sealed envelope. Do not put additional copies of the cost/fee schedule in the technical proposal copies. The original proposal will not be bound as stated in the invitation to propose, and therefore the separately sealed cost/fee proposal should be unbound as well.**

All contractors must submit with bid, a bid bond, certified check or cashier's check in the amount of five percent (5%) of the base amount for preconstruction services. **Failure to submit a bid bond with the proper rating will result in the proposal being deemed non-responsive.** The successful supplier will be required to meet insurance requirements, submit a one hundred percent (100%) performance bond and a one hundred percent (100%) payment bond. Insurance and Bonding Company should be licensed to do business by the Georgia Secretary of State, authorized to do business in Georgia by The Georgia Insurance Department, listed in the Department of Treasury's Publication of Companies holding Certificates of Authority as Acceptable Surety on Federal Bonds and as acceptable reinsuring companies. **The bid bond, payment bond, and performance bond must have an A.M. Best rating of A-12 for construction or higher. Please see the solicitation document for further information regarding insurance and bonding.**

Gwinnett County does not discriminate on the basis of disability in the admission or access to its programs or activities. Any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County Government should be directed to Matthew Eason, Gwinnett County Justice and Administration Center, [matthew.eason@gwinnettcounty.com](mailto:matthew.eason@gwinnettcounty.com).

The written proposal documents supersede any verbal or written prior communications between the parties.

Selection criteria are outlined in the request for proposal documents. Gwinnett County reserves the right to reject any or all proposals to waive technicalities and to make an award deemed in its best interest.

Award notification will be posted after award on the County website, [www.gwinnettcounty.com](http://www.gwinnettcounty.com) and companies submitting a proposal will be notified via email.

We look forward to your proposal and appreciate your interest in Gwinnett County.

**Chris Duncan, CPPB**  
**Purchasing Associate III**



Proud Winner of the Annual **Achievement of Excellence Award** in Procurement since 1999

**CONSTRUCTION MANAGER (CM) AT RISK FOR THE PRECONSTRUCTION AND  
CONSTRUCTION OF GWINNETT COUNTY RECORDS MANAGEMENT AND EMERGENCY  
MANAGEMENT STORAGE FACILITY**

REQUEST FOR PROPOSAL  
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## **CONSTRUCTION MANAGER (CM) AT RISK FOR THE PRECONSTRUCTION AND CONSTRUCTION OF GWINNETT COUNTY RECORDS MANAGEMENT AND EMERGENCY MANAGEMENT STORAGE FACILITY**

### **I. INTRODUCTION**

The Gwinnett County Records Management and Emergency Management Storage Facility project is a renovation to the former Ingles grocery facility located at 1050 Grayson Highway, Lawrenceville GA. Selective interior demolition activities will occur prior to execution of this contract, in order to gain access to above ceiling areas for structural evaluation purposes. The scope of work covered by this contract will include additional interior and exterior demolition, interior construction of new offices and storage space for records and emergency management equipment, and miscellaneous building exterior and site improvements. Refer to the attached preliminary building layout plan at the end of this document.

The project will incorporate green building strategies and will be designed and built to achieve EarthCraft Light Commercial certification through the Southface Institute.

### **II. PROJECT DESCRIPTION**

#### **A. Basic Program and Design**

The Gwinnett County Department of Support Services (DoSS) is soliciting competitive sealed proposals for Construction Manager at Risk (CMaR) or (CMAR) delivery method for the Preconstruction and Construction of Gwinnett County Records Management and Emergency Management Storage Facility. All work will be located at the former Ingles grocery store site at 1050 Grayson Parkway in Lawrenceville, Georgia.

Precision Planning, Inc. (PPI) is the Architect and Engineer responsible for design of the project.

#### **B. Construction Budget and Schedule**

The design and construction schedule for the Gwinnett County Records Management and Emergency Management Storage Facility will be developed as part of the pre-construction services for this project. The cost objective is a critical aspect of this request for proposal. Preliminary estimating indicates a project construction cost objective of \$6,000,000.00. The Client will expect the selected respondent to deliver the project as economically as possible while staying as close as possible to the current design intent and development program.

### **III. SCOPE OF WORK**

Construction management services will include a variety of preconstruction services to assist the Architect and County in design, budgeting, scheduling/phasing of the project; and construction services under a Guaranteed Maximum Price (GMP) delivery approach. The construction process is expected to involve open-book pricing exercises by the Construction Manager. The Construction Manager at Risk contract will be awarded with a fixed fee for preconstruction services, a fixed fee for General Conditions, and a percent of the Guaranteed Maximum Price (GMP) as the Contractor's Fee.

The Construction Manager's services are described at length and in detail in the sample Agreement between Owner and Construction Manager as Constructor included herein. All proposing construction management firms are urged to read this Agreement (and the scope of work detailed below) carefully, for they establish the scope of services required under this request for proposal. **Any exceptions taken by the proposing firms to this proposed Agreement and the associated general conditions of the Contract for Construction, also included herein, must be presented to the County for consideration by the cutoff for questions date stated in the invitation, prior to the opening of proposals.**

The Construction Manager will actively participate with the Architect, Owner, and their consultants during the preconstruction phase services. Anticipated preconstruction services under a lump sum fixed fee include, but are not limited to: cost estimating, scheduling, assisting with selection of construction systems, methods, and materials; and constructability analysis. The Owner expects construction manager attendance at design team meetings throughout the remaining design phase of the project.

The subsequent construction phase services to be provided by the Construction Manager will include all procurement, construction and construction management services required to deliver the completed project based on a Guaranteed Maximum Price (GMP) basis. Once a GMP Agreement has been reached, the GMP Agreement will be presented to the Gwinnett County, County Administrator, for approval and authorization.

The following is a list of some, but not all, of the representative services to be provided by the Construction Manager:

**A. Design and Preconstruction Phase**

1. Develop a provisional critical-path method (CPM) project schedule.
2. Develop requirements for safety, quality assurance, and schedule adherence.
3. Perform constructability and maintainability reviews.
4. Provide detailed construction cost estimates to achieve Owner's budget.
5. Develop a construction budget (schedule of values) to be maintained throughout construction.
6. Develop, maintain and update the project schedule.
7. Regularly attend project planning and coordination meetings with Owner and Architect as required.
8. Assist in permitting processes.
9. Develop a Guaranteed Maximum Price (GMP) for construction.

**B. Bidding and Award Phase**

1. Prepare bid packages and sample contracts for subcontractors.
2. Develop requirements to ensure schedule, cost and quality control during construction.
3. Provide a provisional CPM construction schedule for issuance with bid packages.
4. Identify prospective bidders for each individual bid package.
5. Schedule and conduct pre-bid conferences in conjunction with DoSS and the Architect.
6. Advertise and distribute bid documents.
7. Monitor bidder activity.
8. Review and analyze bids. Make recommendations for subcontractor selection for the owner's approval.
9. Award contracts to owner-approved subcontractors and suppliers.
10. Maintain and update the project schedule.

**C. Construction Phase**

1. Provide and maintain qualified and sufficient onsite staff, acceptable to DoSS, for construction management at risk services.
2. Manage the construction of the project.
3. Establish and maintain administrative and supervisory requirements necessary for coordination of the work for the duration of the construction.
4. Develop and maintain a detailed CPM schedule for submittals, materials delivery, testing and inspections, construction, and occupancy.
5. Perform work by own forces and supervise the work of subcontractors.
6. Provide a project safety plan to meet OSHA requirements. Monitor subcontractors' compliance without relieving them of responsibility to perform. Work in accordance with the best acceptable practices.

7. Conduct and record job meetings.
8. Prepare and submit change proposals and other change order documents for approval of the Architect and DoSS.
9. Maintain a system for review and approval of shop drawings.
10. Maintain records and submit daily reports, biweekly reports and formal monthly reports to the Architect and DoSS.
11. Maintain quality control and ensure conformity to construction documents.
12. Provide cost control through progress payment review and verifications according to the approved schedule and contract amounts.
13. Maintain record documents on site. Update on a continuous basis.
14. Maintain surrounding streets and parking lots in full operation during the entire length of the construction project.
15. Coordinate construction activities with neighboring building operations and functions.
16. Coordinate construction staging plans with DoSS and the Architect.
17. Coordinate and schedule the services of DoSS provided independent testing laboratories and provide the necessary testing of materials to ensure conformance to contract requirements.
18. Develop as-built drawings and deliver to Architect for inclusion into a CAD disk to be submitted by the Architect for maintenance and operations use.
19. Coordinate post-completion activities including the assembly of guarantees, manuals, close-out documents, and training for Owner's final acceptance.

#### **D. Warranty Phase**

1. Coordinate and monitor the resolution of remaining punchlist items.
2. Coordinate, monitor and resolve all warranty complaints to the satisfaction of DoSS during the one-year general warranty period.
3. Participate in 11-month warranty walk-through with DoSS and Architect and address warranty items as required.

#### **E. Project Information Management Software**

1. **The Construction Manager will utilize e-Builder, the County's web-based Project Management System, for all project correspondence including but not limited to budget, schedules, RFI's, ASI's, submittals, invoices, contract modifications, meeting minutes, daily logs, etc.**

### **IV. PROPOSAL SUBMISSION INSTRUCTIONS**

#### **A. General Requirements**

1. Individuals, firms, and businesses seeking an award of a Gwinnett County contract may not initiate or continue any verbal or written communications regarding a solicitation with any elected official or County representative without permission of the purchasing associate named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award by the Board of Commissioners. Violations will be reviewed by the Purchasing Director. If it is determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award. This is to ensure that all prospective respondents have the same level of knowledge relative to the project as well as ensuring that any additional data or information is made available to all proposers.
2. All questions and requests for additional information shall be addressed to Chris Duncan, Purchasing Associate III, Gwinnett County Purchasing Division via email at [Christopher.Duncan@gwinnettcounty.com](mailto:Christopher.Duncan@gwinnettcounty.com) **no later than Friday, November 19, 2021 at 3:00 P.M.**

3. The proposing company shall submit one (1) unbound original proposal, clearly marked as the "original," five (5) bound copies, and one (1) disc/thumb drive, etc. in Adobe PDF format without the pricing information. Proposals shall be submitted in a sealed envelope or package. Within this envelope/package, the cost proposal must be enclosed in its own envelope, marked "**Cost/Fee Proposal**" on the outside of the envelope and sealed to keep it separate from other proposal components. All copies of the proposal document should be identified with the proposal number and title, date of opening, and the proposing company's name. All copies of the proposal must be identical. The proposals should be signed in ink by a company official who has the authorization to commit company resources and bind the company to the proposal. The full cost of proposal preparation is to be borne by the proposing firm.
4. Proposals shall be submitted in a sealed envelope/package. The envelope/package shall be addressed to Gwinnett County Purchasing Division, Gwinnett Justice and Administration Center, Second Floor, 75 Langley Drive, Lawrenceville, Georgia 30046 **and be identified with the proposal number, date of opening, and company name on the outside.**
5. Proposals submitted are not publicly available until an award is made by the Gwinnett County Board of Commissioners. All proposals and supporting materials, as well as correspondence relating to this request for proposal, become the property of Gwinnett County when received. Information submitted by a proposer in the proposal process shall be subject to disclosure after proposal award in accordance with the Georgia Open Records Act.
6. Gwinnett County reserves the right to reject any or all proposals, in whole or in part, to negotiate changes in the scope of services, and to waive any technicalities as deemed in its best interest. Failure to observe any of the instructions or conditions in this request for proposal shall constitute grounds for rejection of proposal.
7. Gwinnett County request for proposal documents or notices of how to obtain the proposal are posted on the Gwinnett County website in PDF format for interested parties to download at [www.gwinnettcountry.com](http://www.gwinnettcountry.com). It is the sole responsibility of all interested parties to ensure that they read the entire content of the Request for Proposal, download and read any applicable addenda for a solicitation via the Gwinnett County website.

## **B. Proposal Content**

The proposal shall be responsive to the specific range of issues described in this request for proposal. Proposing firms are asked to read the request for proposal carefully to ensure that they address the specific requirements of the request and submit all requested information. Proposing firms will be evaluated and scored based on the information provided in their proposals as it relates to this request. Any additional information provided by the proposing firms will not be considered and is discouraged. The proposal shall be organized in the order and format described below. Each proposal shall include the following information:

### **1. Background and Qualifications of Company and Staff – Up to 25 Points**

Provide the full legal name of the company and information on the company's principal business office, satellite offices, and location(s) from which services will be provided on the project. Provide a narrative description of the company's history, purpose, range of services, resources, operating philosophy, financial stability, and past and current business activities. Also include the company's Experience Modification Rate (EMR), and a statement as to whether the company has been involved in construction litigation during the past four years. If the answer to this question is yes, provide a description in specific terms.

Provide a description of the personnel resources and qualifications of the company to carry out the scope of work, both in terms of preconstruction services and construction services. This experience and expertise may be shown either within the company's in-house staff, or through the use of sub-consultants. In team submissions, the prime company must show its experience in working with the other team members. The representation of resources and qualifications should include a Project Organization Chart that will identify all the key personnel involved in the project and their respective roles. Resumes shall be included on all such personnel and in particular, the qualifications and personal experience of the Principal-in-Charge, the Project Manager, Superintendent, Estimator and Scheduler. The requirement for resumes applies to in-house personnel and all sub-consultants to the Construction Manager. Make certain that the resumes and descriptions of experience accurately and clearly state the roles played by the individuals on particular projects and whether the experiences were with the current or a former firm. When possible, indicate the year in which a key referenced project for an individual was completed. Also indicate the percentage of the Project Manager's time that will be devoted to this project.

(The submitting Construction Manager, although referred to herein as a single company, may be a Joint Venture arrangement. If the proposing entity is a Joint Venture, the information requested in this paragraph and elsewhere in this section must be provided for each firm in the Joint Venture. The participants in the Joint Venture also must have prior experience working together and must describe this experience in the proposal.)

**2. Experience with Construction Management Delivery, Project Type and Documentation of Company's Related Capabilities- Up to 25 Points**

Provide a comprehensive and detailed description of the company's experience with the Construction Manager at Risk delivery system or any related experience or capabilities. Include information on preconstruction services as well as construction phase experience. List all projects the firm completed in the past 10 years of similar size and scope and indicate if the Construction Manager at Risk method was used or another delivery method that demonstrates capabilities; and highlight those of a similar size, scope and complexity as that proposed in the request for proposal, including projects involving interior and exterior renovation work and sustainable building certifications. Additional references/examples for work now underway may also be included. Whenever possible, the experience should correspond with the experience of key project personnel. Proposals without such corresponding relationships, or with referenced projects that fail to meet the above criteria or are outside of the requested timeframe, will be scored lower. It is the responsibility of the proposing firm to provide current phone number, email address and contact information.

Describe the company's or team's special capabilities and resources in the construction management at risk field and what sets the company apart or contributes to its ability to implement this particular project. In this description, indicate the tools and techniques that were successful during design and construction delivery.

**3. References – Up to 10 Points**

Provide references for at least five (5) of the completed projects listed in section 2 with a similar type and scope as the proposed project. At least two (2) references should be for interior and exterior renovation projects, and at least one (1) of these should include sustainable building certification. Each reference should include the project name, location, size, description, date of completion, project cost, photograph, and a contact person with phone number, email address and physical address. The contact person should have thorough knowledge of the company's role and performance. These specifically requested references should be for work completed within the last ten (10) years; Provide clear, color photographs of five completed projects that demonstrate the company's construction capabilities. The photographs should include exterior, interior, and site depictions.

***References will be contacted. If references cannot be reached or information is not correct, or there is a failure to meet any of the criteria described above, it will result in a lower score.***

**4. Project Approach/Organizational Management/Schedule– Up to 20 Points**

Describe the company's proposed approach to preconstruction services and how the project team will be organized and will function with DoSS and the Architect. Address the working relationship with DoSS and Architect, communication processes and techniques, cost estimating and budget management, scheduling, constructability analysis, review of drawings and specifications. Also describe the company's proposed approach to the construction process, including obtaining pricing, scheduling and phasing the work as required, handling on-site logistics and circulation, managing subcontractors, providing quality control, controlling costs, providing quality control and ensuring job safety.

Describe the equipment, software, tools, and technology that would be used or proposed for use on this project and indicate how these add value to the design and construction processes. Indicate experience with and results obtained from these on past construction projects.

Include a preliminary schedule for the project which shall clearly indicate the total duration of construction activities from notice to proceed to substantial completion and building occupancy.

**5. Cost Proposals (To be submitted in a separate sealed envelope)- Up to 20 Points**

The proposing company shall provide three Cost/Fee Proposals, one for Preconstruction Services, one for General Conditions, and one for Construction Services. The Cost Proposal for preconstruction services will be a lump sum fee covering all of the company's expected costs for the services described in the Request for Proposal and the sample Agreement attached hereto. These costs shall include the personnel fees and reimbursable expenses of the prime company and any sub-consultant expenses. This Cost Proposal cannot be qualified or subject to exceptions. While this fee is an important criterion, a fee skewed unusually low or high in relation to the other proposals, or the failure to demonstrate that the fee is adequate for the required work, may result in a reduction in the score. The second Cost Proposal for General Conditions will be a lump sum based on items listed in the General Conditions spreadsheet included in the Cost/Fee Proposal form. The third Cost Proposal is for Construction Services and shall be the company's proposed percent fee for Profit and Corporate Overhead and Mark-Ups to be applied to construction costs in determining the company's Guaranteed Maximum Price (GMP).

**6. Interview – Up to 20 Points**

Upon completion of the first phase of the evaluation process, the selection committee may choose to conduct interviews. If so, the short-listed firms will be notified of the requirements for a presentation/interview and will be provided the schedule and subject matter for this evaluation item.

**V. SELECTION PROCEDURE AND EVALUATION CRITERIA**

The Proposals will be evaluated to select the company or team that rates highest according to the criteria listed below. The County will evaluate Proposals based on the first four criteria and score and rank the proposing firms. The County may shortlist proposing firms before opening the Cost Proposals. The fee schedules of the short-listed firms will be opened and scored.

The County may then shortlist again and invite firms to interview. Interviews and presentations will be conducted, if determined to be necessary. The selection committee will tabulate the results of the

interviews with the previous scoring from Phase I. This scoring will be the final element considered in selecting the Construction Manager for the required services. After this final scoring, the short-listed firms will again be ranked and the highest scoring firm or team will be determined. Gwinnett County reserves the right to negotiate scope and/or pricing with all firms who submitted proposals reasonably susceptible of being selected. If an Agreement cannot be reached with the highest scoring firm, the County may negotiate with the next highest scoring firm and so on until an Agreement is reached. Once an Agreement is reached, the selection committee will then make a recommendation of contract award to the Board of Commissioners.

Proposals will be evaluated based on their relative responsiveness to the criteria described in Section IV, Item B (Proposal Content) and with those criteria's values weighted as shown below:

Gwinnett County reserves the right to reject all proposals, to negotiate changes in the scope of work or services to be provided, and to otherwise waive any technicalities.

**POINTS & SELECTION CRITERIA**

<b><u>Phase I</u></b>	<b><u>Points</u></b>
1. Company background and qualifications and experience of the company or team, and key staff members to be assigned to the project	25
2. Firm's experience with Construction Management delivery and project type relevant experience and capabilities	25
3. References	10
4. Project approach, organizational management, and schedule	20
<b><u>Phase II</u></b>	
5. Cost/fee proposal (To be submitted in a separate-sealed envelope)	20
<b>Total Points</b>	<b>100</b>
<b><u>Phase III</u></b>	
6. Optional presentation and interview	20
<b>Total Points</b>	<b>120</b>

**INSURANCE**

The selected Construction Manager will be responsible for providing evidence of the insurance coverage as required in the provisions of this request for proposal, and for maintaining said insurance throughout the project. Professional insurance will be required during the preconstruction phase. Prior to the construction phase beginning, construction insurance will be required. It will also be the responsibility of the awarded firm to maintain the appropriate level of insurance throughout the construction period.

**BONDING**

A Bid Bond is required for this proposal in the **amount of 5% of the "Base Amount for Preconstruction Services"** as indicated on the Cost/Fee Proposal page. Gwinnett County requests that the proposers use the form provided herein, a certified check or cashier's check.

The successful contractor is required to furnish bonds covering faithful performance of the contract (a Performance Bond) and payment of obligations arising thereunder (a Payment Bond) as a condition for the execution of the contract. The bonds shall be in the forms contained in the solicitation document. The surety company providing the bonds must have an A.M. Best Rating of A-12 or higher.

Within ten (10) days of the execution and acceptance of the Guaranteed Maximum Price for the Construction Manager's initial construction phase of the project, and prior to commencement of any work on the project, the Construction Manager shall provide Payment and Performance Bonds in the penal sum equal to one hundred percent (100%) of the contract sum. Examples of Increase Riders for the Performance Bond and Payment Bond are included in the Request for Proposal package.

**CONTACT INFORMATION**

For questions or requests for more information, contact:

**Christopher Duncan, Purchasing Associate III**  
**Department of Financial Services -Purchasing Division**  
**75 Langley Drive**  
**Lawrenceville, Georgia 30046-6935**  
**Phone: 770-822-8741**  
**Fax: 770-822-8728**  
**Email: [christopher.duncan@gwinnettcountry.com](mailto:christopher.duncan@gwinnettcountry.com)**

FAILURE TO RETURN THIS PAGE AS PART OF YOUR BID DOCUMENT MAY RESULT IN REJECTION OF BID.

**REFERENCES**

Gwinnett County requests a minimum of three (3) references where work of a similar size and scope has been completed.

Note: References should be customized for each project, rather than submitting the same set of references for every project bid. The references listed should be of similar size and scope of the project being bid on. Do not submit a project list in lieu of this form.

- 1. Company Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
Completion Date \_\_\_\_\_  
Contract Amount \$ \_\_\_\_\_ Start Dates \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_  
E-Mail Address \_\_\_\_\_
  
- 2. Company Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
Completion Date \_\_\_\_\_  
Contract Amount \$ \_\_\_\_\_ Start Dates \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_  
E-Mail Address \_\_\_\_\_
  
- 3. Company Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
Completion Date \_\_\_\_\_  
Contract Amount \$ \_\_\_\_\_ Start Dates \_\_\_\_\_  
Contact Person \_\_\_\_\_ Telephone \_\_\_\_\_  
E-Mail Address \_\_\_\_\_

Company Name \_\_\_\_\_

Company Name \_\_\_\_\_

**FAILURE TO SUBMIT THIS PAGE AS PART OF THE PROPOSAL DOCUMENT MAY RESULT IN REJECTION OF PROPOSAL.**

**COST/FEE PROPOSAL  
(SUBMITTED IN A SEPARATE ENVELOPE WITHIN PROPOSAL PACKAGE-1 COPY ONLY)**

The proposer has carefully examined and fully understands the request for proposal, contract and other documents hereto attached, and has made a personal examination of the site of the proposed work, and is satisfied to the actual conditions and requirements of the work, and hereby proposes and agrees that if the proposal is accepted, will contract with Gwinnett County according to the proposal documents entitled **RP040-21, Construction Manager (CM) at Risk for the Preconstruction and Construction of Gwinnett County Records Management and Emergency Management Storage Facility**, as well as the existing conditions of the project, and conditions affecting the work, and the undersigned proposes to furnish the Preconstruction Services and General Conditions as required by them in accord with said documents, for the sum as follows:

1. (\$\_\_\_\_\_) which sum is hereinafter called "Base Amount for Preconstruction Services."
2. (\$\_\_\_\_\_) which sum is hereinafter called "Base Amount for General Conditions."
3. In addition to the Base Amounts for Preconstruction Services and General Conditions, Proposer submits a percentage fee for Profit, Corporate Overhead, and Mark-ups to be included in the Guaranteed Maximum Price of (\_\_\_\_\_%). For evaluation purposes, this fee shall be applied to the estimated construction cost of \$6,000,000.00.

**FAILURE TO SUBMIT THIS PAGE AS PART OF THE PROPOSAL DOCUMENT MAY RESULT IN REJECTION OF PROPOSAL.**

**GENERAL CONDITIONS**

SUGGESTED ITEM	DURATION	UNIT COST	TOTAL COST
Project Director		\$	\$
Superintendent (full-time)		\$	\$
Assistant Superintendent		\$	\$
Senior Project Manager		\$	\$
Project Manager/Project Engineer		\$	\$
Scheduler			
Estimator			
Field Engineering		\$	\$
In-House Accounting		\$	\$
On Site Safety Engineer		\$	\$
Safety Materials Program		\$	\$
Field Office Rental, Setup and Removal		\$	\$
Storage Trailer Rental		\$	\$
Equipment Rental			
Dumpsters		\$	\$
Temporary Toilets		\$	\$
Job Signs	LUMP SUM	\$	\$
Copier, Fax Machine		\$	\$
Telephone and Internet Costs and Setup		\$	\$
Ice, Cups, Water		\$	\$
Office Supplies		\$	\$
Office Furniture	LUMP SUM	\$	\$
Jobsite Computers and Technology	LUMP SUM	\$	\$
Postage and Couriers		\$	\$
Progress Photographs		\$	\$
Final Photographs	LUMP SUM	\$	\$
Plan Printing and Copying	LUMP SUM	\$	\$
Cellphones and Radios		\$	\$
Supervision Vehicles		\$	\$
Project Management Vehicles and Travel		\$	\$
Gas, Oil and Maintenance		\$	\$
Builder's Risk Insurance	LUMP SUM (based on \$6M)	\$	\$
General Liability & Umbrella Insurance	LUMP SUM (based on \$6M)	\$	\$
Payment and Performance Bond	LUMP SUM (based on \$6M)	\$	\$
Other/Miscellaneous	LUMP SUM		

**Total General Conditions:** \$ \_\_\_\_\_

*Notes:*

1. All General Conditions associated with the project shall be included in the table above. No additional General Conditions outside of the items listed above shall be permitted.
2. No direct CM labor may be billed as Cost of Work without prior written approval by the County.
3. A Preconstruction Phase duration of three (3) months and a Construction Phase duration of ten (10) months has been assumed for proposal purposes. A shorter duration may be submitted in the CM's preliminary schedule, and proposed General Conditions may be decreased accordingly.
4. The County will not pay for Subcontractor Default Insurance.
5. The Construction Manager shall include in their General Conditions the costs to provide and operate an onsite office trailer for staff and storage as needed.
6. Items listed above are suggested and may be modified.

**Company Name** \_\_\_\_\_

**FIRM INFORMATION (TO BE SUBMITTED WITH TECHNICAL PROPOSAL DOCUMENTS)**

This proposal is submitted to the Gwinnett County Board of Commissioners in accordance with the instructions, requirements, and forms included in the proposal documents, and the firm agrees to complete all work for the cost proposal and substantially complete the work within the agreed upon contract days to complete from the written notice to proceed for each phase.

The undersigned acknowledges receipt of the following addenda, listed by number and date appearing on each:

Addendum No.	Date	Addendum No.	Date

Proposer declares that the proposal is not made in connection with any other proposer submitting a proposal for the same commodity or commodities, and that the proposal is bona fide and is in all respects fair and without collusion or fraud. Each proposer, if included in proposal documents, shall execute an affidavit of non-collusion. Collusion and fraud in proposal preparation shall be reported to the State of Georgia Attorney General and the United States Justice Department.

**Certification of Non-Collusion in Proposal Preparation** \_\_\_\_\_  
(Signature) (Date)

In compliance with the attached specifications, the undersigned acknowledges all requirements outlined in the "Instructions to Proposers" and all documents referred to therein, offers and agrees, if this proposal is accepted by the Board of Commissioners within one hundred twenty (120) days of the date of proposal opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered to the designated point(s) within the time specified in the fee schedule.

Legal Business Name \_\_\_\_\_  
*(If your company is an LLC, you must identify all principals to include addresses and phone numbers in your submittal)*

Federal Tax ID \_\_\_\_\_

Address \_\_\_\_\_

Does your company currently have a location within Gwinnett County? Yes  No

Representative Signature \_\_\_\_\_

Print Authorized Representative's Name \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

E-Mail Address \_\_\_\_\_

**RP040-21, Construction Manager (CM) at Risk for the Preconstruction and Construction of Gwinnett County Records Management and Emergency Management Storage Facility**

**CODE OF ETHICS AFFIDAVIT**

***(THIS FORM SHOULD BE FULLY COMPLETED AND RETURNED WITH YOUR SUBMITTAL AND WILL BE REQUIRED PRIOR TO EVALUATION)***

In accordance with Section 54-33 of the Gwinnett County Code of Ordinances the undersigned bidder/proposer makes the following full and complete disclosure under oath, to the best of his/her knowledge, of the name(s) of all elected officials whom it employs or who have a direct or indirect pecuniary interest in or with the bidder/proposer, its affiliates or its subcontractors:

1. \_\_\_\_\_  
 (Company Submitting Bid/Proposal)

2. (Please check  **one** box below)

No information to disclose *(complete only section 4 below)*

Disclosed information below *(complete section 3 & section 4 below)*

3. (if additional space is required, please attach list)

Gwinnett County Elected Official Name	Gwinnett County Elected Official Name
Gwinnett County Elected Official Name	Gwinnett County Elected Official Name

4. \_\_\_\_\_ Sworn to and subscribed before me this

BY: \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ Authorized Officer  
 or Agent Signature

\_\_\_\_\_ Printed Name of  
 Authorized Officer or Agent      Notary Public

\_\_\_\_\_ Title of Authorized Officer or Agent of Contractor

(seal)

Note: See Gwinnett County Code of Ethics Ordinance E02011, Sec. 54-33. The ordinance will be available to view in its' entirety at [www.gwinnettcountry.com](http://www.gwinnettcountry.com)





**RP040-21, Construction Manager (CM) at Risk for the Preconstruction and Construction of  
Gwinnett County Records Management and Emergency Management Storage Facility**

**CONTRACTOR AFFIDAVIT AND AGREEMENT  
(THIS FORM SHOULD BE FULLY COMPLETED AND RETURNED WITH YOUR SUBMITTAL)**

By executing this affidavit, the undersigned contractor verifies its compliance with The Illegal Immigration Reform Enhancements for 2013, stating affirmatively that the individual, firm, or corporation which is contracting with the Gwinnett County Board of Commissioners has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act, in accordance with the applicability provisions and deadlines established therein.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services or the performance of labor pursuant to this contract with the Gwinnett County Board of Commissioners, contractor will secure from such subcontractor(s) similar verification of compliance with the Illegal Immigration Reform and Enforcement Act on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the Gwinnett County Board of Commissioners at the time the subcontractor(s) is retained to perform such service.

\_\_\_\_\_  
E-Verify \* User Identification Number Date

\_\_\_\_\_  
Registered

\_\_\_\_\_  
Legal Company Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City/State/Zip Code

\_\_\_\_\_  
BY: Authorized Officer or Agent  
(Contractor Signature)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of Authorized Officer or Agent of Contractor

\_\_\_\_\_  
Printed Name of Authorized Officer or Agent

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

\_\_\_\_\_  
Notary Public My Commission Expires: \_\_\_\_\_

<b>For Gwinnett County Use Only:</b> <b>Document ID #</b> _____ <b>Issue Date:</b> _____ <b>Initials:</b> _____
--

\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is "E-Verify" operated by the U.S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

## PROFESSIONAL SERVICES INSURANCE REQUIREMENTS (Preconstruction Services)

1. Statutory Workers' Compensation Insurance
  - (a) Employers Liability:
    - ✓ Bodily Injury by Accident - \$100,000 each accident
    - ✓ Bodily Injury by Disease - \$500,000 policy limit
    - ✓ Bodily Injury by Disease - \$100,000 each employee
  
2. Commercial General Liability Insurance
  - (a) \$1,000,000 limit of liability per occurrence for bodily injury and property damage
  - (b) The following additional coverage must apply:
    - ✓ 1986 (or later) ISO Commercial General Liability Form
    - ✓ Dedicated Limits per Project Site or Location (CG 25 03 or CG 25 04)
    - ✓ Additional Insured Endorsement (Form B CG 20 10 with a modification for completed operations or a separate endorsement covering Completed Operations)
    - ✓ Blanket Contractual Liability
    - ✓ Broad Form Property Damage
    - ✓ Severability of Interest
    - ✓ Underground, explosion, and collapse coverage
    - ✓ Personal Injury (deleting both contractual and employee exclusions)
    - ✓ Incidental Medical Malpractice
    - ✓ Hostile Fire Pollution Wording
  
3. Auto Liability Insurance
  - (a) \$500,000 limit of liability per occurrence for bodily injury and property damage
  - (b) Comprehensive form covering all owned, nonowned, leased, hired, and borrowed vehicles
  - (c) Additional Insured Endorsement
  - (d) Contractual Liability
  
4. Professional Liability Insurance - \$1,000,000 (project specific for the Gwinnett County project) limit of liability per claim/aggregate or a limit of \$1,000,000 per occurrence and \$2,000,000 aggregate.
  - ✓ Insurance company must be authorized to do business in the State of Georgia.
  - ✓ Dedicated Limits per Project Site or Location (CG 25 03 or CG 25 04 or some other form)
  
5. Gwinnett County Board of Commissioners (and any applicable Authority) should be shown as an additional insured on General Liability and Auto Liability policies.
  
6. The cancellation should provide 10 days' notice for nonpayment and 30 days' notice of cancellation.
  
7. Certificate Holder should read:
  - Gwinnett County Board of Commissioners
  - 75 Langley Drive
  - Lawrenceville, GA 30046-6935
  
8. Insurance Company, except Worker' Compensation carrier, must have an A.M. Best Rating of A-12 or higher. Certain Workers' Comp funds may be acceptable by the approval of the Insurance Unit. European markets including those based in London and domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker/agent can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-12 or better.
  
9. Insurance Company should be licensed to do business by the Georgia Department of Insurance.  
\*See above note regarding Professional Liability

10. Certificates of Insurance, and any subsequent renewals, must reference specific bid/contract by project name and project/bid number.
11. The Contractor shall agree to provide complete certified copies of current insurance policy (ies) or a certified letter from the insurance company(ies) if requested by the County to verify the compliance with these insurance requirements.
12. All insurance coverages required to be provided by the Contractor will be primary over any insurance program carried by the County.
13. Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every subcontract with each and every Subcontractor in any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Subcontractor fails to procure and maintain insurance as required, all such required Insurance shall be procured and maintained by Contractor at Contractor's expense.
14. No Contractor or Subcontractor shall commence any work of any kind under this Contract until all insurance requirements contained in this Contract have been complied with and until evidence of such compliance satisfactory to Gwinnett County as to form and content has been filed with Gwinnett County. **The Acord Certificate of Insurance or a preapproved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.**
15. The Contractor shall agree to waive all rights of subrogation against the County, the Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from work performed by the contractor for the County.
16. Special Form Contractors' Equipment and Contents Insurance covering owned, used, and leased equipment, tools, supplies, and contents required to perform the services called for in the Contract. The coverage must be on a replacement cost basis. The County will be included as a Loss Payee in this coverage for County owned equipment, tools, supplies, and contents.
17. The Contractor shall make available to the County, through its records or records of their insurer, information regarding a specific claim related to any County project. Any loss run information available from the contractor or their insurer relating to a County project will be made available to the County upon their request.
18. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liability provisions of the Contract.
19. The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, and any other laws that may apply to this Contract.
20. The Contractor shall at a minimum apply risk management practices accepted by the contractors' industry.

#### Surety Bonds (If Required)

All of the surety requirements will stay the same except the Surety Company must have the same rating as item 8 above.

**BONDING AND CONTRACT REQUIREMENTS****General Bond Requirements**

1. Bid Bonds - Amount of bond should be 5% of the base amount for preconstruction services and submitted with your bid. Gwinnett County form Attached. Failure to use Gwinnett County Bid Bond Form may result in bid being deemed non-responsive and automatic rejection may occur if other methods are not submitted, i.e. Cashier check, etc.
2. Performance Bond - (Supplied by successful contractor) - Amount of bond should be 100% of contract amount for each phase. **(MUST USE COUNTY FORM)** While each construction phase will have its own Guaranteed Maximum Price (GMP), the multiple GMPs will be cumulative, and the bonding requirements will be increased as the overall contract sum increases. Samples of Increase Riders for the Performance Bond and Payment Bond are included in the Request for Proposal package.
3. Payment, Labor and Materials Bonds - (Supplied by successful contractor) - Amount of bond should be 100% of contract amount for each phase. **(MUST USE COUNTY FORM)**. While each construction phase will have its own Guaranteed Maximum Price (GMP), the multiple GMPs will be cumulative, and the bonding requirements will be increased as the overall contract sum increases. Samples of Increase Riders for the Performance Bond and Payment Bond are included in the Request for Proposal package.
4. Bonding company must be authorized to do business by the Georgia Insurance Department.
5. An original/certified copy of the Bonding company's Certificate of Authority or Power of Attorney must be attached to bond. The Certificate of Authority may be obtained from the Georgia Insurance Department.
6. Bonding company must have a minimum AM Best rating of A-12 or higher as stated in Insurance Requirements.
7. Bonding Company must be listed in the Department of the Treasury's publication of companies holding Certificates of Authority as acceptable surety on Federal Bonds and as acceptable reinsuring companies. (Dept. Circular 570; 1992 Revision).
8. After proposal opening, vendor has up to forty eight (48) hours to notify the Gwinnett County Purchasing Division of an obvious error made in calculation of proposal. Withdrawal of Bid Bond for this reason must be done in writing within the forty eight (48) hour period. Bid Bond may not be withdrawn otherwise.
9. The Payment Bond states that the "notice of claim" can be delivered "at any place where an office is regularly maintained". Please note that this document is a standard Gwinnett County form. Additional and more specific information can be provided to the selected Construction Manager once the identity of the surety is known.

**Contract Requirements**

1. Successful contractor is required to do the following within ten (10) days of notification.
  - A. Return to the Purchasing Division contract documents executed by the principal of the company and attested by the secretary or assistant secretary.
  - B. Provide Insurance certificates as specified in the proposal documents.
  - C. Provide bonding as required by the proposal documents.
2. Failure to execute the contract, contract Performance Bond and Payment Bond, or furnish satisfactory proof of carriage of the insurance required within ten days after the date of notice of award of the contract may be just cause for the annulment of the award and for the forfeiture of the bid guaranty to Gwinnett County, not as a penalty, but as liquidation of damages sustained. At the discretion of the County, the award may then be made to the next highest scoring firm. The contract and contract bonds shall be executed in duplicate.

Gwinnett County, Georgia

**BID BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_  
(Corporation, Partnership or Individual)

hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

a Corporation of the State of \_\_\_\_\_, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

Gwinnett County Board of Commissioners  
(Name of Obligee)

75 Langley Drive, Lawrenceville, Georgia 30046  
(Address of Obligee)

Thereinafter referred to as Obligee: in the penal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to submit, or has submitted, to Gwinnett County, Georgia, a proposal for furnishing materials, labor, and equipment for:

WHEREAS, the Principal desires to file this Bond in accordance with law in lieu of a certified Bidder's check otherwise required to accompany this Proposal.

NOW, THEREFORE, the conditions of this obligation are such that if the proposal be accepted, the Principal shall within ten days after receipt of notification of the acceptance, execute a Contract in accordance with the Proposal and upon the terms, conditions, and prices set forth in the form and manner required by Gwinnett County, Georgia, and execute a sufficient and satisfactory Performance Bond and Payment Bond payable to Gwinnett County, Georgia, each in the amount of 100% of the total Contract Price, in form and with security satisfactory to said Gwinnett County, Georgia, and otherwise, to be and remain in full force and virtue in law, and the Surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to Gwinnett County, Georgia, upon demand, the amount hereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

**Gwinnett County, Georgia**

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. § 36-91-1 et seq., and is intended to be and shall be constructed as a bond in compliance with the requirements thereof.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20\_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
(Principal Secretary)  
(SEAL)

\_\_\_\_\_  
(Principal)

By:\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_  
(Surety)

By:\_\_\_\_\_  
(Attorney-in-Fact)

ATTEST:

\_\_\_\_\_  
Resident or Nonresident Agent

(SEAL)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Witness as to Surety)

\_\_\_\_\_  
(Address)

NOTE: If Contractor is Partnership, all partners should execute Bond. Surety Companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

Principal Secretary, Principal and Witness as to Principal signature lines must be signed by three different individuals. Additionally, Resident or Nonresident Agent, Witness as to Surety, and Attorney-in-fact must be signed by three different individuals.

## **AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER AS CONSTRUCTOR**

### **ARTICLE 1 GENERAL PROVISIONS**

#### **§ 1.1 Basic Definitions**

##### **§ 1.1.1 Contract Documents**

The Contract Documents consist of this Agreement between Owner and Construction Manager as Constructor (hereinafter referred to as the Agreement), the General Conditions of Contract for Construction (hereinafter referred to as General Conditions), the Request for Proposal including all Drawings, Specifications, addenda issued prior to the execution of the Agreement, other documents listed in the Agreement or in the General Conditions, and modifications issued after execution of the Agreement, all of which form the contract and are as fully a part of the contract as if attached to the Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.4 of the Agreement and identified in the Guaranteed Maximum Price authorization and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.9 of the Agreement.

##### **§ 1.1.2 Contract for Construction**

The Contract Documents form the Contract for Construction (hereinafter frequently referred to as the contract). The contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations or Agreements, either written or oral. The Contract may be amended or modified only by a modification. If anything in the other Contract Documents, other than a modification, is inconsistent with the Agreement between Owner and Construction Manager, the Agreement between Owner and Construction Manager shall govern. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor.

##### **§ 1.1.3 Architect**

The Owner shall retain an Architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

##### **§ 1.1.4 Change Order**

A Change Order is a written instrument prepared by the Architect and approved in writing by the Owner and Construction Manager stating their Agreement upon all of the following:

1. The change in the Work;
2. The amount of the adjustment, if any, in the Contract Sum; and
3. The extent of the adjustment, if any, in the Contract Time.

##### **§ 1.1.5 Contract Sum**

The Contract Sum shall mean, for the Project or a construction phase of the Project, the sum agreed upon for the associated Work as approved in the Guaranteed Maximum Price authorization or the cumulative value of such authorizations. Said Contract Sum may be adjusted in accordance with the Agreement.

**§ 1.1.6 Contract Time**

Contract Time shall mean for the Project, or any milestone or construction phase, the period of time allotted for Substantial Completion of such Project milestone or construction phase as approved in the Guaranteed Maximum Price authorization associated with that Work element, or the cumulative time associated with such authorizations. Said Contract Time may be adjusted in accordance with the Agreement.

**§ 1.1.7 Construction Manager**

The Construction Manager referred to in this Agreement shall be the same as the Contractor referred to in the General Conditions. The Construction Manager is referred to throughout the Agreement as if singular in number. The Construction Manager shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Construction Manager shall designate in writing a representative who shall have express authority to bind the Construction Manager with respect to all matters under this Contract.

**§ 1.1.8 Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**§ 1.1.9 Guaranteed Maximum Price**

The Guaranteed Maximum Price shall mean the Construction Manager's Guaranteed Maximum Price for performance of the Work in accordance with Article 5. The Guaranteed Maximum Price includes the actual costs, Construction Manager's fee, and a contingency reserve. In each case, the Guaranteed Maximum Price is subject to the review, analysis, and acceptance of the Owner. The Guaranteed Maximum Price may be adjusted from time to time by Change Orders approved by the Owner and Construction Manager.

**§ 1.1.10 Owner**

The Owner is the person or entity identified as such in this Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall act on behalf of the Owner with respect to administration of the project and who shall render decisions promptly and furnish information expeditiously, so to avoid unreasonable delay in the services or Work of the Construction Manager. The representative may on occasion be referred to in the Contract Documents as the Project Manager. Except as provided in Section 4.2.1 of the General Conditions of the Contract for Construction, the Architect does not have the authority assigned to this representative. In addition, in this agreement, the Gwinnett County Board of Commissioners delegates authority to the Gwinnett County-County Administrator to approve Guaranteed Maximum Price Authorizations and related Change Orders. The term "Owner", thus may mean the Owner, Owner's representative, or the County Administrator in this assigned role. Other than stated herein, no representative of the Owner shall have the authority to bind the Owner with respect to any matter requiring approval of the Gwinnett County Board of Commissioners.

**§ 1.1.11 Project**

The Project is the total construction of Gwinnett County Records Management and Emergency Management Storage Facility, and associated site improvements, as defined in the project description section of the request for proposal.

**§ 1.1.12 Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.13 Subcontractor**

A Subcontractor is a person or entity who has a direct Contract with the Construction Manager to perform a portion of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate Contractor or Subcontractors of a separate Contractor.

**§ 1.1.14 Substantial Completion**

Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 1.1.15 Work**

Work means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Construction Manager to fulfill the Construction Manager's obligations. The Work may constitute the whole or a part of the Project.

**§ 1.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

**§ 1.3 General Conditions**

For the preconstruction phase, General Conditions of the Contract for Construction shall apply only as specifically provided in this Agreement. For the construction phase, the General Conditions of the Contract shall be as set forth in General Conditions of the Contract for Construction, which document is incorporated herein by reference. The term "Contractor" as used in General Conditions shall mean the Construction Manager.

**Article 2 Construction Manager's Responsibilities**

The Construction Manager's preconstruction phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's construction phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the construction phase to commence prior to completion of the preconstruction phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

## **§ 2.1 Preconstruction Phase**

### **§ 2.1.1 Preliminary Evaluation**

The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### **§ 2.1.3 Consultation**

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work and the requirements of the sustainability plan. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction.

### **§ 2.1.4 Project Schedule**

When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The Project schedule shall include, but not be limited to, the following components: submission of the Guaranteed Maximum Price proposal for components of the Work; times of commencement and completion required of Subcontractor's ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### **§ 2.1.5 Phased Construction**

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

### **§ 2.1.6 Cost Estimates**

**§ 2.1.6.1** Based on the design criteria prepared by the Architect, the Construction Manager shall prepare estimates of the Cost of the Work for the Architect's review and Owner's approval.

### **§ 2.1.7 Subcontractors and Suppliers**

The Construction Manager shall develop bidders' interest in the Project. Bidders include potential Subcontractors and suppliers.

### **§ 2.1.8 Project Information Management (PIM) Software**

The Construction Manager shall provide and implement for the Architect, Owner, and other key Project participants web-based PIM software compatible with Owner's capabilities for all Project correspondence and records related to budget, schedule, RFIS, submittals, invoices, Contract modifications, meeting minutes, daily logs, etc.

**§ 2.1.9 Procurement Schedule**

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all Contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

**§ 2.1.10 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 2.1.11 Notices and Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs and other programs as may be required by governmental authorities for inclusion in the Contract Documents.

**§ 2.2 Guaranteed Maximum Price Proposals and Contract Time**

**§ 2.2.1** The Construction Manager shall provide a Guaranteed Maximum Price proposal for the Project. The Construction Manager's compensation shall be the Guaranteed Maximum Price determined in accordance with Article 6 of the Agreement.

**§ 2.2.2** At times, and within timeframes to be mutually agreed upon by the Owner and the Construction Manager, and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price shall be the sum of the Construction Manager's estimate of the Cost of the Work, including the contingency described in Section 2.2.5, the Construction Manager's General Conditions, and the Construction Manager's fee.

**§ 2.2.3** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price proposal for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.4** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all addenda thereto, and the conditions of the Contract;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under

Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;

3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingencies, and the Construction Manager's fee; and
4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based.

**§ 2.2.5** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5.1** The contingency will be set forth as a line item within the Guaranteed Maximum Price. The Construction Manager will propose an amount for the contingency based on its knowledge of the Project, which includes the design of the corresponding construction phase as well as the status of material, equipment and subcontract procurement at the time the Guaranteed Maximum Price is being negotiated. The contingency takes into account this knowledge and the Construction Manager's experience in the construction industry in general, and in the Construction Manager's best estimation, shall provide sufficient funds to account for contingent risks as may be anticipated for a Project of similar size, nature, and scope. The Construction Manager does not guarantee any line item of the Guaranteed Maximum Price, but instead guarantees the scope of Work as a whole will be produced within the Guaranteed Maximum Price. Therefore, the Construction Manager is entitled to adjust the contingency depending on whether savings or overages occur within any other line item.

**§ 2.2.5.2** Within the Guaranteed Maximum Price, as costs are finalized through the procurement process, the contingency may be used to cover cost increases due to subcontract pricing errors or defaults, estimating or quantity take-off errors, and gaps in scope not evidenced at the time of development of the Guaranteed Maximum Price and not clearly identified in the basis of the Guaranteed Maximum Price. These gaps in scope are omissions on the part of the Construction Manager and not changes in scope made by the Architect after establishment of the Guaranteed Maximum Price. It is the intent of this Agreement that the Construction Manager, in consultation with the Owner and Architect, procure or secure pricing for as much material and equipment and as many subcontracts as practicable during preconstruction to minimize cost uncertainties.

**§ 2.2.5.3** During construction, the contingency shall be available to cover the new amount of any additional costs resulting from local market fluctuations in labor and materials, inadvertent errors or oversights, unforeseen site conditions, changes in requirements (such as building codes), changes requested by the Owner, scope gaps not identified in the procurement process, costs associated with schedule impacts or acceleration, and other costs incurred that are allocable as cost of Work items under Article 6 of the Agreement. In such cases, the contingency is for the Construction Manager's use only if approved in advance by the Owner. The Construction Manager shall notify the Owner's representative when it intends to use the contingency and the reasons therefore.

**§ 2.2.5.4** If any Subcontractor's Work is defective or nonconforming, prior to the Construction Manager's entitlement to use the contingency to correct the Work, the Construction Manager will take reasonable steps to have the Subcontractor repair the Work at no additional cost and will take all reasonable steps to recover from the Subcontractor or its surety, any amounts used from the contingency to repair the Work. A Subcontractor that fails to perform or defaults shall not be paid funds from the contingency to repair or correct its defective or non-conforming Work.

**§ 2.2.6** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both. If the Construction Manager's Guaranteed Maximum Price proposed for a construction phase is greater than the Architect's cost estimate, the Architect will identify to the Construction Manager the items for which variances exist. The Architect, Owner, and Construction Manager will meet to review and analyze the variances with the objective of reconciling the estimate differences. In the event the parties cannot reconcile the estimate differences, if the proposed Guaranteed Maximum Price is still within the Owner's budget, the Owner may accept the Construction Manager's original Guaranteed Maximum Price. If proceeding with the proposed Guaranteed Maximum Price is not acceptable, the Owner may offer the Construction Manager a revised proposal. Should the Construction Manager not accept the Owner's offer, the Owner may direct the Construction Manager to revisit the proposal and initiate the process anew or may terminate the Agreement in accordance with Section 10.1 of the Agreement.

**§ 2.2.7** The Owner shall have 30 (thirty) calendar days in which to accept the Construction Manager's Guaranteed Maximum Price proposal. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price authorization, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price authorization shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 2.2.8** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the construction phase unless the Owner provides prior written authorization for such costs.

**§ 2.2.9** The Owner shall authorize the Architect to complete the Drawings and Specifications, and to make revisions to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price authorization. The Owner shall promptly furnish those Drawings and Specifications to the Construction Manager as they are completed and revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price authorization and the revised Drawings and Specifications. The three parties shall Work as necessary to reconcile these discrepancies and shall make adjustments as applicable through use of the contingency or Change Orders.

**§ 2.2.10** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price authorization is executed.

**§ 2.2.11** In accordance with the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall agree to completing the associated Work within the time frame established for Substantial Completion. Once this time frame is accepted by the Owner and Architect, the Construction Manager agrees to maintain an approved construction schedule, and to meet all commencement, milestone and completion dates shown therein, including the mutually agreed upon Substantial Completion date.

## **§ 2.3 Construction Phase**

### **§ 2.3.1 General**

**§ 2.3.1.1** For purposes of Section 8.1.2 of the General Conditions of the Contract for Construction, the date of commencement of the Work shall mean the date of commencement of the construction phase.

**§ 2.3.1.2** The construction phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a notice to proceed, whichever occurs earlier.

### **§ 2.3.2 Administration**

**§ 2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate Agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to Contract with anyone to whom the Construction Manager has reasonable objection.

**§ 2.3.2.2** If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other Agreement actually signed with the person or entity designated by the Owner.

**§ 2.3.2.3** Subcontracts or other Agreements shall conform to the applicable payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the subcontract is awarded on a cost plus a fee basis, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

**§ 2.3.2.4** If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction according to Section 6.10.2.

**§ 2.3.2.5** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price authorization, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.12 of the General Conditions of the Contract for Construction.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of Workers on site, identification of equipment on site, problems that might affect progress of the Work, accidents, injuries, and other information required by the Owner.

**Allowed Weather Days**

The following inclement weather days shall be anticipated and included in the Contract Time associated with each of the Guaranteed Maximum Prices provided by the Construction Manager, Days shown are calendar days. The Construction Manager’s request for additional time due to weather shall be granted for days beyond those listed below, considering the full term of each Guaranteed Maximum Price Authorization. The burden of proof and documentation for a request for additional time shall rest solely on the Construction Manager.

<b>Month</b>	<b>Number of Days Allowed for Inclement Weather</b>
January	10 days
February	10 days
March	7 days
April	6 days
May	4 days
June	3 days
July	4 days
August	2 days
September	2 days
October	3 days
November	5 days
December	9 days

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect in accordance with Section 2.3.2.7 above.

**§ 2.4 Professional Services**

Section 3.14.10 of the General Conditions of the Contract for Construction shall apply to both the preconstruction and construction phases.

## **§ 2.5 Hazardous Materials**

Section 10.4 of the General Conditions of the Contract for Construction shall apply to both the preconstruction and construction phases.

### **Article 3 Owner's Responsibilities**

## **§ 3.1 Information and Services Required of the Owner**

### **§ 3.1.1 Program**

The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

### **§ 3.1.2 Budget**

The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

### **§ 3.1.3 Structural and Environmental Tests, Surveys and Reports**

During the preconstruction phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. Unless otherwise directed or stated by Owner, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 3.1.3.1** The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

**§ 3.1.3.2** The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the surveys shall be referenced to a Project benchmarks.

**§ 3.1.3.3** The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion

tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

**§ 3.1.3.4** During the construction phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### **§ 3.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. This representative may occasionally be referred to as the Project Manager. Except as otherwise provided in Section 4.2.1 of the General Conditions of the Contract for Construction, the Architect does not have such authority.

#### **§ 3.2.1 Legal Requirements**

Unless otherwise provided in the Contract Documents, the Owner shall furnish all legal, insurance, and accounting services, including auditing services that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

#### **§ 3.3 Architect**

The Owner has retained an Architect to provide services, duties and responsibilities as described in the consultant Authorization 6FC-2021 for Architectural Services for Gwinnett County Records Management and Emergency Management Storage Facility. The Owner shall provide the Construction Manager a copy of the executed Agreement between the Owner and the Architect, and any further modifications to the Agreement.

## **ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

### **§ 4.1 Compensation**

**§ 4.1.1** For the Construction Manager's preconstruction phase services, the Owner shall compensate the Construction Manager as follows:

**§ 4.1.2** For the Construction Manager's preconstruction phase services described in Sections 2.1 and 2.2: (Lump Sum-TBD)

« »

### **§ 4.2 Payments**

**§ 4.2.1** Unless otherwise agreed, payments for services shall be made monthly by the Owner following presentation by the Construction Manager of an invoice detailing the services performed through the billing period and the associated fee amount due. The Owner shall notify the Construction Manager promptly of objections it has to the Construction Manager's invoices. Preconstruction services will be ongoing through the construction phases and completed upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposed for the final construction phase.

§ 4.2.2 Payments are due and payable within 30 days after receipt of the Construction Manager's invoice. Amounts unpaid sixty (60) days after the invoice date shall bear interest at ½ % per month or pro rata fraction thereof beginning on the sixty-first (61<sup>st</sup>) day following the Owner's receipt of the pay request. The provisions of the Agreement are intended to supersede all provisions of the Georgia Prompt Pay act as provided by law.

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

### § 5.1 General Conditions and Construction Manager's Fee

For the Construction Manager's performance of the Work as described in section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's fee.

§ 5.1.1 The Construction Manager's Fee:  
(Percentage of the Work-TBD)

« »

§ 5.1.2 The Construction Manager's General Conditions:  
(Lump Sum-TBD)

« »

### § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price authorization, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price; the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

### § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of the General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price authorization may be determined by any of the methods listed in Section 7.4.2 of the General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost," "costs," and "fee" as used in Section 7.4 of the General Conditions of the Contract for Construction shall have the meanings assigned to them in

the General Conditions of the Contract for Construction and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 5.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions of the Contract for Construction shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's fee as defined in Section 5.1 of this Agreement.

## **ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 6.1 Costs to Be Reimbursed**

**§ 6.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

**§ 6.1.2** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of the General Conditions of the Contract for Construction which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

**§ 6.1.3** Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing the Guaranteed Maximum Price authorizations.

### **§ 6.2 Labor Costs**

**§ 6.2.1** Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

**§ 6.2.2** Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site, but only for that portion of time spent in performing the Work, and only to the extent such costs are consistent with a staffing plan approved by the Owner.

**§ 6.2.3** Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at the principal office, factories, workshops or on the road in expediting the procurement, production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and as approved in advance by the Owner.

**§ 6.2.4** Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining Agreements and, for personnel not covered by such Agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

**§ 6.2.5** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

**§ 6.3 Subcontract Costs**

Subcontract costs include payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

**§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 6.4.1** Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

**§ 6.4.2** Costs of materials described in the preceding section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

**§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 6.5.1** Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval and consistent with rental charges prevailing in the Atlanta Metropolitan Statistical Area.

**§ 6.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 6.5.5** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

**§ 6.5.6** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval and adequate insurance coverage.

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for insurance coverage and bonds required by the Contract Documents that can be directly attributed to the Work.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 **Costs** for utility services provided at the Project site and consumed in performance of the Work.

§ 6.6.5 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.6.3 of the General Conditions of the Contract for Construction or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.6 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.19 of the General Conditions of the Contract for Construction or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.7 Costs for acquiring or leasing electronic equipment and software directly related to the Work with the Owner's prior approval.

§ 6.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.5 of the General Conditions of the Contract for Construction.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

### § 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

1. Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2;

2. Expenses of the Construction Manager's principal office and offices other than the site office;
3. Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
4. The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
5. Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
6. Any cost not specifically and expressly described in Sections 6.1 to 6.7;
7. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
8. Costs for services incurred during the preconstruction phase.
9. Any cost paid by the Construction Manager regarded as a reimbursable cost in article 6 to the extent such cost is recovered by the Construction Manager from a Subcontractor, vendor, insurer, or otherwise.

### **§ 6.9 Discounts, Rebates and Refunds**

**§ 6.9.1** The Construction Manager shall notify the Owner of potential cash discounts prior to making related payments or submitting for same on its application for payment so that the Owner may accept and accrue the full savings from such discounts through the normal payment process. The Construction Manager also shall provide prior notice to the Owner and make provisions so that all savings received by the Construction Manager for trade discounts, rebates, refunds, and amounts received for sale of surplus materials and equipment can be obtained by and accrued to the Owner through the normal payment process.

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 6.10 Construction Manager's Incentive Payment**

The Owner will share in cost savings accumulated to the Project within the contingency upon completion of all the Work for the Project. Fifty percent (50%) of the savings will be paid to the Construction Manager, up to a cap of maximum payment of \$100,000. Savings are defined as those monies remaining when actual total disbursements to the Construction Manager are subtracted from the final Guaranteed Maximum Price for all construction phases. The incentive payment will be made one year following Substantial Completion of the Project, upon the completion of the warranty periods for each element of the Work.

### **§ 6.11 Related Party Transactions**

**§ 6.11.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common Ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

**§ 6.11.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Section 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

### **§ 6.12 Accounting Records**

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to and shall be permitted to audit and copy the Construction Manager's records and accounts including complete documentation supporting accounting entries, books, correspondence, instructions, Drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law and applicable records retention schedules.

## **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 7.1 Progress Payments**

Based upon applications for payment submitted to the Architect by the Construction Manager and certificates for payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided in Article 9 of the General Conditions of the Contract for Construction.

### **§ 7.2 Payment upon Final Completion of the Project**

The Owner shall make payment to the Construction Manager for final completion of the project as provided in Article 9 of the General Conditions of the Contract for Construction.

## **ARTICLE 8 INSURANCE AND BONDS**

For all phases of the Project, the Construction Manager shall purchase and maintain insurance and shall provide bonds as set forth in Article 11 of the General Conditions of the Contract for Construction.

## **ARTICLE 9 DISPUTE RESOLUTION**

Any claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in Article 15 of the General Conditions of the Contract for Construction.

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**

**§ 10.1.1 10.1.1** Prior to the execution of the initial Guaranteed Maximum Price authorization, the Owner may terminate this Agreement upon not less than 30 day's written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate the Agreement for cause for the reason and under the terms provided hereafter within this section. In the event the Owner fails to make payment to the Construction Manager as required by the Agreement, the Construction Manager shall have the right to terminate the Agreement for cause provided the Construction Manager first provides the Owner 15 days prior written notice and provided further that after timely receipt of such notice, the Owner fails to make payments as required by the terms and conditions of the Agreement.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for preconstruction phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** If the Owner terminates the Agreement pursuant to Section 10.1.1 after the commencement of the construction phase but prior to the execution of the Guaranteed Maximum Price authorization, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager's fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.
3. Subtract the aggregate of previous payments made by the Owner for construction phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental Agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All subcontracts, purchase orders and rental Agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental Agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental Agreement, if those costs would have been reimbursable as Cost of the Work if the Contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental Agreement that would have constituted a Cost of the Work had this Agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental Agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the initial Guaranteed Maximum Price authorization and subject to the provisions of Section 10.2.1 below, the Agreement may be terminated as provided in Article 14 of the General Conditions of the Contract for Construction.

**§ 10.2.1** If the Owner terminates the Agreement after execution of the initial Guaranteed Maximum Price authorization, the amount payable to the Construction Manager pursuant to Article 14 of the General Conditions of the Contract for Construction shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions of the Contract for Construction. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.2.1 of the General Conditions of the Contract for Construction, except that the term “profit” shall be understood to mean the Construction Manager’s fee as described in Sections 5.1 and 5.3.5 of this Agreement.

**ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1 Terms**

Terms in this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction.

**§ 11.2 Ownership and Use of Documents**

Section 1.5 of the General Conditions of the Contract for Construction shall apply to both the preconstruction and construction phases.

**§ 11.3 Governing Law**

Section 13.1 of the General Conditions of the Contract for Construction shall apply to both the preconstruction and construction phases.

**§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other. Except as provided in Section 13.2 of the General Conditions of the Contract for Construction, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**ARTICLE 12 SCOPE OF THE AGREEMENT**

This Agreement represents the entire and integrated Agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or Agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**IN WITNESS WHEREOF**, the parties hereto, acting through their duly authorized agents, have caused this **CONTRACT** to be signed, sealed and delivered.

**GWINNETT COUNTY, GEORGIA**

By: \_\_\_\_\_  
Nicole Love Hendrickson, Chairwoman  
Gwinnett County Board of Commissioners  
ATTEST:

\_\_\_\_\_  
Diane Kemp, County Clerk  
Board of Commissioners

(County Seal)

APPROVED AS TO FORM:

\_\_\_\_\_  
Gwinnett County Staff Attorney

CONSTRUCTION MANAGER: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

ATTEST:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
Corporate Secretary

(Seal)

**SAMPLE GUARANTEED MAXIMUM PRICE AUTHORIZATION**

**Exhibit A**

**PROJECT**

Gwinnett County Records Management and Emergency Management Storage Facility  
1050 Grayson Highway  
Lawrenceville Georgia 30045

**OWNER**

Gwinnett County Board of Commissioners  
75 Langley Drive  
Lawrenceville, Georgia 30046

**CONSTRUCTION MANAGER**

Name  
Address  
City, State, Zip

Article A.1

A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.7 of the Agreement, the Owner and Construction Manager hereby establish a Guaranteed Maximum Price for the Phase of Work described as \_\_\_\_\_. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum for the phase of Work shall not exceed. The Contract Sum consists of the Construction Manager’s Fee plus the Cost of Work as that term is defined in Article 6 of the Agreement.

A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_), subject to additions and deductions by Change Order as provided in the Contract Documents.

A.1.1.2 Provided below is an itemized Statement of the Guaranteed Maximum Price organized by trade categories, alternates, allowances, contingencies, the Construction Manager’s Fee and other items that comprise the Guaranteed Maximum Price.

(Provide below or reference on an attachment)

«  
»

A.1.1.3 The Guaranteed Maximum Price is inclusive of the following Alternates, which are described in the Contract Documents and hereby accepted by the Owner:

(Provide the identification numbers and descriptions of the accepted Alternates. If there is a provision for the Owner to accept other Alternates subsequent to the execution of the Authorization, attach a schedule of these Alternates showing the amount for each and the date by which it must be accepted.)

«  
»

A.1.1.4 The Guaranteed Maximum Price includes the following Allowances:

(Identify the Allowances and state any exclusions from the Allowance prices.)

Item Price

«  
»

A.1.1.5 The Guaranteed Maximum Price is based upon the following Conditions of the Contract for Construction and these Supplementary Conditions:

Document/Title Date Pages

«  
»

A.1.1.6 The Guaranteed Maximum Price is based upon the following Specifications:  
(List the Specifications here or refer to an exhibit attached to the Authorization.)

Section/Title Date Pages

«  
»

A.1.1.7 The Guaranteed Maximum Price is based upon the following Drawings:  
(List the Drawings here or refer to an Exhibit attached to the Authorization.)

Number/Title Date

«  
»

A.1.1.8 The Guaranteed Maximum Price is based upon the following Sustainability Plan:  
(Identify the document or documents that comprise the Sustainability Plan by title, date, number of pages, and other identifying information.)

«  
»

A.1.1.9 The Guaranteed Maximum Price is based upon the following Assumptions:  
(Itemize any mutually agreed to assumptions regarding the design and construction that affect the Contract Sum and are not explicitly provided for in the other documents identified and listed herein.)

«  
»

A.1.1.10 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other document or information here or refer to an exhibit attached to the Authorization.)

«  
»

**Article A.2**

A.2.1 Contract Time

The anticipated date of Substantial Completion established by the Authorization is:

»

**WINNETT COUNTY, GEORGIA**

**IN WITNESS WHEREOF**, the parties hereto, acting through their duly authorized agents, have caused this **CONTRACT AUTHORIZATION** to be signed, sealed and delivered.

By: \_\_\_\_\_  
Glenn Stephens, County Administrator  
Gwinnett County Board of Commissioners

ATTEST:  
\_\_\_\_\_  
Diane Kemp, County Clerk  
Board of Commissioners

APPROVED AS TO FORM:  
\_\_\_\_\_  
Gwinnett County Staff Attorney

CONSTRUCTION MANAGER: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

ATTEST:  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name  
Corporate Secretary

(Seal)

## **GENERAL CONDITIONS OF CONTRACT FOR CONSTRUCTION**

### **ARTICLE 1 GENERAL PROVISIONS**

#### **§ 1.1 Basic Definitions**

##### **§ 1.1.1 Contract Documents**

The Contract documents consist of these General Conditions of Contract for Construction (hereinafter referred to as General Conditions), the Agreement between Owner and Construction Manager as Constructor (hereinafter referred to as the Agreement), Request for Proposal including all Drawings, Specifications, Addenda issued prior to the execution of the Agreement, other documents listed in the Agreement or in the General Conditions, and modifications issued after execution of the Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to the Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.4 of the Agreement and identified in the Guaranteed Maximum Price authorization and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.9 of the Agreement.

##### **§ 1.1.2 Contract for Construction**

The Contract Documents form the Contract for Construction (hereinafter frequently referred to as the Contract). The Contract represents the entire and integrated Agreement between the parties hereto and supersedes prior negotiations, representations or Agreements, either written or oral. The Contract may be amended or modified only by a modification. If anything in the Contract Documents, other than a modification, is inconsistent with the Agreement between Owner and Construction Manager, the Agreement between Owner and Construction Manager shall govern. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor.

##### **§ 1.1.3 Architect**

The Owner shall retain an Architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

##### **§ 1.1.4 Change Order**

A Change Order is a written instrument prepared by the Architect and approved in writing by the Owner and Contractor stating their Agreement upon all of the following:

1. The change in the Work;
2. The amount of the adjustment, if any, in the Contract Sum; and
3. The extent of the adjustment, if any, in the Contract Time.

##### **§ 1.1.5 Contractor**

The Contractor referred to in these General Conditions shall be the same as the Construction Manager referred to in the Agreement. The Contractor is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a

representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

#### **§ 1.1.6 Contract Sum**

The Contract Sum shall mean, for the Project or a construction phase of the Project, the sum agreed upon for the associated Work as approved in the Guaranteed Maximum Price authorization or the cumulative value of such authorizations. Said Contract Sum may be adjusted in accordance with the Agreement.

#### **§ 1.1.7 Contract Time**

Contract Time shall mean for the Project, or any milestone or construction phase, the period of time allotted for Substantial Completion of such Project milestone or construction phase as approved in the Guaranteed Maximum Price authorization associated with that Work element, or the cumulative time associated with such authorizations. Said Contract Time may be adjusted in accordance with the Agreement.

#### **§ 1.1.8 Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### **§ 1.1.9 Guaranteed Maximum Price**

The Guaranteed Maximum Price shall mean the Construction Manager's Guaranteed Maximum Price for performance of the Work in accordance with Article 5 of the Agreement authorized by the Owner. The Construction Manager's Guaranteed Maximum Price proposal for the performance of the Work is based upon the design development documents or another mutually agreed to design stage. The Guaranteed Maximum Price includes the actual costs, Construction Manager's fee, and a contingency reserve. In each case, the Guaranteed Maximum Price is subject to the review, analysis and acceptance of the Owner. The Guaranteed Maximum Price may be adjusted from time to time by Change Orders approved by the Owner and Construction Manager.

#### **§ 1.1.10 Instruments of Service**

Instruments of service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative Work performed by the Architect and the Architect's consultants under their respective professional services Agreements. Instruments of service may include, without limitation, studies, surveys, models, sketches, Drawings, Specifications, and other similar materials.

#### **§ 1.1.11 Owner**

The Owner is the person or entity identified as such in this Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall act on behalf of the Owner with respect to administration of the project and who shall render decisions promptly and furnish information expeditiously, so to avoid unreasonable delay in the services or Work of the Construction Manager. The representative may on occasion be referred to in the Contract Documents as the Project Manager. Except as provided in Section 4.2.1 of the General Conditions of the Contract for Construction, the Architect does not have the authority assigned to this representative. In addition, in this Agreement, the Gwinnett County Board of Commissioners delegates authority to the Gwinnett County-County Administrator to approve Guaranteed Maximum Price Authorizations and related Change Orders up to the maximum amount of the Agreement award

ceiling. The term "Owner", thus may mean the Owner, Owner's representative, or the County Administrator in this assigned role. Other than stated herein, no representative of the Owner shall have the authority to bind the Owner with respect to any matter requiring approval of the Gwinnett County Board of Commissioners.

#### **§ 1.1.12 Project**

The Project is the total construction of Gwinnett County Records Management and Emergency Management Storage Facility.

#### **§ 1.1.13 Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.14 Subcontractor**

A Subcontractor is a person or entity who has a direct Contract with the Contractor to perform a portion of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate Contractor or Subcontractors of a separate Contractor.

#### **§ 1.1.15 Sub-subcontractor**

A Sub-subcontractor is a person or entity who has a direct or indirect Contract with a Subcontractor to perform a portion of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

#### **§ 1.1.16 Substantial Completion**

Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

#### **§ 1.1.17 Work**

Work means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event there are any conflicting provisions or requirements in Contract Documents, the components shall take precedence in the following order:

1. Supplemental Agreement/Change Order
2. Agreement
3. General Conditions
4. Specifications/Scope of Work
5. Drawings

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other published documents.

**§ 1.4 Interpretation**

In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

**§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect’s consultants shall be deemed the authors of their respective instruments of service, including the Drawings and Specifications. All Drawings, Specifications, and other documents prepared by the Architect as instruments of service for the Project are the property of the Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the instruments of service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner’s, Architect’s or Architect’s consultants’ reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the instruments of service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the instruments of service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the instruments of service on other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants.

**§ 1.6 Transmission of Data in Digital Form**

If the parties intend to transmit instruments of service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

**ARTICLE 2 OWNER**

**§ 2.1 General**

The Owner is the person or entity identified as such in this Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall act on behalf of the Owner with respect to administration of the project and who shall render decisions promptly and furnish information expeditiously, so to avoid unreasonable delay in the services or Work of the Construction Manager. The representative may on occasion be referred to in the Contract Documents as the Project

Manager. Except as provided in Section 4.2.1 of the General Conditions of the Contract for Construction, the Architect does not have the authority assigned to this representative. In addition, in this agreement, the Gwinnett County Board of Commissioners delegates authority to the Gwinnett County-County Administrator to approve Guaranteed Maximum Price Authorizations and related Change Orders up to the maximum amount of the Agreement award ceiling. The term "Owner", thus may mean the Owner, Owner's representative, or the County Administrator in this assigned role. Other than stated herein, no representative of the Owner shall have the authority to bind the Owner with respect to any matter requiring approval of the Gwinnett County Board of Commissioners.

## **§ 2.2 Information and Services Required of the Owner**

**§ 2.2.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.2.3** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

## **§ 2.3 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner or Architect may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of the Owner or Architect to stop the Work shall not give rise to a duty on the part of the Owner or Architect to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

## **§ 2.4 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a 10 day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor and submission of each Guaranteed Maximum Price proposal is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before submitting its pricing proposals and before starting each portion of the Work, carefully study and compare the various Contract Documents relative to the Work, as well as the information furnished by the Owner pursuant to Sections 2.2.2 and 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, has properly stopped the affected Work until ordered to proceed, and has otherwise followed the instructions of the Architect, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. All Work shall be performed in a skilled and workmanlike manner.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. All areas within the limits of the Project that are determined by the Architect to be unnecessarily damaged due either directly or indirectly in the process of construction, shall be the responsibility of the Contractor to correct and repair without additional compensation.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** The Contractor may make substitutions only under the terms of the Contract Documents and with the consent of the Owner, after evaluation by the Architect, and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Architect may, by written notice, require the Contractor to remove from the Work any employee or Subcontractor deemed by the Architect to be incompetent.

### **§ 3.5 Warranties**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** If within one year after the date of Substantial Completion or within such longer period as may be prescribed by law or by the term of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the

Contract Documents, the Contractor shall correct such Work promptly after receipt of written notice from the Owner to do so. This obligation shall survive both final payment for the Work and termination of the Contract.

**§ 3.5.3** Without limiting the responsibility of the Contractor pursuant to the Contract, all warranties given by manufacturers or materials or equipment incorporated in the Work are hereby assigned by the Contractor to the Owner. If requested, the Contractor shall execute formal assignments of said manufacturers' warranties to the Owner. All such warranties shall be directly enforceable by the Owner.

**§ 3.5.4** The warranties contained in this Contract, as well as the warranties implied by law, shall be deemed cumulative and shall not be deemed alternative or inclusive. No one or more warranties contained herein shall be deemed to alter or limit any other.

### **§ 3.6 Taxes**

The Contractor shall pay all sales, retail, occupational, service, excise, old age benefit and unemployment compensation taxes, consumer, use and other similar taxes as well as any other taxes or duties on the materials, equipment, and labor for the Work provided by the Contractor which are legally enacted by any municipal, county, state or federal authority, department or agency at the time bids are received or negotiations concluded, whether or not yet effective. The Contractor shall maintain records pertaining to such taxes and levies as well as payment thereof and shall make the same available to the Owner at all reasonable times for inspection and copying.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. If any permit license of certificate expires or is revoked, terminated, or suspended as a result of any action on the part of the Contractor, the Contractor shall not be entitled to any additional compensation.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor agrees to indemnify and hold harmless the County, its officers, agents and employees, as well as the Architect, against any claim or liability arising from or based on the violation of any law, ordinance, regulation, order or decree affecting the conduct of the Work, whether occasioned by the Contractor, his agents or employees.

### **§ 3.8 Familiarity with Work Conditions**

The Contractor shall take all steps necessary to ascertain the nature and location of the Work and the general and local conditions, which may affect the Work or the cost thereof. The Contractor's failure to fully acquaint itself with the conditions which may affect the Work, including, but not limited to conditions relating to transportation, handling and storage of materials, availability of labor, site access, availability of utilities, weather, topographic and

subsurface conditions, other separate contracts to be entered into by the Owner relating to the Project which may affect the Work of the Contractor, applicable provisions of law, and the character and availability of equipment and facilities necessary prior to and during the performance of the Work shall not relieve the Contractor of its responsibilities pursuant to this Contract and shall not constitute a basis for an equitable adjustment of the Contract terms. The Owner assumes no responsibility for any understandings or representations concerning conditions of the Work made by any of its officers, agents, or employees prior to the execution of this Contract.

### **§ 3.9 Concealed or Unknown Conditions**

**§ 3.9.1** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

**§ 3.9.2** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.10 Allowances**

**§ 3.10.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.10.2** Unless otherwise provided in the Contract Documents,

1. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
3. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect

(1) the difference between actual costs and the allowances under Section 3.10.2.1 and (2) changes in Contractor's costs under Section 3.10.2.2.

**§ 3.10.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.11 Contractor's Representatives**

**§ 3.11.1** The Contractor shall employ and designate a competent representative ("Project manager") who shall have complete authority to administer the Contract and the Work, to receive directions, questions, and information from the Architect; and to represent the Contractor on all matters arising pursuant to the Contract. This Project manager shall be made known to the Owner and Architect prior to the award of the Contract and shall be acceptable to both parties. The Contractor shall not remove the Project manager without first notifying the Owner and Architect in writing and providing information indicating the experience and adequacy of the replacement. The replacement Project manager shall be subject to the Owner's and Architect's approval, which shall not be unreasonably withheld or delayed.

**§ 3.11.2** The Contractor also shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site full time during the performance of the Work. In the absence of the Project manager on site, the superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be made known to the Owner and Architect prior to award of the Contract and shall be acceptable to both parties. The Contractor shall not remove the superintendent without first notifying the Owner and Architect in writing indicating the experience and adequacy of the replacement. The replacement superintendent shall be subject to the Owner's and Architect's approval, which shall not be unreasonably withheld or delayed.

### **§ 3.12 Contractor's Construction Schedules**

**§ 3.12.1** The Contractor, promptly after receipt of the Guaranteed Maximum Price authorization, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits established in the Guaranteed Maximum Price authorization under the Contract Documents, shall be revised 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 Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall be in such form and shall utilize such format as the Owner may require.

**§ 3.12.2** The Contractor shall prepare a submittal schedule, promptly after receipt of the Guaranteed Maximum Price authorization and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.12.3** The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Architect.

**§ 3.13 Documents and Samples at the Site**

The Contractor shall maintain at the site for the Owner and Architect one copy of the Drawings, Specifications, addenda, Change Orders and other modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved shop Drawings, product data, samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.14 Shop Drawings, Product Data and Samples**

**§ 3.14.1** Shop Drawings are Drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.14.2** Product data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.14.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.14.4** Shop Drawings, product data, samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.14.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect, shop Drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate Contractors.

**§ 3.14.6** By submitting shop Drawings, product data, samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.14.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of shop Drawings, product data, samples or similar submittals until the respective submittal has been approved by the Architect.

**§ 3.14.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of shop Drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such

deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or construction change directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in shop Drawings, product data, samples or similar submittals by the Architect's approval thereof.

**§ 3.14.9** The Contractor shall direct specific attention, in writing or on resubmitted shop Drawings, product data, samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.14.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all Drawings, calculations, Specifications, certifications, shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.14.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### **§ 3.15 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.16 Cutting and Patching**

**§ 3.16.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

**§ 3.16.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate Contractor except with written consent of the Owner and of such separate Contractor; such consent shall not be unreasonably withheld. The

Contractor shall not unreasonably withhold from the Owner or a separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

### **§ 3.17 Cleaning Up**

**§ 3.17.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 3.17.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.18 Access to Work**

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located. The Owner reserves the right to enter the site of the Work by such agent as it may elect for the purpose of inspecting the Work or installing such collateral Work as the Owner may desire.

### **§ 3.19 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent; the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### **§ 3.20 Indemnification**

To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the Owner, the Architect, and their agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including, but not limited to, attorney's fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless whether such claim is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any of the rights or obligations of indemnity which would otherwise exist as to any party or person described in this Agreement. In any and all claims against the Owner, the Architect, or any of their agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation contained herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any Subcontractor under worker's compensation acts, disability benefit acts, or other employee benefit acts.

**ARTICLE 4 ARCHITECT****§ 4.1 General**

**§ 4.1.1** The Owner shall retain an Architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor Architect whose status under the Contract Documents shall be that of the Architect.

**§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final certificate for payment. The Architect will have authority to act on behalf of the Owner to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to inspect the progress and quality of the portion of the Work completed and to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4** If directed by the Owner, the Construction Manager shall communicate with the Owner through the Architect. The Construction Manager shall communicate with the Architect's consultants through the Architect.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's applications for payment, the Architect will review and certify the amounts due the Contractor and will issue certificates for payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have

authority to require inspection or testing of the Work in accordance with Sections 13.6.1 and 13.6.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as shop Drawings, product data and samples, for the purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other 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 Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.14. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and construction change directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.9.1.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue certificates of Substantial Completion pursuant to Section 9.9; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.11; and issue a final certificate for payment pursuant to Section 9.11.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such Project representatives shall be as set forth in the Contract Documents.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made within any time limits agreed upon in the Contract Documents or otherwise with reasonable promptness. Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from, the Contract Documents and will be in writing or in the form of Drawings. The Architect shall maintain a record of requests and interpretations and the status and impact of said requests and interpretations and shall keep the Owner and Contractor informed.

**§ 4.2.12** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.13** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 4.2.14** The Architect will conduct monthly on-site meetings with the Owner, Contractor, and Subcontractors to review the progress of the Work and to address any issues involving such. This meeting may coincide with site inspections or payment reviews. The Architect will establish the agenda for these meetings and will be responsible for preparation and distribution of meeting minutes. Additional requirements for Project related meetings are contained in the Contract Documents.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct Contract with the Contractor to perform a portion of the Work at the site. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate Contractor or Subcontractors of a separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect Contract with a Subcontractor to perform a portion of the Work at the site. The term Sub-subcontractor is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after receipt of a Guaranteed Maximum Price authorization, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not Contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to Contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### **§ 5.3 Sub-contractual Relations**

By appropriate Agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these documents, assumes toward the Owner and Architect. Each subcontract Agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract Agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar Agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract Agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract Agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract Agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that:

1. Assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.1 and only for those subcontract Agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
2. Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract Agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under conditions of the Contract

identical or substantially similar to these including those portions related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term “Contractor” in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner’s own forces and of each separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual Agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate Contractors and the Owner until subsequently revised.

## **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents. The Owner shall endeavor to ensure that its personnel or separate Contractors do not cause any conflict with the Work of the Contractor.

**§ 6.2.2** If part of the Contractor’s Work depends upon construction or operations by the Owner or a separate Contractor for the proper execution of the Work, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner’s or separate Contractor’s completed or partially completed construction is fit and proper to receive the Contractor’s Work, except as to defects not then reasonably discoverable.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate Contractor because of the Contractor’s delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate Contractor’s delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate Contractors as provided in Section 10.2.5.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Guaranteed Maximum Price authorization, and without invalidating the Contract, by Change Order, construction change directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon Agreement among the Owner, and Contractor; a construction change directive requires Agreement by the Owner and Architect and may or may

not be agreed to by the Contractor; and an order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, construction change directive or order for a minor change in the Work.

## **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect and approved in writing by the Owner and Contractor stating their Agreement upon all of the following:

1. The change in the Work;
2. The amount of the adjustment, if any, in the Contract Sum; and
3. The extent of the adjustment, if any, in the Contract Time.

**§ 7.2.2** Upon receipt of a Change Order, the Contractor shall comply therewith and perform, or omit as the case may be, each item of Work set forth therein, furnishing, or omitting all labor, material, and equipment necessary, in the same manner as if such Work were originally included or excluded in the Guaranteed Maximum Price authorization. Contractor's written acceptance of a Change Order shall constitute its final and binding Agreement to the provisions thereof and a waiver of all claims in connection therewith, whether direct or consequential in nature. In the absence of a fully executed Change Order, the Contractor shall not be entitled to payment or an extension of the time of completion on account of any changes made.

**§ 7.2.3** The cost basis of a Change Order may be a lump sum, unit prices, or time and materials, also referred to as force account. Lump sum changes must be supported by the cost breakdowns required in the change proposal.

## **§ 7.3 Change Proposal Request**

**§ 7.3.1** The change proposal request is the method by which the Owner, through the Architect, requests Contractor proposals for changes in the Work. These requested changes may originate with the Owner or Architect as changes in the Drawings or Specifications, may be responses to unexpected site conditions, or may be responses to issues raised by the Contractor through requests for information or document clarifications. Change proposal requests are not directions to change the Work.

**§ 7.3.2** Unless specified differently on the change proposal request, the Contractor will be expected to reply in writing to all such requests within seven days of receipt.

## **§ 7.4 Construction Change Directive**

**§ 7.4.1** A construction change directive is a written order prepared and signed by the Architect and Owner directing a change in the Work prior to an Agreement on adjustment, if any, in the Contract Sum, Contract Time, or both. The construction change directive may be issued because of 1) situations that threaten life and safety, 2) the need to address previously unknown conditions, or 3) the need to maintain the timely and orderly sequencing of the Work. The Owner may by the construction change directive, and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions with the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.4.2** The construction change directive shall be used in the absence of total Agreement on the terms of a Change Order. If the construction change directive anticipates a change in the Contract Sum, the Architect shall indicate in the directive whether the adjustment will be made by 1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, 2) unit prices stated in the Contract Documents or subsequently agreed upon, or 3) or a force account basis as outlined in Section 7.6.

**§ 7.4.3** Upon receipt of a construction change directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's Agreement or disagreement with the method, if any, provided in the construction change directive for determining the proposed adjustment in the Contract Sum or Contract Time. If the Contractor is in Agreement, the Contractor shall submit a change proposal as described herein for evaluation. The change proposal costs, when mutually acceptable to the Owner and Contractor shall be incorporated into the Contract by Change Order. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of the reasonable expenditures and savings of those performing the Work attributable to the change, including an amount for overhead and profit as set forth in the Contract. This calculation of cost shall be made under the terms for time and materials Work under Section 7.6.

## **§ 7.5 Change Proposal**

**§ 7.5.1** The Contractor will submit change proposals in response to change proposal requests, in response to construction change directives, in accompaniment of substitution requests, and as follow up and support to previously filed claims for extra cost or time.

**§ 7.5.2** Every change proposal shall include the following information as applicable:

1. The amount of change in the Contract Sum, if any;
2. The amount of change in the Contract Time, if any, explained relative to the approved construction schedule justified in terms of the critical path of the Work and the requirements of the Contract;
3. Cost breakdowns detailing the applicable Work items and inclusive of quantities and unit prices for labor; materials, products, equipment usage, expenses for bonds, insurance and taxes; and overhead and profit, with Subcontractor and Sub-subcontractor expenses presented at the same level of detail;
4. The period of time within which the proposed changes in Contract Sum or time will be valid; and
5. A statement describing the effect the change may have on the Work of other prime Contractors or the Owner.

**§ 7.5.3** Fees for administration, overhead and profit shall be limited to \_\_% for the Contractor or Subcontractor performing the Work. On Work performed by a Subcontractor, the Contractor may markup said Work for purposes of administration, overhead and profit by no more than \_\_%. On Work performed by a Sub-subcontractor, the Subcontractor may markup said Work for purposes of administration, overhead and profit by no more than 5%; the prime Contractor shall not mark up the Work of Sub-subcontractors separately from the mark-up on the Subcontractor.

**§ 7.5.4** The Contractor shall not place a reservation on a change proposal that holds open the Contractor's right to claim additional costs for indirect or impact damages related to the change such as alleged costs for disruption, interference, delay, acceleration or remobilization; or any consequential damage or costs.

**§ 7.5.5** If the change proposal is related to a claim for additional cost or time, Contractor shall indicate the origin and date of the initial claim notice and detail the basis of the claim and the associated costs.

**§ 7.6 Time and Materials Work**

When no Agreement is reached for extra Work to be done at lump sum or unit prices, such Work may be authorized by the Owner to be done on a time and materials basis. A time and materials estimate that identifies all anticipated costs shall be prepared by the Contractor on forms provided by the Architect. Work shall not begin until the time and materials account is approved by the Architect. Payment for time and materials Work will be in accordance with the following:

1. Labor: the Contractor shall receive the rate of wage agreed to for all hours the labor, equipment operators and supervisors, excluding the superintendent, are actually engaged in the specific operations and Work required. The Contractor shall receive the actual costs paid to the workers inclusive of wages, allowances, health and welfare benefits and pension fund benefits.
2. Bonds, insurance and taxes: the Contractor shall receive the actual cost for property damage, liability, and worker's compensation insurance premiums, unemployment, insurance contributions, and social security taxes on the time and materials Work.
3. Materials: the Contractor shall receive the actual cost for materials and products incorporated in the Work and accepted by the Architect, including Contractor paid freight or shipping expenses.
4. Equipment: for any machinery or special equipment (other than small tools), the use of which is essential to the Work and approved by the Architect, the Contractor shall receive fair market rental rates for the actual time that such equipment is in operation on the Work or required to stand by.
5. Overhead and profit: on the total of all costs described above, the Contractor will be allowed to add \_\_% of that value as compensation for administration, overhead and profit.
6. Miscellaneous: no additional allowance will be made for general requirements costs, superintendence, use of small tools or other costs for which no specific allowance is herein provided.
7. Subcontract Time and Materials Work: for Work performed by a Subcontractor or Sub-subcontractor, all provisions of this section that apply to the Contractor in respect to labor, materials and equipment shall govern. The prime Contractor shall coordinate the Work of its Subcontractors and will be allowed an amount to cover administrative costs and profit equal to \_\_\$ of the Subcontractor's amount earned. Mark-up for Sub-subcontractor Work will be limited to 5% by the Subcontractor.
8. Compensation: the Contractor shall maintain records of the cost of all Work done each day as ordered on a time and materials basis and shall provide such records to the Architect.
9. Statements: no payment will be made on Work performed on a time and materials basis until the Contractor has furnished the Architect with itemized statements of the cost of such time and materials Work detailed as follows:
  - A. Name, classification, date, daily hours, rate and extension for each laborer, equipment operator and supervisor;
  - B. Cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions and social security tax;
  - C. Quantity of materials, prices, and extensions; and
  - D. Designation, dates, daily hours, rental rate and extension for each unit of machinery and equipment.

Statements shall be accompanied and supported by invoices for all materials used, including evidence of transportation charges and taxes. However, if materials used on time and materials

Work are not specifically purchased for such Work but are taken from the Contractor's stock, then in lieu of the invoices, the Contractor shall furnish an affidavit certifying that such materials were taken from stock, that quantity claimed was actually used and price claimed represents actual cost to the Contractor.

### **§ 7.7 Minor Changes in Work**

The Architect has the authority to order minor changes in the Work not involving adjustments in the Contract Sum or extensions of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by a written order signed by the Architect and shall be binding on the Owner and Contractor.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

**§ 8.1.1** Unless otherwise provided, Contract Time shall mean for the Project, or any milestone or construction phase, the period of time allotted for Substantial Completion of such milestone or construction phase approved in the Guaranteed Price authorization associated with that Work element, or the cumulative time associated with such authorizations. Said Contract Time may be adjusted in accordance with the Agreement.

**§ 8.1.2** The date of commencement of the Work is the date established in the Guaranteed Maximum Price authorization or mutually agreed to by the Owner, Construction Manager and Architect after execution of the Guaranteed Maximum Price authorization.

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.9.

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### **§ 8.2 Progress and Completion**

**§ 8.2.1** Time is of the essence of the Contract. By executing a Guaranteed Maximum Price authorization, the Contractor confirms that the established Contract Time associated with the Guaranteed Maximum Price is a reasonable period for performing the Work.

**§ 8.2.2** The Contractor shall not knowingly, except by Agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

**§ 8.2.3** The Contractor shall diligently prosecute the Work to achieve Substantial Completion within the specified Contract Time. The Contractor's procurement and construction plan, the sequence and method of operations, and the Work force employed, including the management and supervisory personnel, shall be adequate to ensure completion within the specified time.

### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** Inclement Weather: The Contractor shall not be entitled to an extension of the Contract Time due to normal inclement weather. The Contractor shall not be entitled to an extension of time unless the Contractor can substantiate to the satisfaction of the Architect and Owner that

there was greater than normal inclement weather considering the term of the Contract and the affected phases of the Work using a ten year average of accumulated mean values for climatological data compiled by the U.S. Department Of Commerce For Atlanta, Georgia and that such greater than normal inclement weather actually delayed the critical path of the Work so as to cause a delay in Substantial Completion of the Project. The normal number of inclement weather days expected for each month is included in the Contract Documents.

**§ 8.3.2** Delay: The Contractor may be entitled to an extension of the Contract Time, but not an increase in the Contract Sum, for delays arising from unforeseeable causes beyond the control of and without the fault of the Contractor or its Subcontractors for labor strikes, acts of the public enemy, acts of the state, federal or local government in its sovereign capacity, unusual delays in deliveries, fire or casualty, by acts of god, or by acts of another Contractor employed by the Owner, or by an act of neglect by the Owner or Architect.

**§ 8.3.3** Notice of Delay: The Contractor shall not receive an extension of time unless a notice of a delay is filed with the Owner and the Architect within ten days of the first instance of such delay, disruption, interference or hindrance and a written statement of the claim is filed with the Architect and the Owner within 20 days of the first such instance. In the event that the Contractor fails to comply with this provision, the Contractor waives any claim, which it may have for an extension of time pursuant to the Contract. The notice of delay shall include specific information concerning the nature of the delay, the date of commencement of the delay, the construction activities affected by the delay, the person or organization responsible for the delay, the anticipated extent of the delay, and any recommended action to avoid or minimize the delay.

#### **§ 8.4 Impact Damages**

Except as specifically provided pursuant to a stop Work order or Change Order, the Contractor shall not be entitled to payment or compensation of any kind from the Owner for direct or indirect or impact damages including, but not limited to, costs of acceleration arising because of delay, disruption, interference or hindrance from any cause whatsoever whether such delay, disruption, interference or hindrance is reasonable or unreasonable, foreseeable or unforeseeable, or avoidable, provided, however, that this provision shall not preclude the recovery of damages by the Contractor for hindrances or delays due solely to fraud or bad faith on the part of the Owner its agents or employees. The Contractor shall be entitled only to extensions in the time required for performance of the Work as specifically provided in the Contract.

#### **§ 8.5 Progress of Work and Acceleration**

**§ 8.5.1** To the extent that the Contractor is entitled to additional compensation for delay, an absolute condition precedent to such entitlement shall be strict compliance with all requirements and procedures for entitlement to an extension of time herein. If the Work actually in place falls behind the currently updated and approved Project network schedule, and it becomes apparent from the current schedule that Work will not be completed within the Contract Time, the Contractor agrees that it will, as necessary, or as directed by the Architect, take action at no additional cost to the Owner to improve the progress of the Work, including increasing manpower, increasing the number of working hours per shift or shifts per working day, increasing the amount of equipment at the site, and any other measure reasonably required to complete the Work in a timely fashion.

**§ 8.5.2** The Contractor's failure to substantially comply with the requirements of the preceding paragraph may be grounds for determination by the Owner or Architect that the Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified. In such event, the Owner shall have the right to furnish such additional labor and

materials as may be required to comply with the schedule after 48 hours written notice to the Contractor and the Contractor shall be liable for such costs incurred by the Owner.

**§ 8.5.3** All monies due the Owner pursuant to the acceleration provisions of this Contract may be decided by the Owner from monies due from the Owner to the Contractor. The remedies of the Owner concerning acceleration are in addition to and without prejudice to all of the rights and remedies of the Owner at law, in equity, or contained in this Contract.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

The Contract Sum as stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of each phase of Work under the Contract Documents.

### **§ 9.2 Schedule of Values**

The Contractor shall submit to the Architect, before the first application for payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, upon approval by the Architect, shall be used as a basis for reviewing the Contractor's applications for payment and shall be used for the purpose of tracking actual costs reimbursed to the Contractor against the portion of the Guaranteed Maximum Price applicable to the progress of the Work. The schedule of values shall be in sufficient detail to permit the Architect and Owner to properly evaluate the accuracy of the Contractor's application for payment, and at a minimum, shall allocate the Contractor's estimate of actual cost to each of the discrete components of the Work, and separately identify the Contractor's Fee and contingency. Each application for payment submitted by the Contractor shall in the schedule of values, reflect the percentage of completion achieved for each portion of the Work through the date of the application for payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** The period covered by each application for payment shall be one calendar month ending on the last day of the month. Applications for payment submitted by the Contractor shall be in a form and format approved by the Architect and Owner and shall contain the substance and be accompanied by the back-up and documentation required by the Architect to properly evaluate the request.

**§ 9.3.2** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized application for payment for completed portions of the Work prepared in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, and as called on in Paragraph 9.3.4 below.

**§ 9.3.3** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include

the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.4** Each application for payment shall be accompanied by certified payroll records for compensation paid by the Contractor to its own forces and reimbursable as an actual cost, which shall include a listing of all personnel for whom payment is sought, itemizing the wages or salary amount owed each individual, the taxes, insurance and benefits payable on account of each individual and timesheets for each person working on the Project. The Contractor also shall submit a written schedule itemizing the invoices, bills, receipts, and cost documentation for all other actual costs for which payment is requested.

**§ 9.3.5** Applications for payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the application for payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next application for payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 9.3.6** Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values;
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in section 5.1 of the Agreement;
4. Subtract retainage of ten percent (10%) from that portion of the Work that the Contractor's and its Subcontractors perform and complete;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 9.3.4 to substantiate prior applications for payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Architect has withheld or nullified in a certificate for payment as provided in Section 9.5

**§ 9.3.7** The Contractor further warrants that upon submittal of an application for payment all Work for which certificates for payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractor, material suppliers, or other persons or entities a claim by reason of having provided labor, materials and equipment relating to the Work. The Contractor shall submit interim lien waivers documenting such.

## **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within five days after receipt of the Contractor's application for payment, either issue to the Owner a certificate for payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.

**§ 9.4.2** The issuance of a certificate for payment will constitute a representation by the Architect to the Owner, based on the Architect's on-site inspection and evaluation of the Work and the data comprising the application for payment, that, to the best of the Architect's knowledge, information and belief, the quantity of Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, and to correction of minor deviations from the Contract Documents prior to completion. The issuance of a certificate for payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a certificate for payment will not be a representation that the Architect has (1) reviewed construction means, methods, techniques, sequences or procedures, (2) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (3) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Architect may withhold a certificate for payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a certificate for payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a certificate for payment or, because of subsequently discovered evidence, may nullify the whole or a part of a certificate for payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2 because of:

1. Defective Work not remedied;
2. Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. Damage to the Owner or a separate Contractor;
6. Repeated failure to carry out the Work in accordance with the Contract Documents.

Notwithstanding any other provision of this Agreement, and notwithstanding any certification by the Architect, the Owner may withhold payment to the Contractor to the same extent, and for the same reasons, that Architect may withhold or nullify an application for payment, in whole or in part.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

**§ 9.5.3** If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next certificate for payment.

**§ 9.5.4** The Owner and Contractor expressly agree that the terms of payment, payment period, and rates of interest as set forth in the Contract Documents shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, et al, and the provisions of said Act are herein waived.”

### **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a certificate for payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents and shall so notify the Architect.

**§ 9.6.2** The Contractor shall pay each Subcontractor promptly after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor’s portion of the Work. The Contractor shall, by appropriate Agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work completed by such Subcontractor.

**§ 9.6.4** The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

**§ 9.6.5** Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** A certificate for payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

### **§ 9.7 Time of Payment**

When the Contractor has performed in accordance with the provisions of the Contract, the Owner shall pay to the Contractor, within 30 days of receipt by the Owner of any payment request based upon Work completed or service provided pursuant to the Contract, the sum so requested, less the retainage stated in this Contract, if any. In the event that Owner fails to pay the Contractor

within 60 days of the Owner's receipt of a pay request based upon Work completed or service provided pursuant to the Contract, the Owner shall pay the Contractor interest at the rate of 1/2 percent per month or pro rata fraction thereof beginning the 61st day following the Owner's receipt of the pay request. The Contractor's acceptance of progress payments or final payment shall release all claims for interest on said payments. The provisions of this Contract are intended to supersede all provisions of the Georgia prompt pay act as provided by law.

### **§ 9.8 Retainage**

**§ 9.8.1** As the Work is executed and progress payments made to the Contractor, the Owner shall retain ten percent (10%) of the amounts approved for payment until progress payments including retainages total fifty percent (50%) of the Contract Sum. Thereafter, no further retainage shall be withheld so long as the Contractor is making satisfactory progress to ensure completion of the Work in the time specified. The Owner may release retainage after Substantial Completion to an amount equal to the value of uncompleted punch list Work, but will not release all retainage until requirements for final payment have been met by the Contractor. One percent (1%) retainage of the value of the Work in place will be held by the order until final payment for all aspects of the Project is made.

**§ 9.8.2** If prior to Substantial Completion or final completion of the Work, the Owner determines that the progress of the Work warrants further reduction of retention or a reinstatement of retainage on pay applications after fifty percent (50%) of Work is complete, the Owner may reduce the amount of retention or reinstate such retainage. If, however, after reducing or discontinuing retention, the Owner determines that the Contractor is not making satisfactory progress to complete the Work within the specified time or the Architect provides a specific cause for withholding, retention may be resumed at the previous level. If the retention is resumed by the Owner, the Contractor and Subcontractors shall be entitled to resume withholding retainage accordingly. The rights of the Owner set forth herein to retainage are in addition to all other rights and remedies of the Owner set forth in the Contract.

### **§ 9.9 Substantial Completion under a Guaranteed Maximum Price**

**§ 9.9.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.9.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.9.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.9.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a certificate of Substantial Completion that shall establish the date of Substantial Completion; shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the Contractor shall finish all items on the list accompanying the certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the certificate of Substantial Completion.

**§ 9.9.5** The certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### **§ 9.10 Partial Occupancy or Use**

**§ 9.10.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate Agreement with the Contractor, provided such occupancy or use is consented to by the Contractor's insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments; retainage, if any; security, maintenance, heat, utilities, damage to the Work and insurance; and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.10.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written Agreement between the Owner and Contractor or, if no Agreement is reached, by decision of the Architect.

**§ 9.10.2** Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.10.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### **§ 9.11 Final Completion and Final Payment under a Guaranteed Maximum Price**

**§ 9.11.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final application for payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and fully performed, the Architect will issue a final certificate for payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final certificate minus One percent (1%) retainage is due and payable.

**§ 9.11.2** The amount of final payment for the Guaranteed Maximum Price based construction phase shall be calculated as follows. Take the sum of the actual cost allowed under article 5 in the Agreement and pro-rata share of the Contractor's Fee less any remaining unspent contingency and subtract any amounts being withheld by the Owner pursuant to the Contract, including the one percent (1%) retainage. If this aggregate amount exceeds the aggregate of previous payments made to the Contractor by the Owner, the Owner shall make payment of this amount to the Contractor. If the aggregate amount calculated above is less than the aggregate of previous payments made by the Owner to Contractor, the Contractor shall reimburse the Owner within thirty (30) days of the date established for final completion.

### **§ 9.12 Final Completion and Payment for All Work under the Project**

**§ 9.12.1** Upon receipt of the Contractor's written notice that all the Work under the Contract is ready for final inspection and acceptance and upon receipt of a final application for payment, the Architect will make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final certificate for payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final certificate is due and payable. The Architect's final certificate for payment will constitute a further representation that conditions listed in Section 9.12.2 below as precedent to the Contractor being entitled to final payment have been fulfilled.

**§ 9.12.2** Final payment of all amounts due the Contractor, including the remaining retainage owed the Contractor shall not become due until the following events and submittals have occurred.

1. The Work has been finally completed as required by the Contract;
2. Contractor has inspected all Work and certified that the Work is finally complete and punch list Work has been performed;
3. The Architect has certified that the Work is finally completed including the performance of all punch list Work, and has issued the certificate of final completion for the Project;
4. The Owner's representative has signed the certificate of final completion;
5. Contractor has submitted to the Owner properly executed final, unconditional, claim waivers and releases in the form and format approved by the Owner;
6. Contractor has submitted to the Owner properly executed final, unconditional claim waivers and releases from all Subcontractors in the form and format approved by the Owner;
7. The Contractor has discharged at its own expense and cost, by bond, payment or otherwise, all liens, encumbrances or security interests that have been filed against this Project, the site or the improvement thereon;
8. The Contractor has delivered to the Owner all submittals and documents required by the Contract Documents to be delivered to the Owner, including, but not limited to, all as-built Drawings, Specifications, warranties, operations and maintenance manuals, and certificates of occupancy necessary for the Owner to occupy and use the Project;
9. All outstanding Change Orders and proposals related thereto have been executed or otherwise resolved;
10. The Contractor has provided the Owner with a written consent of surety to final payment; and
11. The Contractor has submitted, Architect has certified and Owner has received the Contractor's final application for payment, and Owner has approved same.

### **§ 9.13 Owners Right to Audit for Final Payment**

**§ 9.13.1** The Owner shall have the right to conduct an audit of the Contractor's final cost accounting before approval of final payment on the Project. If the Owner chooses to conduct such an audit, the Owner will have ninety (90) days from the receipt of the Contractor's final accounting to produce the audit report. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of section 9.12.2 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final certificate for payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate. The time periods stated in this section supersede those stated elsewhere in the General Conditions.

**§ 9.13.2** If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to seek an initial decision regarding the disputed amount in accordance with Article 15 of the General Conditions. This request shall be made within 14 days after the Contractor's receipt of a copy of the Architect's final certificate of payment. Failure to request a decision within the 14 day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final certificate for payment.

### **§ 9.14 Overpayment**

If the Owner shall determine, by audit or otherwise, that an overpayment has been made to the Contractor and thereafter makes written demand for repayment thereof, the Contractor shall within seven (7) days of receipt of such written demand for repayment, tender the amount of such overpayment to the Owner or otherwise resolve the demand for repayment to the Owner's satisfaction.

### **§ 9.15 No Waiver by Owner**

No payment of any of the Contractor's pay applications, including final payment, nor any determination by the Owner of Substantial Completion or final completion, nor any partial or entire use or occupancy of the Project by the Owner shall constitute an acceptance of any Work not in accordance with the Contract Documents.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

1. Employees on the Work and other persons who may be affected thereby;
2. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying Owners and users of adjacent sites and utilities.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor acknowledges that it is fully aware of the contents and requirements of O.C.G.A 25-9-1 through 25-9-12 concerning blasting and excavations near underground gas pipes and facilities and shall fully comply therewith. The Contractor acknowledges that it is fully aware of the contents and requirements of O.C.G.A 46-3-30 through 46-3-39 concerning safeguards against contact with high voltage lines, and the Contractor shall fully comply with said provisions. The Contractor acknowledges that it is responsible for employing and directing others to perform labor regarding scaffolding and staging within the meaning of O.C.G.A 34-1-1 and agrees to comply with said provisions.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

**§ 10.2.6** The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

### **§ 10.3 Injury or Damage to Person or Property**

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 14 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

### **§ 10.4 Hazardous Materials**

**§ 10.4.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a

material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

**§ 10.4.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written Agreement of the Owner and Contractor. If the Contractor's stoppage has affected the overall schedule for the Work, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.4.3** The Owner shall not be responsible under this section 10.4 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.4.4** The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.4.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

### **§ 10.5 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Contractor's Liability Insurance**

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under statutory workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees and persons other than Contractor's employees;
3. Claims for damages to property and personal injury or death arising from the Contractor's undertaking of the Work both in the form of commercial general liability insurance and umbrella liability insurance;
4. Claims for damages because of bodily injury, death of a person or property damage arising out of Ownership, maintenance and use of a motor vehicle; and
5. Claims associated with builder's risk in association with erection of a structure or bridge.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written to include the specific coverages and limits of liability specified in the requirements of this Contract. Coverage, whether written on an occurrence or claims made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment.

**§ 11.1.3** Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. The Contractor and Subcontractor shall not commence any Work of any kind until all insurance requirements contained in the Contract have been complied with and until evidence of such compliance satisfactions to the Owner as to form and content has been filed with the Owner. The Acord certificate of insurance or a preapproved substitute is the required form in all cases where reference is made to a certificate of insurance or an approved substitute. Certificates of insurance and any subsequent renewals must reference the Contract by Project name and Project/bid number. Certificate holder should read:

Gwinnett County Board of Commissioners  
75 Langley Drive  
Lawrenceville, Georgia 30046-0935

**§ 11.1.4** The Owner (Gwinnett County Board of Commissioners) should be shown as an additional insured on the general liability, auto liability, and umbrella liability policies held by the Contractor.

**§ 11.1.5** The certificate and the required insurance policies shall contain provisions that coverages afforded under the policies should provide 10 days of notice for nonpayment and should not be allowed to expire until at least 30 days after written notice has been given to the Owner.

**§ 11.1.6** The Contractor's insurance company, except Workers' Compensation carrier, must have an A.M. Best Rating of A-12 or higher. Certain workers' compensation funds may be acceptable by the approval of the insurance unit. European markets, including those based in London, and domestic surplus lines markets that operate on a non-admitted basis are exempt from the requirement provided that the Contractor's broker/agent can provide financial dates to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-12 or better. The insurance company should be licensed to do business by the Georgia Department of Insurance.

**§ 11.1.7** The Contractor agrees to provide complete certified copies of current insurance policies or a certified letter from the insurance company(ies) if requested by the Owner to verify the compliance with these insurance requirements.

**§ 11.1.8** Coverage under special form Contractors' equipment and contents insurance covering owned, used and leased equipment, tools, supplies, and contents required to perform the services called for in the Contract must be on a replacement cost basis. The Owner will be included as a loss payee in this coverage for any Owner owned equipment, tools, supplies, and contents.

**§ 11.1.9** All insurance coverages required to be provided by the Contractor will be primary over any insurance program or coverage carried by the Owner.

**§ 11.1.10** The Contractor agrees to waive all rights of subrogation against the Owner, the Gwinnett County Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from Work performed by the Contractor for the Owner.

**§ 11.1.11** The Contractor shall make available to the Owner through its records or records of its insurer, information regarding a specific claim related to any Project of the Owner. Any loss run information available from the Contractor or its insurer relating to a Project of the Owner will be made available to the Owner upon its request.

**§ 11.1.12** The Contractor shall incorporate a copy of these insurance requirements in article 11 in each and every subcontract with each and every Subcontractor in any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. The Contractor agrees that if for any reason a Subcontractor fails to procure and maintain insurance as required, all such required insurance will be procured and maintained by the Contractor at the Contractor's expense.

**§ 11.1.13** Compliance by the Contractor and all Subcontractors with the foregoing insurance requirements for insurance coverage shall not relieve the Contractor and Subcontractors of their responsibilities and obligations under the liability provisions of the Contract. The Contractor and all Subcontractors are to comply with the occupational safety and health act of 1970, public law 91-956, and any other laws and safety regulations that apply to this Contract. The Contractor shall at a minimum apply the risk management practices that apply to and are accepted by the general Contractors' industry.

## **§ 11.2 Performance Bond And Payment Bond**

**§ 11.2.1** The Contractor is required to furnish bonds covering faithful performance of the Contract (a Performance Bond) and payment of obligations arising thereunder (a Payment Bond) as a condition for the execution of the Contract. The bonds shall be in the forms contained in the solicitation document. The surety company providing the bonds must have an A.M. Best Rating of A-12 or higher.

**§ 11.2.2** Within ten (10) days of the execution and acceptance of the Guaranteed Maximum Price for the Project, and prior to commencement of any Work on the Project, the Construction Manager shall provide Payment and Performance Bonds in the penal sum equal to one hundred percent (100%) of the Contract Sum.

**§ 11.2.3** Upon the request of any persons or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall allow the Owner to do the same.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate Contractor in which event the Owner shall be responsible for payment of such costs.

### **§ 12.2 Correction of Work**

**§ 12.2.1** The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

**§ 12.2.2** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.10.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

Each and every provision of this Agreement shall be construed in accordance with and governed by Georgia law. The parties acknowledge that this Contract is executed in Gwinnett County, Georgia and that the Contract is to be performed in Gwinnett County, Georgia. Each party hereby consents to the Gwinnett Superior Court's sole jurisdiction over any dispute which arises as a result of the execution and performance of this Agreement, and each party hereby waives any and all objections to venue in the Gwinnett Superior Court.

### **§ 13.2 Assignment**

The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, Agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. The Contractor shall retain personal control and shall provide attention to its obligations pursuant to the Contract.

### **§ 13.3 Written Notice**

Any written notice, order, instruction, claim or other communication required pursuant to this Agreement shall be deemed to have been delivered or received as follows:

1. For the Contractor and Architect or Architect on behalf of the Owner, by personal delivery to the individual, or a member or officer of the firm or corporation for which it was intended, accomplished by in-person hand delivery or by courier or overnight express providing proof of delivery.
2. Three days after depositing in the United States mail a certified letter addressed to the Contractor, Architect or Owner where the mailing addresses for the three parties shall be those listed on the cover sheet of these conditions.

### **§ 13.4 Rights and Remedies**

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall

such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### **§ 13.5 Materials**

**§ 13.5.1** No materials, equipment, or supplies shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage or under a conditional sales Contract or other Agreement by which any interest is retained by the seller. The Contractor hereby warrants that it has good and marketable title to all materials, equipment and supplies used by it in the Work, and the Contractor further warrants that all materials, equipment and supplies shall be free from all liens, claims or encumbrances at the time of incorporation in this Work.

**§ 13.5.2** The Contractor shall furnish all materials and equipment to be incorporated in the Work. The Contractor warrants that all material and equipment incorporated in the Work shall be new unless otherwise specified in the Contract Documents and free of faults and defects. The warranty set forth in this paragraph shall survive final acceptance of the Work. Manufactured materials and equipment shall be obtained from sources that are currently manufacturing such materials and equipment, except as otherwise specifically approved by the Architect.

**§ 13.5.3** Materials and equipment to be incorporated in the Work shall be stored in such a manner as to preserve their quality and fitness for the Work and to facilitate inspection.

### **§ 13.6 Tests and Inspections**

**§ 13.6.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided in the construction documents, the Contractor shall schedule and make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity provided under Contract by the Owner. The Owner shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

**§ 13.6.2** If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under section 13.6.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by the Owner's testing agency, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs shall be at the Owner's expense.

**§ 13.6.3** If such procedures for testing, inspection or approval under Sections 13.6.1 and 13.6.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

**§ 13.6.4** Required certificates of testing, inspection or approval for installed systems, equipment and materials shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

**§ 13.6.5** If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

**§ 13.6.6** Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Owner for Cause**

**§ 14.1.1** The Owner may terminate the Contract if the Contractor:

1. Is adjudged bankrupt, makes a general assignment for the benefit of creditors, suffers the appointment of a receiver on account of its insolvency;
2. Refuses or fails to supply enough properly skilled workers or proper materials;
3. Fails to make payment to Subcontractors for materials or labor in accordance with the respective Agreements between the Contractor and the Subcontractors;
4. Disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
5. Otherwise is guilty of a material violation of a provision of the Contract Documents.

**§ 14.1.2** When any of the above reasons exists and the Contractor fails within seven days after receipt of a written notice to commence and continue correction of such default, neglect, or violation with diligence and promptness, the Owner, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety ten days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

1. Exclude the Contractor from the site and take possession of the site as well as all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
2. Finish the Work by whatever reasonable method the Owner may deem expedient and upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

**§ 14.1.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

**§ 14.1.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

**§ 14.1.5** Termination of this Contract pursuant to this article may result in the disqualification of the Contractor from participating in future County contracts and will be referred to the Purchasing Policy and Review Committee.

### **§ 14.2 Suspension by the Owner for Convenience**

The Owner or Architect may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine to be

appropriate for the convenience of the Owner. If the performance of the Work is interrupted for an unreasonable period of time by an act of the Owner or Architect in the administration of the Contract, an equitable adjustment shall be made for any increase in the Contractor's costs of performance and any increase in the time required for performance of the Work necessarily caused by the unreasonable suspension, delay, or interruption. Any equitable adjustment shall be reduced to writing and shall constitute a modification to the Contract. In no event, however, shall an equitable adjustment be made to the extent that performance of the Contract would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor. No claim for an equitable adjustment pursuant to this paragraph shall be permitted before the Contractor shall have notified the Architect in writing of the act or failure to act involved, and no claim shall be allowed unless asserted in writing to the Architect within ten days after the termination of such suspension, delay or interruption.

### **§ 14.3 Termination by Owner for Convenience**

**§ 14.3.1** The Owner may, at any time upon 30 days written notice to the Contractor, terminate the whole or any portion of the Work for the convenience of the Owner. Said termination shall be without prejudice to any right or remedy of the Owner provided herein. In addition, in the event the Contract has been terminated due to the default of the Contractor, and if it is later determined that the Contractor was not in default pursuant to the provisions of the Contract at the time of termination, then such termination shall be considered a termination for convenience pursuant to this paragraph.

**§ 14.3.2** In the event that the Owner terminates the Contract for the convenience of the Owner, the Owner shall only be liable to the Contractor for those costs reimbursable to the Contractor plus a mark-up of ten percent on the actual fully accounted cost recovered pursuant to this paragraph. In the event that it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of settlement to reflect the indicated rate of loss. In the event of termination for the convenience of the Owner, the Owner shall pay the Contractor the following amounts determined by the Architect:

1. An amount for supplies, services, or property accepted by the Owner for which payment has not previously been made. The price to be paid for these items shall be equivalent to the aggregate price for such supplies or services computed in accordance with the price specified in the Contract appropriately adjusted for any saving of freight or other charges; and
2. The total of:
  - a. The costs incurred in the performance of the Work terminated, including initial costs and preparatory expenses allocable thereto, but exclusive of any costs attributable to supplies or services previously paid;
  - b. The costs of settling and paying claims arising pursuant to the termination of the Work under said contracts or orders which are properly chargeable to the terminated portion of the Contract (exclusive of the amounts paid or payable on account of completed items or equipment delivered or services furnished by a Subcontractor or vendor prior to the effective date of the notice of termination, which amounts shall be included in the costs payable pursuant to (1.); and
  - c. The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonable and necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the Contract.

**§ 14.3.3** In the event of termination for the convenience of the Owner, the total amount to be paid to the Contractor shall not exceed the Contract Sum as reduced by the amount of payments otherwise made, by the Contract price for Work not terminated, and as otherwise permitted by the Contract. Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor the fair value, as determined by the Architect, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to another buyer.

#### **§ 14.4 Contractor's Responsibilities Upon Termination**

After receipt of a notice of termination from the Owner, and except as otherwise directed by the Architect, the Contractor shall complete the actions as stated below in Section 14.4.1 through 14.4.9.

**§ 14.4.1** The Contractor shall stop Work under the Contract on the date and to the extent specified in the notice of termination.

**§ 14.4.2** The Contractor shall place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated.

**§ 14.4.3** The Contractor shall terminate all orders and subcontracts to the extent that they relate to the performance of the Work terminated by the notice of termination.

#### **§14.5 Termination by the Contractor for Cause**

**§14.5.1** The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any persons or entities performing portions of the Work under direct or indirect contract with the Contractor because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding the certification, or because the Owner has not made payment on the Certificate for Payment within the times stated in the Contract Documents.

**§14.5.2** If the situation described in 14.5.1 exists, the Contractor may, upon 15 days prior written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed.

**§ 14.5.3** The Contractor shall assign to the Owner in the manner, at the times, and to the extent directed by the Architect, all of the rights, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, at its discretion, to settle or pay any and all claims arising out of the termination of such orders or subcontracts.

**§ 14.5.4** The Contractor shall settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Architect, to the extent the Architect may require, which approval or ratification shall be final for all purposes.

**§ 14.5.5** The Contractor shall transfer title and deliver to the entity or entities designated by the Owner, in the manner, at the times, and to the extent, if any, directed by the Architect, and to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the Work as has been terminated:

1. The fabricated or non-fabricated parts, Work, and progress, partially completed supplies, and equipment, materials, parts, tools, dyes, jigs, and other fixtures, completed Work, supplies, and other material produced as a part of or acquired in connection with the performance of the Work terminated by the notice of termination; and
2. The completed or partially completed plans, Drawings, information, and other property to the Work.

**§ 14.5.6** The Contractor shall use its best efforts to sell in the manner, at the times, to the extent, and at the prices directed or authorized by the Architect, any property described in 14.5.5, provided, however, that the Contractor shall not be required to extend credit to any buyer and further provided that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor pursuant to this Contract.

**§ 14.5.7** The Contractor shall complete performance of such part of the Work as shall not have been terminated by the notice of termination.

**§ 14.5.8** The Contractor shall take such action as may be necessary, or as the Architect may direct, for the protection and preservation of the property related to the Contract which is in the possession of the Contractor and in which the Owner has or may acquire an interest.

#### **§ 14.6 Cost to Cure**

If the Owner terminates the whole or any part of the Work pursuant to the Contract, the Owner may procure upon such terms and in such manner as the Architect may deem appropriate, materials, supplies or services similar to those so terminated, and the Contractor shall be liable to the Owner for any excess costs for such similar materials, supplies or services. The Contractor shall continue the performance of the Contract to the extent not terminated hereunder.

#### **§ 14.7 Deductions to Payment and Reimbursement**

In arriving at any amount due the Contractor after termination pursuant to the terms of the Contract, there shall be deducted all liquidated damages, advance payments made to the Contractor applicable to the termination portion of the Contract, the amount of any claim the Owner may have against the Contractor, the amount determined by the Architect to be necessary to protect the Owner against loss due to outstanding liens or claims, and the agreed price of materials acquired or sold by the Contractor and not otherwise recovered or credited to the Owner. The Contractor shall refund to the Owner any amount paid by the County to the Contractor in excess of the costs reimbursable to the Contractor.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 Claims**

**§ 15.1.1** A claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of the Contract. The term claim also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate claims shall rest with the party making the claim.

**§ 15.1.2** Claims by the Contractor must be initiated by written notice to the Architect. Claims by the Contractor must be initiated within 14 days after occurrence of the event giving rise to such claim or within 14 days after the Contractor first recognizes the condition giving rise to the claim, whichever is later.

**§ 15.1.3** Pending final resolution of a claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue certificates for payment in accordance with the decisions of the Contract document.

**§ 15.1.4** If the Contractor wishes to make a claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for claims relating to an emergency endangering life or property arising under Section 10.4.

**§ 15.1.5** If the Contractor wishes to make a claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay, only one claim is necessary. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating 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.

## **§ 15.2 Architect's Review and Recommendation**

**§ 15.2.1** Claims shall be referred to the Architect for a recommendation to the Owner and Contractor.

**§ 15.2.2** The Architect will review claims and within ten days of the receipt of a claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party; (2) reject the claim in whole or in part; (3) recommend approval of the claim; (4) suggest a compromise; or (5) advise the parties that the Architect is unable to make a recommendation regarding the claim because it lacks sufficient information to evaluate the merits of the claim.

**§ 15.2.3** In evaluating claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a recommendation. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Architect requests a party to provide a response to a claim or to furnish additional supporting data, such party shall respond within ten days after receipt of such request and shall either (1) provide a response on the requested supporting data; (2) advise the Architect when the response or supporting data will be furnished; or (3) advise the Architect that no supporting data will be furnished.

**§ 15.2.5** The Architect will make a recommendation regarding the claim or indicate that the Architect is unable to resolve the claim. This recommendation shall (1) be in writing; (2) state the reasons for approval or rejection; and (3) notify the parties of any proposed change in the Contract Sum or Contract Time or both.

## MAJOR CONSTRUCTION INSURANCE REQUIREMENTS

1. Statutory Workers' Compensation Insurance:
  - (a) Employers Liability:
    - ✓ Bodily Injury by Accident-\$500,000 each accident
    - ✓ Bodily Injury by Disease -\$500,000 policy limit
    - ✓ Bodily Injury by Disease -\$500,000 each employee
  
2. Automobile Liability Insurance:
  - (a) \$1,000,000 limit of liability per occurrence for Bodily Injury and Property Damage
  - (b) Comprehensive form covering all owned, non-owned, leased, hired, and borrowed vehicles
  - (c) Additional Insured Endorsement
  - (d) Contractual Liability
  
3. Commercial General Liability Insurance:
  - (a) \$1,000,000 limit of liability per occurrence for Bodily Injury and Property Damage
  - (b) \$1,000,000 limit of liability per occurrence for Personal Injury
  - (c) Separate Owner's and Contractor's Protective policy with Gwinnett County Board of Commissioners as Named Insured. Limit of Liability-\$25,000,000\*. Provided by General Contractor
 

**\* The Separate Owner's and Contractor's Protection policy with coverage is \$25,000,000. The County recognizes that the duration of the project is such that the cost of this policy could increase, and at its discretion may choose to negotiate changes in terms. The County is interested in obtaining the best value for the project while adequately protecting itself and will work with the selected Construction Manager and insurance carriers through its Risk Management staff to obtain such.**
  - (d) The following additional coverage must apply:
    - ✓ 1986 (or later) ISO Commercial General Liability Form
    - ✓ Dedicated Limits per Project Site
    - ✓ Completed Operations coverage maintained for three (3) years
    - ✓ Additional Insured Endorsement ( Form B CG 2010 11 85)
    - ✓ Blanket Contractual Liability (Included in 1986 Form)
    - ✓ Broad Form Property Damage (Included in 1986 Form)
    - ✓ Severability of Interest (Included in 1986 Form)
    - ✓ Underground, explosion, and collapse coverage (Included in 1986 Form)
    - ✓ Personal Injury (Deleting both contractual and employee exclusions)
    - ✓ Incidental Medical Malpractice
    - ✓ Hostile Fire Pollution Wording
  
4. Umbrella Liability Insurance for General Contractor:
  - (a) \$24,000,000 limit of liability per Occurrence/Aggregate
  - (b) The following additional coverage must apply:
    - ✓ Additional Insured Endorsement
    - ✓ Concurrency of Effective Dates with Primary
    - ✓ Blanket Contractual Liability
    - ✓ Drop Down Feature
    - ✓ Care, Custody, and Control - Follow Form Primary
    - ✓ Aggregates: Apply Where Applicable in Primary
    - ✓ Completed Operations coverage maintained for three (3) years
    - ✓ Umbrella Policy must be as broad as the primary policy

5. Umbrella Liability Insurance for Subcontractors:
  - (a) \$4,000,000 limit of liability per Occurrence/Aggregate
  - (b) The following additional coverage must apply:
    - ✓ Additional Insured Endorsement
    - ✓ Concurrence of Effective Dates with Primary
    - ✓ Blanket Contractual Liability
    - ✓ Drop Down Feature
    - ✓ Care, Custody, and Control - Follow Form Primary
    - ✓ Aggregates: Apply Where Applicable in Primary
    - ✓ Completed Operations coverage maintained for three (3) years
    - ✓ Umbrella Policy must be as broad as the primary policy
6. The cancellation should provide 10 days' notice for nonpayment and 30 days' notice of cancellation
7. **Certificate Holder should read:**  
**Gwinnett County Board of Commissioners**  
**75 Langley Drive**  
**Lawrenceville, GA 30046-6935**
8. Insurance Company, except Workers' Compensation Funds, must have an A.M. Best Rating of A-12 or higher. Certain Workers' Comp Funds may be acceptable by the approval of the Insurance Unit. European markets including those based in London and domestic surplus lines markets that operate on a non-admitted basis are exempt from this requirement provided that the contractor's broker/agent can provide financial data to establish that a market is equal to or exceeds the financial strengths associated with the A.M. Best's rating of A-12 or better.
9. Insurance Company should be licensed to do business by the Georgia Department of Insurance.
10. Gwinnett County Board of Commissioners must be shown as an additional insured on General Liability, Auto Liability, and Umbrella.
11. If applicable, Aircraft and Watercraft Bodily Injury Liability and Property Damage Liability Insurance \$1,000,000 per person and occurrence, if Contractor uses owned or non-owned aircraft and watercraft in his/her operation.
12. All insurance coverages required to be provided by the Contractor will be primary over any insurance program carried by the County.
13. Contractor shall incorporate a copy of the insurance requirements as herein provided in each and every subcontract with each and every Subcontractor in any tier, and shall require each and every Subcontractor of any tier to comply with all such requirements. Contractor agrees that if for any reason Subcontractor fails to procure and maintain insurance as required, all such required Insurance shall be procured and maintained by Contractor at Contractor's expense.
14. No Contractor or Subcontractor shall commence any work of any kind under this Contract until all insurance requirements contained in this Contract have been complied with and until evidence of such compliance satisfactory to Gwinnett County as to form and

content has been filed with Gwinnett County. **The Acord Certificate of Insurance or a preapproved substitute is the required form in all cases where reference is made to a Certificate of Insurance or an approved substitute.**

15. All Risk Contractor's Equipment Insurance covering owned, used, and leased equipment required to perform the services called for in the Contract.
16. Builders Risk Insurance: The Contractor shall procure and maintain Builder's Risk Insurance which provides "All Risk" coverage including earthquake and flood, collapse, transit coverage, boiler and machinery including operational testing and startup, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage, resultant damage from faulty workmanship or materials or errors in design. The policy shall include no exclusion for foundations or underground pipes, tanks, or machinery. The limit of insurance will be for the amount necessary to cover 100% of the work required under this Contract on a replacement cost basis. The deductible shall not exceed \$100,000. Gwinnett County Board of Commissioners, Contractors and Subcontractors will be named as insured. The policy shall cover materials and equipment stored at the site or at another location that was agreed to in writing by Gwinnett County prior to be incorporated in the work. Permission is granted for complete or partial occupancy of the project by Owner before or after substantial completion. The County, however, will work with the selected company to establish deductibles or to accept self-insurance when the firm can demonstrate that it is financially capable of paying a claim(s) up to their deductible or is approved as self-insured by the State of Georgia and has the financial resources to pay the claims.
17. The Contractor shall make available to the County, through its records or records of their insurer, information regarding a specific claim. Any loss run information available from the contractor or their insurer will be made available to the County upon their request.
18. Compliance by the Contractor and all Subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all Subcontractors of their liability provisions of the Contract.
19. The Contractor and all Subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, and any other laws that may apply to this Contract.
20. The Contractor shall at a minimum apply risk management practices accepted by the contractors' industry.
21. The Contractor shall agree to waive all rights of subrogation against the County, the Board of Commissioners, its officers, officials, employees, and volunteers from losses arising from work performed by the contractor for the County.
22. The County will not provide insurance coverage on the project.

#### Surety Bonds (If Required)

All of the surety requirements will stay the same except the Surety Company must have the same rating as item 9 above.

BOND #

**PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_

(Name of Contractor)

\_\_\_\_\_

(Address of Contractor)

a \_\_\_\_\_

(Corporation, Partnership or Individual)

Hereinafter called Principal, and

\_\_\_\_\_

(Name of Surety)

\_\_\_\_\_

(Address of Surety)

a Corporation of the State of \_\_\_\_\_, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

Gwinnett County Board of Commissioners \_\_\_\_\_

(Name of Obligee)

75 Langley Drive, Lawrenceville, Georgia 30046 \_\_\_\_\_

(Address of Obligee)

Hereinafter called Obligee;

for the use and protection of all subcontractors and all persons supplying labor, services, skill, tools, machinery, materials and/or equipment in the prosecution of the work provided for in the contract hereinafter referred to in the full and just sum of \_\_\_\_\_

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum, will and truly to be made, the Principal and Surety bind themselves, their, and each of their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, as whereas the Principal entered into a certain Contract, hereto attached, with the Obligee.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well, truly, and faithfully perform said Contract according to its terms, covenants, and conditions, and shall promptly pay all persons furnishing labor, materials services, skill, tools, machinery and/or equipment for use in the performance of said Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

ALL persons who have furnished labor, materials, services, skill, tools, machinery and/or equipment for use in the performance of said Contract shall have a direct right of action on this Bond, provided payment has not been made in full within ninety (90) days after the last day on which labor was performed, materials, services, skill, tools, machinery, and equipment furnished or the subcontract completed.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed thereunder.

PROVIDED, HOWEVER, that no suit or action shall be commenced hereunder by any person furnishing labor, materials, services, skill, tools, machinery, and/or equipment having a direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Principal:

Unless such person shall have given notice to the Principal within ninety (90) days after such person did, or performed the last of the work or labor, or furnished the last of the materials, services, skill, tools, machinery and/or equipment for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials, services, skill, tools, machinery and/or equipment were furnished, or for whom the work or labor was done or performed. Such a notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Principal, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer, and a copy of such notice shall be delivered to the Obligee, to the person and at the address provided for in the Contract, within five (5) days of the mailing of the notice to the Principal.

PROVIDED, FURTHER, that any suit under this bond must be instituted before the expiration of one (1) year after the acceptance of the public works covered by the Contract by the proper authorities.

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. § 36-91-1 et seq., and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

[Signatures Next Page]

ATTEST:

\_\_\_\_\_  
(Principal Secretary)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Resident or Nonresident Agent

(SEAL)

\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_  
(Principal)

By: \_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Surety)

By \_\_\_\_\_  
(Attorney-in-Fact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

**BONDING AGENT CONTACT INFO**

**Print Name** \_\_\_\_\_

**Company Name** \_\_\_\_\_

**E-Mail** \_\_\_\_\_

**Phone** \_\_\_\_\_

NOTE: If Contractor is Partnership, all partners should execute Bond. Surety Companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

**Principal Secretary, Principal and Witness as to Principal signature lines must be signed by three different individuals. Additionally, Resident or Nonresident Agent, Witness as to Surety, and Attorney-in-fact must be signed by three different individuals.**

WINNETT COUNTY, GEORGIA

BOND # \_\_\_\_\_

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

\_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_  
(Corporation, Partnership or Individual)

Hereinafter called Principal, and

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Address of Surety)

a Corporation of the State of \_\_\_\_\_, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

Gwinnett County Board of Commissioners  
(Name of Obligee)

75 Langley Drive, Lawrenceville, Georgia 30046  
(Address of Obligee)

hereinafter referred to as Obligee, are held and firmly bound unto said Obligee and all persons doing work or furnishing skill, tools, machinery, supplies, or material under or for the purpose of the Contract hereinafter referred to, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such, as whereas the Principal entered into a certain Contract, hereto attached, with the Obligee.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well, truly, fully and faithfully perform said Contract according to its terms, covenants, conditions, and Agreements of said Contract during the original term of said Contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and Agreement of any and all duly authorized modifications of said Contract that may hereafter be made, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed thereunder.

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. § 36-91-1 et seq., and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

(Signatures Next Page)

ATTEST:

\_\_\_\_\_  
(Principal Secretary)

(SEAL)

\_\_\_\_\_  
(Witness as to Principal)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_  
(Principal)

By: \_\_\_\_\_

\_\_\_\_\_  
(Address)

ATTEST:

\_\_\_\_\_  
Resident Agent

(SEAL)

\_\_\_\_\_  
(Witness as to Surety)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_  
(Surety)

By: \_\_\_\_\_  
(Attorney-in-Fact)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

**BONDING AGENT CONTACT INFO**

**Print Name** \_\_\_\_\_

**Company Name** \_\_\_\_\_

**E-Mail** \_\_\_\_\_

**Phone** \_\_\_\_\_

NOTE: If Contractor is Partnership, all partners should execute Bond. Surety Companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located.

**Principal Secretary, Principal and Witness as to Principal signature lines must be signed by three different individuals. Additionally, Resident or Nonresident Agent, Witness as to Surety, and Attorney-in-fact must be signed by three different individuals.**

**FAILURE TO RETURN THIS PAGE MAY RESULT IN REMOVAL OF YOUR COMPANY FROM COMMODITY LISTING.**

**Buyer Initials: CD**

**IF YOU DESIRE TO SUBMIT A "NO BID" IN RESPONSE TO THIS PACKAGE, PLEASE INDICATE BY CHECKING ONE OR MORE OF THE REASONS LISTED BELOW AND EXPLAIN.**

- Do not offer this product or service; remove us from your vendor list for this item only.
- Specifications too "tight"; geared toward one brand or manufacturer only.
- Specifications are unclear.
- Unable to meet specifications
- Unable to meet bond requirements
- Unable to meet insurance requirements
- Our schedule would not permit us to perform.
- Insufficient time to respond.
- Other

\_\_\_\_\_

COMPANY NAME \_\_\_\_\_

AUTHORIZED REPRESENTATIVE SIGNATURE \_\_\_\_\_

**GWINNETT COUNTY**  
**DEPARTMENT OF FINANCIAL SERVICES – PURCHASING DIVISION**  
**GENERAL INSTRUCTIONS FOR PROPOSERS, TERMS AND CONDITIONS**

**I. PREPARATION OF PROPOSALS**

- A. Each proposer shall examine the drawings, specifications, schedule and all instructions. Failure to do so will be at the proposer's risk.
- B. Each proposer shall furnish all information required by the proposal form or document. Each proposer shall sign the proposal and print or type his or her name on the schedule. The person signing the proposal must initial erasures or other changes. An authorized agent of the company must sign proposals.
- C. With the exception of solicitations for the sale of real property, individuals, firms and businesses seeking an award of a Gwinnett County contract may not initiate or continue any verbal or written communications regarding a solicitation with any County officer, elected official, employee or other County representative other than the Purchasing Associate named in the solicitation between the date of the issuance of the solicitation and the date of the final contract award by the Board of Commissioners. The Purchasing Director will review violations. If determined that such communication has compromised the competitive process, the offer submitted by the individual, firm or business may be disqualified from consideration for award. Solicitations for the sale of real property may allow for verbal or written communications with the appropriate Gwinnett County representative.
- D. Sample contracts (if pertinent) are attached. These do NOT have to be filled out with the bid/proposal submittal, but are contained for informational purposes only. If awarded, the successful proposer(s) will be required to complete them prior to contract execution.
- E. Effective, July 1, 2013 and in accordance with the Georgia The Illegal Immigration Reform Enhancements for 2013, an original signed, notarized and fully completed Contractor Affidavit and Agreement should be included with your bid/proposal submittal, if the solicitation is for the physical performance of services for all labor or service contract(s) that exceed \$2,499.99 (except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia). Failure to provide the Contractor Affidavit and Agreement with your bid/proposal submittal may result in bid/proposal being deemed non-responsive and automatic rejection.

**II. DELIVERY**

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

**III. EXPLANATION TO PROPOSERS**

Any explanation desired by a proposer regarding the meaning or interpretation of the request for proposals, drawings, specifications, etc. must be requested by the question cutoff deadline stated in the solicitation in order for a reply to reach all proposers before the close of the proposal. Any information given to a prospective proposer concerning a request for proposal will be furnished to all prospective proposers as an addendum to the invitation if such information is necessary or if the lack of such information would be prejudicial to uninformed proposers. The written proposal document supersedes any verbal or written communication between the parties. Receipt of addenda should be acknowledged in the proposal. **It is the proposer's responsibility to ensure that**

**they have all applicable addenda prior to proposal submittal.** This may be accomplished via contact with the assigned Procurement Agent prior to proposal submittal.

#### **IV. SUBMISSION OF PROPOSALS**

- A. Proposals shall be enclosed in a sealed package, addressed to the Gwinnett County Purchasing Office with the name and address of the proposer, the date and hour of opening, and the request for proposal number on the face of the package. Telegraphic/faxed proposals will not be considered. Any addenda should be enclosed in the sealed envelopes as well.
- B. ADD/DEDUCT: Add or deduct amounts indicated on the outside of the envelope are allowed and will be applied to the lump sum amount. Amount shall be clearly stated and should be initialed by an authorized company representative.
- C. Samples of items, when required, must be submitted within the time specified and, unless otherwise specified by the County, at no expense to the County. Unless otherwise specified, samples will be returned at the proposer's request and expense if testing does not destroy items.
- D. Items offered must meet required specifications and must be of a quality that will adequately serve the use and purpose for which intended.
- E. Full identifications of each item proposed, including brand name, model, catalog number, etc. must be furnished to identify exactly what the proposer is offering. Manufacturer's literature may be furnished.
- F. The proposer must certify that items to be furnished are new and that the quality has not deteriorated so as to impair its usefulness.
- G. Unsigned proposals will not be considered except in cases where proposal is enclosed with other documents that have been signed. The County will determine this.
- H. Gwinnett County is exempt from federal excise tax and Georgia sales tax with regard to goods and services purchased directly by Gwinnett County. Suppliers and contractors are responsible for federal excise tax and sales tax, including taxes for materials incorporated in county construction projects. Suppliers and contractors should contact the State of Georgia Sales Tax Division for additional information.
- I. Information submitted by a proposer in the proposal process shall be subject to disclosure after proposal award in accordance with the Georgia Open Records Act.

#### **V. WITHDRAWAL OF PROPOSAL DUE TO ERRORS**

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

To withdraw a proposal after proposal opening, the supplier has up to forty-eight (48) hours to notify the Gwinnett County Purchasing Office of an obvious clerical error made in calculation of proposal. Withdrawal of bid bond for this reason must be done in writing. Suppliers who fail to request withdrawal of proposal by the required forty-eight (48) hours shall automatically forfeit bid bond. Bid bond may not be withdrawn otherwise.

Proposal withdrawal is not automatically granted and will be allowed solely at Gwinnett County's discretion.

**VI. TESTING AND INSPECTION**

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

**VII. F.O.B. POINT**

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

**VIII. PATENT INDEMNITY**

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

**IX. BID BONDS AND PAYMENT AND PERFORMANCE BONDS  
(IF REQUIRED, FORMS WILL BE PROVIDED IN THIS DOCUMENT)**

A five percent (5%) bid bond, a one hundred percent (100%) performance bond, and a one hundred percent (100%) payment bond must be furnished to Gwinnett County for any proposal as required in the proposal package or document. **Failure to submit a bid bond with the proper rating will result in the proposal being deemed non-responsive.** Bonding company must be authorized to do business in Georgia by the Georgia Insurance Commission, listed in the Department of the Treasury's publication of companies holding certificates of authority as acceptable surety on Federal bonds and as acceptable reinsuring companies, and have an A.M. Best rating as stated in the insurance requirement of the solicitation. **The bid bond, payment bond, and performance bond must have the proper an A.M. Best rating as stated in the proposal when required in the proposal package or document.**

**X. DISCOUNTS**

- A. Time payment discounts will be considered in arriving at net prices and in award of proposal. Offers of discounts for payment within ten (10) days following the end of the month are preferred.
- B. In connection with any discount offered, time will be computed from the date of delivery and acceptance at destination, or from the date correct invoice or voucher is received, whichever is the later date. Payment is deemed to be made for the purpose of earning the discount, on the date of the County check.

**XI. AWARD**

- A. Award will be made to the highest scoring responsive and responsible proposer according to the criteria stated in the proposal documents. The County may make such investigations as it deems necessary to determine the ability of the proposer to perform, and the proposer shall furnish to the County all such information and data for this purpose as the County may request. The County reserves the right to reject any proposal if the evidence submitted by, or investigation of, such proposer fails to satisfy the County that such proposer is properly qualified to carry out the obligations of the contract.
- B. The County reserves the right to reject or accept any or all proposals and to waive technicalities, informalities and minor irregularities in the proposals received.
- C. The County reserves the right to make an award as deemed in its best interest, which may include awarding a proposal to a single proposer or multiple proposers; or to award the

whole proposal, only part of the proposal, or none of the proposal to single or multiple proposers, based on its sole discretion of its best interest.

- D. In the event scores rounded to the nearest whole number result in a tie score, the award will be based on lowest cost.
- E. In the event that negotiations with the highest ranked firm are unsuccessful the County may then negotiate with the second ranked firm and so on until a satisfactory agreement has been reached.

**XII. DELIVERY FAILURES**

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

**XIII. COUNTY FURNISHED PROPERTY**

The County will furnish no material, labor or facilities unless so provided in the RFP.

**XIV. REJECTION OF PROPOSALS**

Failure to observe any of the instructions or conditions in this request for proposal shall constitute grounds for rejection of proposal.

**XV. CONTRACT**

Each proposal is received with the understanding that the acceptance in writing by the County of the offer to furnish any or all of the commodities or services described therein shall constitute a contract between the proposer and the County which shall bind the proposer on his part to furnish and deliver the articles quoted at the prices stated in accordance with the conditions of said accepted proposal. The County, on its part, may order from such contractor, except for cause beyond reasonable control, and to pay for, at the agreed prices, all articles specified and delivered.

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

Any Consultant as defined in O.C.G.A. §36-80-28 that is engaged to develop or draft specifications/requirements or serve in a consultative role during the procurement process for any County procurement method, by entering into such an arrangement or executing a contract that the consultant agrees to: (1) Avoid any appearance of impropriety and shall follow all policies and procedures of the County (2) disclose to the County, any material transaction or relationship pursuant to §36-80-28, considered a conflict of interest, any involvement in litigation or other dispute, relationship or financial interest not disclosed in the ethics affidavit, when ethics affidavit is required or such that may be discovered during the pending contract or arrangement; and (3) Acknowledge that any violation or threatened violation of the agreement may cause irreparable injury to the County, entitling the County, to seek injunctive relief in addition to all other legal remedies. This requirement does not apply to confidential economic development activities

pursuant to §50-18-72 or to any development authority for the purpose of promoting the development of trade, commerce, industry, and employment opportunities or for other purposes and, without limiting the generality of the foregoing, shall specifically include all authorities created pursuant to Title 36 Chapter 62; However, per provisions of subparagraph (e)(1)(B) of Code Section 36-62-5 reporting of potential conflicts of interest by development authority board members is required.

When the contractor has performed in accordance with the provisions of this agreement, Gwinnett County shall pay to the contractor, within thirty (30) days of receipt of any department approved payment request and based upon work completed or service provided pursuant to the contract, the sum so requested, less the retainage stated in this agreement, if any. In the event that Gwinnett County fails to pay the contractor within sixty (60) days of receipt of a pay request based upon work completed or service provided pursuant to the contract, the County shall pay the contractor interest at the rate of ½% per month or pro rata fraction thereof, beginning the sixty-first (61<sup>st</sup>) day following receipt of pay requests. The contractor’s acceptance of progress payments or final payment shall release all claims for interest on said payment.

**XVI. NON-COLLUSION**

Proposer declares that the proposal is not made in connection with any other proposer submitting a proposal for the same commodity or commodities, and that the proposal is bona fide and is in all respects fair and without collusion or fraud. Each proposer, if included in proposal documents, shall execute an affidavit of non-collusion. Collusion and fraud in bid preparation shall be reported to the State of Georgia Attorney General and the United States Justice Department.

**XVII. DEFAULT**

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

**XVIII. TERMINATION FOR CAUSE**

The County may terminate this agreement for cause upon ten days prior written notice to the contractor of the contractor’s default in the performance of any term of this agreement. Such termination shall be without prejudice to any of the County’s rights or remedies by law.

**XIX. TERMINATION FOR CONVENIENCE**

The County may terminate this agreement for its convenience at any time upon 30 days written notice to the contractor. In the event of the County’s termination of this agreement for convenience, the contractor will be paid for those services actually performed. Partially completed performance of the agreement will be compensated based upon a signed statement of completion to be submitted by the contractor, which shall itemize each element of performance.

**XX. DISPUTES**

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

**XXI. SUBSTITUTIONS:**

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

**XXII. INELIGIBLE PROPOSERS**

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

**XXIII. OCCUPATION TAX CERTIFICATE**

Each successful proposer shall provide evidence of a valid Gwinnett County occupation tax certificate if the proposer maintains an office within the unincorporated area of Gwinnett County. Incorporated, out of County and out of State proposers are required to provide evidence of a certificate to do business in any town, County or municipality in the State of Georgia, or as otherwise required by County ordinance or resolution.

**XXIV. PURCHASING POLICY AND REVIEW COMMITTEE:**

The Purchasing Policy and Review Committee has been established to review purchasing procedures and make recommendations for changes; resolve problems regarding the purchasing process; make recommendations for standardization of commodities, schedule buying, qualified products list, annual contracts, supplier performance (Ineligible Source List) and other problems or requirements related to Purchasing. The Purchasing Policy and Review Committee have authority to place suppliers and contractors on the Ineligible Source List for reasons listed in the Gwinnett County Purchasing Ordinance.

**XXV. AMERICANS WITH DISABILITIES ACT:**

All contractors for Gwinnett County are required to comply with all applicable sections of the Americans with Disabilities Act (ADA) as an equal opportunity employer. In compliance with the Americans with Disabilities Act (ADA), Gwinnett County provides reasonable accommodations to permit a qualified applicant with a disability to enjoy the privileges of employment equal to those employees without disabilities. Disabled individuals must satisfy job requirements for education background, employment experience, and must be able to perform those tasks that are essential to the job with or without reasonable accommodations. Any requests for reasonable accommodations required by individuals to fully participate in any open meeting, program or activity of Gwinnett County should be directed to Matthew Eason, ADA Coordinator, 75 Langley Drive, Lawrenceville, Georgia 30046, matthew.eason@gwinnettcountry.com.

**XXVI. ALTERATIONS OF SOLICITATION AND ASSOCIATED DOCUMENTS:**

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

**XXVII. TAX LIABILITY:**

Local and state governmental entities must notify contractors of their use tax liability on public works projects. Under Georgia law, private contractors are responsible for paying a use tax equal to the sales tax rate on material and equipment purchased under a governmental exemption that is incorporated into a government construction project: excluding material and equipment provided for the installation, repair, or expansion of a public water, gas or sewer system when the property is installed for general distribution purposes. To the extent the tangible personal property maintains its character (for example the installation of a kitchen stove), it remains tax-exempt. However, if the installation incorporates the tangible personal property into realty, e.g., the installation of sheetrock, it becomes taxable to the private contractor. See O.C.G.A. 48-8-3(2) and O.C.G.A. 48-8-63.

**XXVIII. STATE LAW REGARDING WORKER VERIFICATION**

Effective July 1, 2013 State Law requires that all who enter into a contract for the physical performance of services for all labor or service contract(s) that exceed \$2,499.99 (except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia) for the County, must satisfy the Illegal Immigration Reform and Enforcement Act, in all manner, and such are conditions of the contract.

The Purchasing Division Director with the assistance of the Performance Analysis Division shall be authorized to conduct random audits of a contractor's or subcontractors' compliance with the Illegal Immigration Reform Enhancements for 2013 and the rules and regulations of the Georgia Department of Labor. The contractor and subcontractors shall retain all documents and records of its compliance for a period of five (5) years following completion of the contract. This requirement shall apply to all contracts for all labor or service contracts that exceed \$2,499.99 except for services performed by an individual who is licensed pursuant to Title 26, Title 43, or the State Bar of Georgia.

Whenever it appears that a contractor's or subcontractor's records are not sufficient to verify the work eligibility of any individual in the employ of such contractor or subcontractor, the Purchasing Director shall report same to the Department of Homeland Security and may result in termination of the contract if it is determined at any time during the work that the contractor/or subcontractor is no longer in compliance with the Illegal Immigration Reform and Enforcement Act.

**XXIX. SOLID WASTE ORDINANCE**

No individual, partnership, corporation or other entity shall engage in solid waste handling except in such a manner as to conform to and comply with the current Gwinnett County Solid Waste Ordinance and all other applicable local, state and federal legislation, rules, regulation and orders.

**XXX. GENERAL CONTRACTORS LICENSE**

Effective July 1, 2008: All General Contractors must have a current valid license from the State Licensing Board for Residential and General Contractors, unless specifically exempted from holding such license pursuant to Georgia law (O.C.G.A. Section 43-41-17).

**XXXI. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall, at his sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless the County, the engineer, and their agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including, but not limited to, attorney's fees arising out of or resulting from the performance of the work, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by the negligent acts, errors or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless whether such claim is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any of the rights or obligations of indemnity which would otherwise exist as to any party or person described in this agreement. In any and all claims against the County, the engineer, or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation contained herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under Worker's Compensation Acts, disability benefit acts, or other employee benefit acts.

**XXXII. CODE OF ETHICS:**

"Proposer/Bidder" shall disclose under oath the name of all elected officials whom it employs or who have a direct or indirect pecuniary interest in the business entity, its affiliates, or its subcontractors. The "Proposer/Bidder" shall execute a Code of Ethics affidavit. Failure to submit the affidavit during the bid or proposal process shall render the bid or proposal non-responsive.

The act of submitting false information or omitting material information shall be referred to the Purchasing Policy & Review Committee for action pursuant to the Purchasing Ordinance or to the District Attorney for possible criminal prosecution.

Any business entity holding a contract with Gwinnett County that subsequent to execution of the contract or issuance of the purchase order employs, subcontracts with, or transfers a direct or indirect pecuniary interest in the business entity to an elected official shall within five (5) days disclose such fact in writing under oath to the Clerk of the Board of Commissioners. Failure to comply shall be referred to the Purchasing Policy & Review Committee for action pursuant to the Purchasing Ordinance or to the District Attorney for possible criminal prosecution.

Note: See Gwinnett County Code of Ethics Ordinance E02011, Sec. 60-33. The ordinance will be available to view in its entirety at [www.gwinnettcountry.com](http://www.gwinnettcountry.com)

**XXXIII. PENDING LITIGATION:**

A proposal submitted by an individual, firm or business who has litigation pending against the County, or anyone representing a firm or business in litigation against the County, not arising out of the procurement process, will be disqualified.

**XXXIV. ELECTRONIC PAYMENT**

Vendors accepting procurements should select one of Gwinnett County's electronic payment options.

- A. A vendor may select ePayables payment process which allows acceptance of Gwinnett County's virtual credit card as payment for outstanding invoices. The authorized vendor representative must send an email to: [vendorelectronicpayment@gwinnettcountry.com](mailto:vendorelectronicpayment@gwinnettcountry.com) and indicate the desire to enroll in Gwinnett County's virtual credit card payment process.
- B. A vendor may select Direct Deposit payment process and the payment will be deposited directly into an account at their designated financial institution. To securely enroll in Direct Deposit, either access your online [Vendor Login and Registration](#) on the County's web site and update the requested information on the Direct Deposit tab or mail a [Direct Deposit Authorization Agreement](#) form.

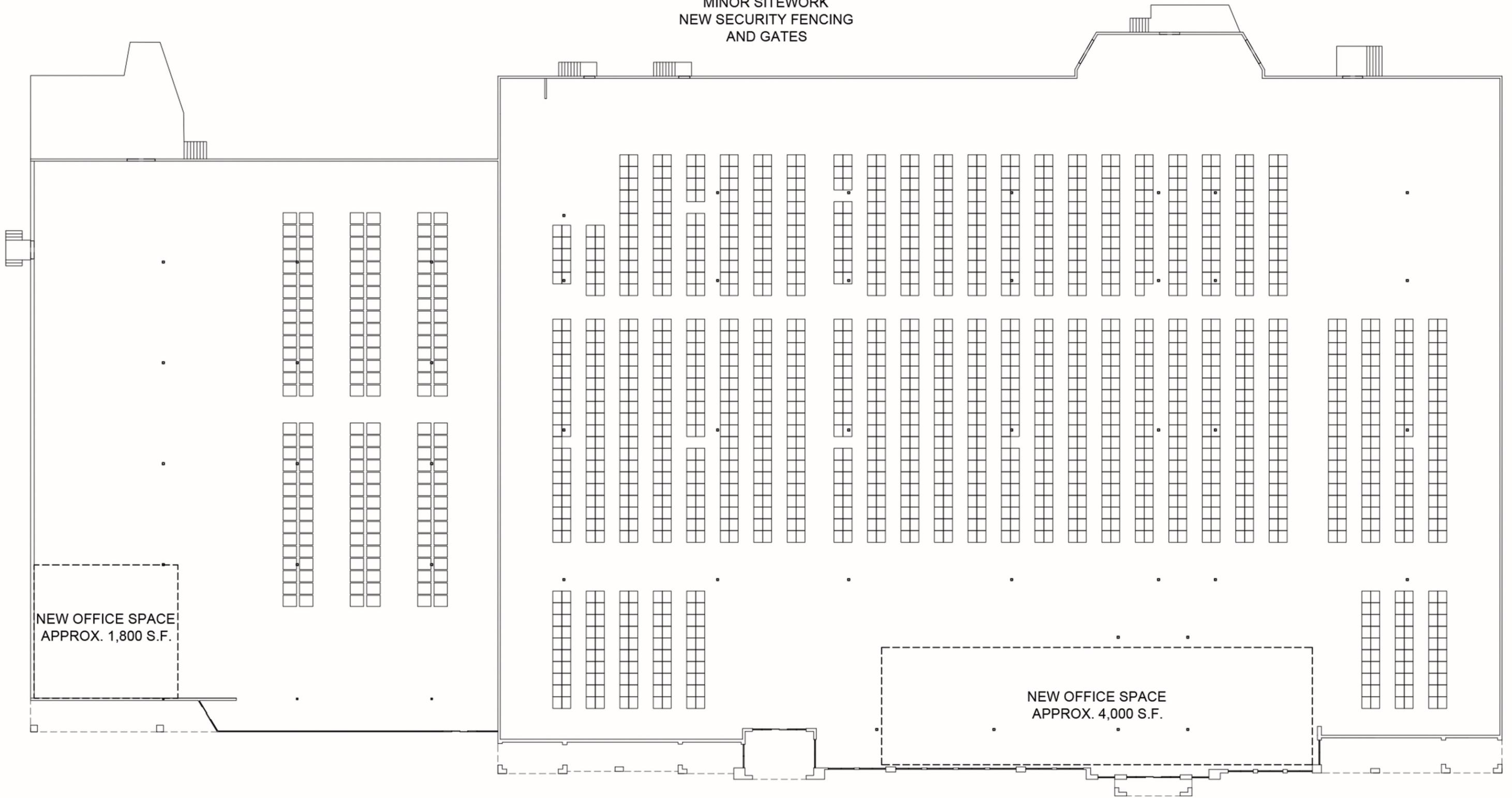
The County will send a Payment Advice notification via email for both payment types.

For more information about Electronic Payments, please go to the Treasury Division page on the County's Web Site or click here -> [Gwinnett County Electronic Payments](#).

**DIRECTIONS TO GJAC BUILDING FROM I-85**

Take I-85 to Georgia Highway 316 (Lawrenceville/Athens exit). Exit Highway 120 (Lawrenceville/Duluth exit) and turn right. At seventh traffic light, turn right onto Langley Drive. Cross Highway 29 through the traffic light and cross at the 4-way stop sign. The main public parking lot is on the left or behind the building, Click [Here](#) for additional information about parking. The Purchasing Division is located in the Administrative Wing.

MINOR SITEWORK  
NEW SECURITY FENCING  
AND GATES



NEW OFFICE SPACE  
APPROX. 1,800 S.F.

NEW OFFICE SPACE  
APPROX. 4,000 S.F.