



**BALDWIN COUNTY
REGULAR MEETING**
May 21, 2024
1601 N Columbia St, Suite 220
6:00 PM

AGENDA

CALL TO ORDER

INVOCATION

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

1. May 7, 2024 Work Session
May 7, 2024 Regular Meeting
May 7, 2024 Executive Session

ADMINISTRATIVE/FISCAL MATTERS

2. Alcoholic Beverage License - County Manager
Wings, Rings and Things
3015 North Columbia Street
Retail Beer and/or Wine by the Drink
3. Selection of Proposal for Rural Housing Initiative Grant Application - County Manager
4. Authorization for Submission of Department of Energy Grant Application - County Manager
5. Ratification of Dyer Construction Contract for Aquatic Center - County Manager

OLD BUSINESS

NEW BUSINESS

COUNTY MANAGER'S REPORT

PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS

EXECUTIVE SESSION

6. Litigation and Personnel

ADJOURNMENT

REMINDERS

May 23, 2024, Thursday, 1:00 p.m., Work Session, 1601 North Columbia Street, Suite 240.

May 27, 2024, Monday, ALL NON-EMERGENCY DEPARTMENTS WILL BE CLOSED IN OBSERVANCE OF MEMORIAL DAY.

June 4, 2024, Tuesday, 6:00 p.m., Regular Meeting, 1601 North Columbia Street, Suite 220.

June 18, 2024, Tuesday, 6:00 p.m., Regular Meeting, 1601 North Columbia Street, Suite 220.



**BALDWIN COUNTY
WORK SESSION
May 7, 2024
1601 N Columbia St, Suite 220
5:00 PM**

MINUTES

MEMBERS PRESENT

Emily Davis
John Westmoreland
Kendrick Butts
Sammy Hall
Henry Craig

OTHERS PRESENT

Brandon Palmer
Carlos Tobar
Dawn Hudson

CALL TO ORDER

Chair John Westmoreland called the Work Session to order at 5:00 p.m.

ADMINISTRATIVE / FISCAL MATTERS

Transportation Special Purpose Local Option Sales Tax T-SPLOST) Road List

County Manager Carlos Tobar presented the list of roads that were approved by the Board for submission to Georgia Department of Transportation under the LMIG program. He referenced the T-SPLOST road list. He stated the County Engineer will go out to bid for both the LMIG and T-SPLOST road lists. Mr. Tobar stated each road on the list that was included in the T-SPLOST road list and which portions of the roads would be included. He stated the list of roads includes what the County Engineer feels can be completed with the first nine months of T-SPLOST funding.

Discussion was held on the Road List. County Engineer Wood stated the list includes approximately 16 miles of roads.

ADJOURNMENT

Commissioner Henry Craig made a motion to adjourn the Work Session at 5:46 p.m. Vice Chairman Kendrick Butts seconded the motion and it passed unanimously.

Respectfully submitted,

John H. Westmoreland
Chairman

Carlos Tobar
County Manager



**BALDWIN COUNTY
REGULAR MEETING**
May 7, 2024
1601 N Columbia St, Suite 220
6:00 PM

MINUTES

MEMBERS PRESENT

John Westmoreland
Kendrick Butts
Henry Craig
Emily Davis
Sammy Hall

OTHERS PRESENT

Carlos Tobar
Brandon Palmer
Dawn Hudson

CALL TO ORDER

Chairman John Westmoreland called May 7, 2024 Regular Meeting to order at 6:00 p.m.

INVOCATION

The Invocation was delivered by County Manager Carlos Tobar.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Chairman John Westmoreland.

APPROVAL OF MINUTES

Commissioner Henry Craig made a motion to approve the minutes of the March 28, 2024 Planning Retreat, April 2, 2024 Regular Meeting, April 12, 2024 Called Meeting, April 12, 2024 Executive Session and the April 30, 2024 Joint Work Session with the City of Milledgeville as submitted. Commissioner Emily Davis seconded the motion and it passed unanimously.

AMENDMENT TO AGENDA

Vice Chairman Kendrick Butts made a motion to amend the Agenda to add the contract for Dyer Construction for the Aquatic Center and to add the Road List as items #10 and #11. Commissioner Emily Davis seconded the motion.

After discussion regarding the Dyer Construction Contract, Vice Chairman Butts amended his motion and motioned to withdraw the Dyer Construction from the Agenda. He made a motion to move the Dyer Construction Contract to the next agenda on May 21, 2024. Commissioner Sammy Hall seconded the motion and it passed unanimously.

Vice Chairman Kendrick Butts made a motion to move the Road List to Agenda item #10. Commissioner Emily Davis seconded the motion and it passed by the following vote:

Aye: Butts, Davis, Hall, Westmoreland Nay: Craig

ADMINISTRATIVE/FISCAL MATTERS

Update by Legislative Delegation

Chairman Westmoreland thanked Senator Rick Williams and Representatives Mack Jackson and Ken Vance for attending the meeting to provide a legislative update.

Representatives Jackson and Vance expressed their appreciation for the opportunity to address the Board.

Representative Mack Jackson reported a balanced budget was passed and has been signed by the Governor. He stated the budget totaled \$36.1 billion dollars and with the federal drawdown it increased to \$66 billion. He stated the budget included pay raises for teachers, law enforcement personnel, and state employees. It also included \$1.5 billion dollars for State Transportation programs. Representative Jackson discussed House Bills 1017 – the Squatter Reform Act; HB 1339 – Certificates of Need for rural counties; and HB 82 – Rural Physicians Tax Credit which incentivizes physicians to practice in rural Georgia.

Representative Ken Vance discussed the efforts of legislators to address mental health issues. He stated bills have been passed to address mental health issues. One bill will help to expediate licensing of therapists and counselors who move to Georgia to become certified to practice in Georgia. He stated rural Georgia has many mental health issues as do larger cities and counties. Representative Vance stated the lack of beds for mental health patients is a tremendous part of the problem. He said the steps we have taken is only a start to begin to address mental health issues. He stated the income tax rate has been lower and child tax credit has been increased. A bill was also passed to cap the annual increase in property tax. Republicans and Democrats are committed to making Georgia a better place to live. Back the Blue Bill was passed. When a tag is purchased, an additional \$5.00 can be paid that is earmarked for local law enforcement deputies and jailers. Collections will begin January 1, 2025 and be distributed to law enforcement agencies in January 1, 2026.

Commissioner Davis asked the status of Medicaid expansion. Representative Jackson stated this was not approved.

Senator Rick Williams reported local legislation was passed which staggered terms of election for Baldwin County Commissioners and also established a Board of Elections for Baldwin County. He discussed the cost of early voting to counties when on some days a very small number of voters show up to vote. He stated he feels the number of days for early voting should be reconsidered because it is such an expense. He stated he will introduce a bill that the State build five mental wellness centers across the state with each having seventy-five beds.

Senator Williams thanked the Board for the opportunity to present information on the past session. He encouraged everyone to contact him if he could help in any way.

Alcoholic Beverage License

County Manager Carlos Tobar presented an alcoholic beverage license for Little River Park. He stated legal requirements have been met for the application process.

Commissioner Henry Craig made a motion to approve the alcoholic beverage license as presented for Little River Park. Vice Chairman Kendrick Butts seconded the motion and it passed unanimously.

Resolution to Donate Property to Land Bank

County Manager Tobar presented a Resolution to donate two parcels of property owned by the County to the Land Bank. The properties are located in the City at 470 Ross Avenue and 476 Ross Avenue. He stated Attorney Palmer and his firm have done the legal work and prepared a Resolution for the Board’s consideration.

Vice Chairman Kendrick Butts made a motion to approve the Resolution as presented. Commissioner Emily Davis seconded the motion and it passed unanimously.

Commissioner Davis stated other 501C(3) organizations must be considered as well as Habitat for Humanity.

A copy of the Resolution is herewith attached and made an official part of the minutes at pages _____ and _____.

Resolution Establishing Baldwin County as Fiscal Agent for the Oconee River Greenway Authority GA DNR Grant

County Manager Tobar asked Haley Hicks, County Grant Writer, to present a Resolution establishing Baldwin County as the fiscal agent for the Greenway DNR Recreational Trails Program Grant and to be responsible for grant administration.

Commissioner Sammy Hall made a motion to approve the Resolution as presented. Commissioner Emily Davis seconded the motion and it passed unanimously.

A copy of the Resolution is herewith attached and made an official part of the minutes at pages _____ and _____.

Transportation Special Purpose Local Option Sales Tax (T-SPLOST) List

Chairman John Westmoreland stated the T-SPLOST Road List was discussed at the Work Session held earlier this afternoon. He asked for a motion to approve the Road List. County Manager Tobar stated the County Engineer has included roads for T-SPLOST funding as well as the second round of LMIG funding on this list. Assistant County Manager Hudson reported that \$860,000 of LMIG funding will be used to offset the T-SPLOST cost of paving Log Cabin Road which will cost \$1.3 million dollars.

Commissioner Emily Davis made a motion to approve the road list as presented. Commissioner Sammy Hall seconded the motion and it passed by the following vote:

Aye: Davis, Hall, Butts, Westmoreland Nay: Craig

OLD BUSINESS

Chairman Westmoreland stated the convenience center located on Meriwether Road is not being cleaned up. Commissioner Davis requested an update on whether the large boxes would be removed and replaced with individual containers at the trailer park. County Manager Tobar stated he will check on the progress of determining addresses with staff.

NEW BUSINESS

Commissioner Emily Davis stated she would like to express appreciation to all Nurses and Teachers for Nurses Appreciation Week and Teachers Appreciation Week.

COUNTY MANAGER'S REPORT

County Manager Tobar reported he had submitted a County Manager’s report to the Board prior to tonight’s meeting. He discussed that no progress on memorial library-environmental which was submitted in September of 2023 is not approved yet; construction continues on sewer project; waterline replacement continues; EPA mandatory training for Sibley-Smith sewer extension project; working with DNR staff for environmental process for Fishing Creek Trail; update on flock cameras with one more camera installed and waiting on GDOT approval for the installation of other four; PAPI airport project complete; Oconee Heights streetscape project continues; awaiting award information on CHIP grant; design for Coopers Park should be completed in 2025; proposals received for Rural Housing Initiative; Urban Redevelopment Plan has been completed.

Chairman Westmoreland asked for an update for the Sinclair Water Authority generators. Mr. Tobar stated Putnam County is the lead on this project, and negotiations are taking place on the cost.

Mr. Tobar reported Wayne Johnson, EMA Director, and Haley Hicks are working on grant for generator for Recreation Department. He also stated overflow parking at the Department is at the west of the water park location.

PUBLIC COMMENT PERIOD FOR NON-AGENDA ITEMS

Mr. Edwin Atkins, 939 Walnut Street, Macon, thanked Commissioners for the Georgia Historical Marker at the old prison site. He distributed a fact sheet on the State Prison Farm.

Mr. Danny Blair, 583 Meriwether Road, expressed his appreciation to the Board for the improvements made at the Meriwether Convenience Center. He discussed improvements that still need to be made. He discussed the Oakwood Village development stating the building in the subdivision is out of control. He stated there is only one entry to subdivision and there is no adequate parking. He requested a meeting with Chairman Westmoreland and Mr. Tobar about this situation.

Ms. Rhonda Kelly, 143 Admiralty Way, discussed the short-term rental ordinance which she feels is not adequate to protect homeowners. She discussed problems property owners are experiencing in regards to the short-term vacation rentals such as property not being taken care of; loud parties; animals not being restrained; and ruining the property values of the owners. Property Managers are not on site. More people at property than should be allowed.

Ms. Pam Peacock, 196 Montego Bay Road, stated she feels the County's Animal Control Ordinance is not being enforced. She stated animals are being tethered, kept in small areas and not being fed properly. She stated Animal Control does not acknowledge calls, and the animals are being left in bad situations.

EXECUTIVE SESSION

Commissioner Emily Davis made a motion to adjourn into Executive Session at 6:30 p.m. to discuss litigation and Real Estate. Vice Chairman Kendrick Butts seconded the motion and it passed unanimously.

RECONVENE REGULAR MEETING

Commissioner Henry Craig made a motion to reopen the Regular Meeting at 8:33 p.m. Commissioner Emily Davis seconded the motion and it passed unanimously.

ADJOURNMENT

Commissioner Sammy Hall made a motion to adjourn the meeting at 8:34 p.m. Vice Chairman Kendrick Butts seconded the motion and it passed unanimously.

Respectfully submitted,

John H. Westmoreland
Chairman

Carlos Tobar
County Manager



Baldwin County Business Services

1601 N Columbia St, Suite 200
Milledgeville, Ga 31061
Phone: 478-445-4205
permits@baldwincountyga.com

2022 Occupational Tax Application Item 2.

Cash or checks, made payable to Baldwin County Business Services, are due with completed application.

TYPE OF REGISTRATION

- Home Office
- Commercial
- Industrial
- Online

TYPE OF BUSINESS

- New
- Renewal
- Closed (Date Closed: _____)

TYPE OF OWNERSHIP

- Sole owner
- Corporation
- LLC / LLP
- Non - Profit (Paperwork must be present.)

BUSINESS INFORMATION

Business Name: Wings, Rings and Things
 Business Location: 3015 North Columbia St.
 Business Telephone #: 478-295-2224 Verify # (If applicable): _____
 Business Description: restaurant

OWNER INFORMATION

Owner Name: Suzanne M Schilling Brooks
 Mailing Address: _____
 City, State, Zip: Milledgeville, GA 31061
 Telephone #: _____ Driver's License #: _____ State License # (If applicable): _____
 Email: _____

TOTAL # OF EMPLOYEES	CHECK	FEES DUE	NOTES	OFFICE USE ONLY
Application Fee (New businesses only)	()	\$25.00		
1-3	()	\$100.00		
4-9	(<input checked="" type="checkbox"/>)	\$200.00		
10-19	()	\$350.00		
20-29	()	\$500.00		
30-39	()	\$800.00		
40-49	()	\$1000.00		
50+	()	\$1500.00		
Late Fee (Penalty of \$25.00 applied on March 2nd)	()	\$25.00		

**** I agree to abide by all the laws of the State of Georgia and Baldwin County concerning the sales of any merchandise, product or service for which this license is issued. I understand that the premises must meet all the building and life safety codes and as an applicant I am subject to a criminal background check and if any information given on this application is misrepresented the license may be revoked. ****

Suzanne M Schilling Brooks
 SIGNATURE

DATE

OFFICE USE ONLY

FIRE DEPT		LAND USE ADMIN / BUILDING OFFICIAL		COMMISSIONERS APPROVAL	
[] Approved	[] Denied	[] Approved	[] Denied	[] Approved	[] Denied
_____ Signature	_____ Date	_____ Signature	_____ Date	_____ Signature	_____ Date

Baldwin County Board of Commissioners Communication
1601 North Columbia Street, Suite 230, Milledgeville, GA 31061



AGENDA ITEM: Authorization for Submission of Department of Energy Grant Application

MEETING DATE: May 21, 2024

PREPARED BY: County Manager

RECOMMENDED ACTION: Adopt RV Park Ordinance.

BACKGROUND INFORMATION: Staff requested of Georgia Power to prepare a proposal for budgeting purposes for sports lighting at the baseball/softball fields at Walter B. Williams Park. I have attached the proposal. This document will help staff finalize the Department of Energy Grant application. The grant covers 95% of the \$426,856 estimated cost. The county match of 5% is \$21,343. SPLOST would pay the match.

This is a highly competitive grant program. In 2024 only \$18 million is available nationwide. That said we do qualify and I think we have a competitive application. I seek your permission to submit the application which is due May 31, 2024.

LED Sports Lighting Milledgeville Baldwin County Milledgeville, Georgia

**Provided By: Steven Faulkner, CEM, CEA
Scott McNally**

May 16, 2024



Executive Summary

Baldwin County Recreation Department would like to install LED fixtures and replace one damaged pole on four of the fields at Walter B. Williams Park. Georgia Power will replace the HID fixtures with (116) 700-watt Cooper Ephesus LumaSport 8 Integral LED Sports Floods and install one 80' MH concrete pole for the fixtures located on pole B1-B2. The cost of this project is **\$426,856**. The estimated energy savings is **\$5,422/year**.

Purpose

The purpose and scope of this proposal is to give Baldwin County Recreation Department the cost and energy savings for installing LED light fixtures on four baseball fields.

Scope

Baseball Fields

- Layout based on 30 FC average in the infield and 20 FC average in the outfield.
- (116) 700-watt Cooper Ephesus LumaSport 8 Integral LED Sports Flood
- 700 watts/fixture x 116 = 81,200 watts
- Air Mesh Control System with Dynamic Scenes (must be connected to 120v circuit)
- Extension plates will be provided for mounting hardware and fixtures to the crossarms.
- Furnish labor and equipment to remove and dispose of 112 existing fixtures.
- Replace and haul off damaged pole with one 80' MH concrete direct embedded pole with crossarms for 16 fixtures.
- Install and aim 116 new fixtures.
- Includes using existing poles, arms, branch circuits, and breakers.
- Voltage to be verified before fixtures are ordered.

Notes

- Pricing good for 30 days
- Traditional sales quote includes 10-year fixture warranty.
- No rock excavation included.
- No fence removal or install included.
- Utilities not marked by UPC are owner's responsibility to locate.
- Not responsible for unmarked utilities
- Excess dirt to be left on-site.
- Using only standard equipment required to access each pole location will be used.
- No landscaping or sod included.
- Not responsible for any damage to existing concrete, asphalt, curbs or landscaping by cranes, lifts, or equipment

Rate and Energy Savings

The baseball building and sports lighting are on Georgia Power's Power and Light Medium Commercial Rate (PLMC). Energy is purchased based on kW demand and kWh consumed. Once over 200 hours use of billing demand, energy is purchased on the incremental cost. Energy saving based on the twelve-month average energy cost and estimated operating hours of 261 hours/year.

Energy Savings

$(165 \text{ kW} - 81.2 \text{ kW}) \times 261 \text{ hours/year} \times \$0.2479/\text{kWh} = \mathbf{\$5,422/year}$

BALDWIN CO BD OF COMM										
Tariff	PLM-C									
Meter Number	3154646									
Service End Date	Bill Date	Billing Days	Total kWh	Peak kW	Billing Demand	Use of Bill Dema	Load Factor	Elec Svc Amount	c/kWh	est. hrs. month
5/1/2024	5/1/2024	29	5400	161	157	34	0.05	\$1,260.74	23.35	34
4/2/2024	4/2/2024	32	3600	148	157	23	0.03	\$913.14	25.36	24
3/1/2024	3/1/2024	29	1400	4	157	9	0.49	\$470.29	33.59	350
2/1/2024	2/1/2024	29	1400	2	157	9	0.87	\$470.29	33.59	700
1/3/2024	1/3/2024	33	1720	35	157	11	0.06	\$525.26	30.54	49
12/1/2023	12/1/2023	30	5200	149	157	33	0.05	\$1,195.09	22.98	35
11/1/2023	11/1/2023	29	5960	153	157	38	0.06	\$1,337.90	22.45	39
10/3/2023	10/27/2023	33	5480	158	157	35	0.04	\$1,247.70	22.77	35
8/31/2023	9/14/2023	29	3520	78	157	22	0.06	\$890.32	25.29	45
8/2/2023	8/2/2023	31	3320	15	157	21	0.29	\$825.50	24.86	221
7/2/2023	7/5/2023	31	3280	13	157	21	0.35	\$815.71	24.87	252
6/1/2023	6/2/2023	29	2800	165	165	17	0.02	\$725.64	25.92	17
Totals and Peaks										
Averages		30	3590	90	158	23	0.2	\$889.80	24.79	

Georgia Power has installed sports lighting to over a dozen county school systems in Georgia, and over a dozen county recreation departments, and private schools over the past 5 years. If you would like to move forward with this project, contact Scott McNally at 478-214-0471.

Georgia Power would like to thank you for your business; we look forward to meeting your lighting needs.

*Prepared by:
 Steven Faulkner CEM, CEA
 Utility Services
 Georgia Power*

Georgia Power Company disclaims any representation or warranty, written or oral, expressed, or implied, including, without limitation, any representation or warranty with respect to the workability, merchantability, or fitness for any particular purpose of any system or equipment installed by the customer. The customer agrees that Georgia Power Company has no liability for any claim or cause of action whatsoever arising from or as relates to this recommendation or any advice rendered by Georgia Power Company.

THIS CONSTRUCTION CONTRACT (hereinafter the "Contract") is made this 9th day of Apr, 2024, by and between Dyer Construction, Inc., hereafter "Contractor," and Baldwin County, hereafter called "Owner," for the construction of the Baldwin County Aquatic Facility.

Contractor and Owner agree as follows:

1. The Contract and Scope of Work. The Contract includes this Form of Contract, Contract General Requirements, Supplementary Contract Requirements, Exhibits, and all Drawings and Specifications included in the Bidding Documents titled Baldwin County Aquatic Facility, and all Addenda, each of which are incorporated herein. Contractor shall furnish all the materials and perform all the Work described in the Contract and shall do everything required by or reasonably inferable therefrom.

2. The Contract Sum. Owner shall pay Contractor for the full performance of the Work the Contract Sum as follows:

Four Million Nine Hundred Seventy-Nine Thousand Dollars (\$4,979,000.00).

3. Notice. Notice in accordance with Section 1.1.5 of the General Requirements shall be given to the following addresses:

Contractor:	Dyer Construction, Inc. 2351 River Ridge Road, NE Milledgeville, GA, 31061 Attention: Matthew Bentley Phone Number: 478-453-7111 E-mail: MBentley@dyer-construction.com
OWNER:	Baldwin County 1601 N. Columbia Street, Suite 230 Milledgeville, GA, 31061 Attention: Carlos Tobar Phone Number: 478-445-4791 E-mail: CTobar@baldwincountyga.com
DESIGN PROFESSIONAL:	Freedman Engineering Group 1000 Whitlock Avenue Suite 320, #218 Marietta, GA, 30064 Attention: David Freedman Phone Number: 770-851-3175 E-mail: Davidf@Freedmanengineering.com

4. Material Completion. The Material Completion Date is 365 calendar days after the Notice to Proceed.

5. Liquidated Damages. The agreed amount for Liquidated Damages, in the event Contractor fails to achieve Material Completion by the Material Completion Date, is One Hundred Fifty Dollars (\$150.00) per day.

6. **No Assignment.** This Contract and the proceeds of this Contract shall not be assigned, nor may the performance hereunder be assigned, without the prior written consent of Owner. Any attempted assignment without such prior written consent shall be void.

7. **Full Performance; No Waiver.** Owner and Contractor hereby agree to the full performance of the Contract. The failure of Owner at any time to require performance by Contractor of any provision will not affect the right of Owner thereafter to enforce such provision or any other provision of the Contract. The failure of Owner to enforce or exercise remedies as a result of any breach of any provision shall not be considered a waiver of such provision, such remedies, any subsequent breach of such provision, or any other provision, or a modification or rescission of the Contract. No provision of this Contract, or right or remedy of Owner, will be deemed waived unless such waiver is in writing and executed by Owner.

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

9. **Full Agreement.** The Contract supersedes all prior negotiations, discussions, statements, and agreements between Owner and Contractor and constitutes the full, complete, and entire agreement between Owner and Contractor. There can be no changes to this Contract by oral means, by course of conduct of the parties, or by custom of the trade. No change to this Contract will be binding on either party unless such change is properly authorized, in writing, and in accordance with the terms of this Contract.

10. **Venue.** In the event of any disputes between Owner and Contractor over the meaning, interpretation, or implementation of the terms of this Contract, the matter under dispute, unless resolved between the Owner and Contractor, shall be submitted to the Superior Court of Baldwin County.

IN WITNESS WHEREOF the parties hereto have executed this Contract under seal on the day and year first written above.

<p>Dyer Construction, Inc. Contractor</p> <p>By: <u>Mark Buntz</u></p> <p>Title: <u>President</u></p>	<p>Baldwin County Owner</p> <p>By: <u>John A. [Signature]</u></p> <p>Title: <u>CHAIR</u></p>
---	--

SECTION G: CONTRACT GENERAL REQUIREMENTS
TABLE OF CONTENTS

1 GENERAL PROVISIONS..... 2

1.1 Miscellaneous Contract Requirements 2

1.2 Bonds, Insurance and Indemnification..... 5

1.3 Defined Terms and Basic Definitions 8

1.4 Time 11

1.5 Design Professional's Decisions and Claims 12

1.6 Contract Suspension and Termination 13

2 THE WORK 15

2.1 Pre-Construction Requirements..... 15

2.2 Construction Phase Requirements 16

2.3 Warranties, Inspections and Correcting the Work 18

2.4 Change Orders..... 21

2.5 Project Closeout..... 23

2.6 Payment 25

GENERAL PROVISIONS

1.1 Miscellaneous Contract Requirements

1.1.1 Administration of Contract. Both the Owner and Design Professional have construction contract administration duties under the Contract. Design Professional is not the agent of Owner, except to the extent so specified in writing. Design Professional has no authority to unilaterally amend the Contract, orally or in writing, either expressly or by implication.

1.1.2 Requirement for Written Amendment. No amendment to this Contract shall be effective unless it is in writing and signed by duly authorized representatives of the parties. No representation, request, instruction, directive or order, made or given by any official of any agency of the State of Georgia, whether verbal or written shall be effective to amend this contract or excuse or modify performance hereunder unless reduced to a formal amendment and executed as set forth above. Contractor shall not be entitled to additional compensation, delay in performance, or other benefit claimed for relying upon or responding to any such representation, request, instruction, directive, or order. Contractor expressly acknowledges the constitutional prohibition of claims (including Claims) against Owner based solely upon oral statement, course of conduct, customs of the trade, quasi-contract, unjust enrichment, quantum meruit, or O.C.G.A. § 13-4-4 (mutual departure from contract terms)

1.1.3 Work Not Subject to Lien. Title to the Site and the Project is vested in the State of Georgia and Baldwin County as public property of the State of Georgia and Baldwin County and is therefore not subject to levy or lien.

1.1.4 Legal Compliance. This Contract shall be interpreted and governed by the laws of Georgia without regard to principles of conflicts of laws. Contractor shall comply with all laws, rules, regulations, ordinances, and orders of any governmental authority having jurisdiction over the Project or the performance of the Work, and the specific laws noted below, and shall ensure such compliance of its Subcontractors.

1.1.4.1 Open Records Act. Owner and Contractor acknowledge and agree that certain records of the Project and the Work, including records of Subcontractors, are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, with particular attention being called to O.C.G.A. § 50-18-70(a) regarding the records of private persons, firms, corporations, or other private entities engaged in performance of services or functions on behalf of a state agency, public agency, or public office.

1.1.4.2 Use of Georgia Materials and Equipment and Georgia Forest Products. Contractor shall use materials and equipment manufactured or produced in Georgia when the use of Georgia products does not sacrifice quality, increase the cost of the Work, or restrict or limit competitive bidding. If the Work includes forest products, Contractor and its Subcontractors shall use exclusively Georgia forest products if Georgia forest products are available. These provisions shall not apply when in conflict with Federal law, rules, and regulations concerning interstate commerce or construction.

1.1.4.3 Illegal Immigration Reform and Enforcement Act of 2011. Contractor certifies its compliance with Illegal Immigration Reform and Enforcement Act of 2011 and specifically those provisions codified at O.C.G.A. § 13-10-90 *et seq.* Contractor warrants that it has registered with and uses the federal work authorization program commonly known as "E-Verify." Contractor further agrees that it will contract for the physical performance of services in satisfaction of this Contract only with Subcontractors who present an affidavit as required by O.C.G.A. § 13-10-91. Contractor warrants that it will include a similar provision in all contracts entered into with Subcontractors for the physical performance of services in satisfaction of this Contract.

1.1.4.4 Drug-Free Workplace. Contractor certifies that it will provide a drug-free work place in accordance with the Drug-Free Workplace Act, O.C.G.A. §§ 50-24-1 *et seq.* Contractor certifies that it will secure from all Subcontractors the following written certification: "As part of the subcontracting agreement with (contractor's name), (subcontractor's name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-3."

1.1.4.5 Applicable Sales and Use Taxes. Contractor shall pay all applicable sales and use taxes, including such taxes on Owner supplied tangible personal property that is to be incorporated into the Project as required by O.C.G.A. 50-24-1(h)(1). Prior to supplying such property, Owner shall provide notice of the amount of tax owed for such tangible personal property.

1.1.4.6 No Boycott of Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. §§ 50-5-85.

1.1.4.7 Applicable Codes. The latest edition of the regulations, rules, and codes listed below, with all amendments as of the date of permitting for construction, shall govern all Work. The following codes, rules, and regulations are adopted and incorporated into the Contract, and it shall be the responsibility of Contractor to familiarize itself with the requirements of these codes, rules, and regulations as applied to the performance of the Work.

1.1.4.8 Building Codes. The following Building Codes, as approved by the Georgia Department of Community Affairs, shall be used. (See O.C.G.A. § 8-2-20 *et seq.*) Design Professional will designate any additional codes or special modifications in the Construction Documents.

- International Building Code, with Georgia Amendments
- International Fire Code, with Georgia Amendments
- International Plumbing Code, with Georgia Amendments
- International Mechanical Code, with Georgia Amendments
- International Fuel Gas Code, with Georgia Amendments
- National Electrical Code, with Georgia Amendments
- International Energy Conservation Code, with Georgia Supplements and Amendments

1.1.4.9 Fire, Life Safety, and Accessibility Codes. The following codes, in the versions approved by the Georgia State Fire Marshal/Fire Safety Commissioner and Department of Human Resources, shall be used. Design Professional will designate any additional codes or special modifications in the Supplementary General Requirements.

- Georgia State Life Safety Code (NFPA 101)
- State Accessibility Codes (See O.C.G.A. § 30-3-3)
- Rules and Regulations of the Georgia Safety Fire Commissioner

1.1.4.10 Adherence to Contract When in Excess of Code. The Construction Documents shall govern when they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the codes stated above.

1.1.4.11 Variations. If Contractor observes that the Construction Documents are at variance with any laws, ordinances, rules, regulations, or codes stated above, it shall promptly give Notice to Owner. If Contractor performs any Work contrary to such laws, ordinances, rules, regulations, or codes without providing such prior Notice to Owner, it shall bear all costs arising therefrom. No variances from the Contract are allowed except to the extent that the said variances are necessary to comply with the above-stated codes. If any express requirements of the Contract are at variance with the above-stated codes, a Change Order shall be executed to bring the Contract into compliance with the above-stated codes.

1.1.5 Notice. Any Notice or other material communication required or permitted under this Contract shall be in writing, dated, and signed by an officer or duly authorized representative of the party making same. Unless otherwise required by the provisions of this Contract, Notice may be sent via electronic mail, fax, U.S. Mail, or hand delivered to the addresses shown in Section **Error! Reference source not found.** of the Form of Contract. All members of the Project Team shall be copied on any Notice. The persons and addresses to which notices should be given may be changed by Notice given in accordance with this Section. Such Notice shall be effective as of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery.

1.1.6 Order of Precedence of Contract and Changes. In the event of conflict among the Contract documents, a Change Order shall control over any previous Change Order; and a Change Order shall control over the Supplementary General Requirements, which shall control over the Form of Contract, which shall control over the General Requirements, which shall control over the Specifications.

1.1.7 Order of Precedence in Construction Documents. The following general principles shall govern the settlement of disputes that may arise over conflicts in the Construction Documents: (a) as between the drawings and specifications, the specifications shall govern; (b) as between figures given on drawings and the scaled measurements, the figures shall govern; and (c) as between large-scale drawings and small-scale drawings, the larger scale shall govern. Conflicts discovered shall be immediately reported to Design Professional.

1.1.8 Intellectual Property Rights in Construction Documents, Drawings, and Models. The Construction Documents and other documents prepared by Design Professional for the Project are the property of Owner. Neither Contractor nor any Subcontractor shall own or claim a copyright in such drawings, specifications, and other similar or related documents; Owner shall retain all common law, statutory, and other intellectual property rights with respect thereto. All models are the property of Owner.

1.1.9 Licenses, Easements and Surveys. Permanent easements for structures shall be obtained and paid for by Owner unless otherwise specified. Any licenses necessary for the permanent operation of the completed Project shall be obtained by the Owner unless otherwise specified. Owner shall furnish all surveys unless otherwise specified.

1.1.10 Owner's Right to Perform Other Work at the Project Site. Owner reserves the right at any time, upon Notice to Contractor, to perform other work at the Site. Contractor shall afford Owner and Separate Contractors reasonable access to the Site, subject to the Separate Contractors' compliance with Contractor's safety rules and Site specific policies, reasonable areas for storage of materials and equipment, and reasonable opportunity to execute work at the Site. Contractor shall, if required by the Contract, coordinate its work with Owner's Separate Contractors but shall have no responsibility to certify the suitability or correctness of any work performed by Separate Contractors.

1.2 Bonds, Insurance and Indemnification

1.2.1 **Bonds.** Upon execution of the Contract, Contractor shall furnish both a performance bond and a payment bond, in the exact form attached hereto, with a penal sum equal to at least the Contract Sum. Surety companies must be acceptable to Owner. Only those sureties listed in the Department of Treasury's Listing of Approved Sureties (Department Circular 570, as amended) are acceptable to Owner. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia, and shall have an A.M. Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. When any subsequent Change Order, or combination of Change Orders, increases the Contract Sum by five percent (5%) or more, Contractor shall obtain a rider to the payment and performance bonds increasing the penal sum to match the increased Contract Sum.

1.2.2 **Indemnification Obligation.** Contractor shall indemnify, defend, and hold harmless Owner, Baldwin County and its departments, agencies and instrumentalities, and all of their respective commissioners, county manager, employees, representatives, and agents (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, suits, judgments, liability, demands, losses, costs, or expenses, including reasonable attorneys' fees and other costs of litigation including expert witnesses, arising out of bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of Contractor, its Subcontractors, its agents, employees, or others working at the direction of Contractor or on its behalf, or due to any breach of this Contract by Contractor, or due to the application or violation of any applicable Federal, State or local law, rule, or regulation. The indemnification obligation set forth in this Section extends to the successors and assigns of Contractor, and will survive the termination of the Contract or Contractor's performance hereunder and the dissolution or, to the extent allowed by law, the bankruptcy of Contractor. Whenever Contractor is obligated to defend the Owner or any other Indemnitee pursuant to this Agreement, Contractor shall use counsel selected or approved by Owner.

1.2.2.1 This indemnification obligation does not extend beyond the scope of the Project, this Contract, and the Work or obligations undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred due to the sole negligence of the Indemnitees.

1.2.2.2 This indemnification does not extend to claims for losses or injuries or damages incurred by the Indemnitees due solely to the negligent acts, errors, or omissions of Design Professional in the performance of professional services in connection with the Project that fail to meet the applicable professional standard of care, skill, and ability as employed by others in their profession.

1.2.3 **Insurance Coverage.** Contractor shall procure the insurance coverages identified below in accordance with the policy requirements listed below. Contractor shall provide Owner with a Certificate of Insurance showing the required coverage prior to execution of this Contract. If Owner requests, Contractor shall provide a certified copy of insurance policies required hereunder. Owner owes no duties or contractual obligations to any third party and will not be liable to any third party for Contractor's failure to obtain, or failure to require its Subcontractors to obtain, the insurance required hereunder or required by law.

Worker's Compensation Insurance	Minimum Coverage Limit
	Coverage to meet Georgia statutory requirements
Employer's Liability Insurance	Minimum Coverage Limit
Bodily Injury by Accident	\$1,000,000 per Accident
Bodily Injury by Disease	\$1,000,000 per Employee \$1,000,000 Aggregate
Commercial General Liability Coverage	Minimum Coverage Limit
Premises and Operations	\$ 1,000,000.00 per Occurrence and \$2,000,000 General Aggregate
Products and Completed Operations	\$1,000,000.00 per Occurrence and \$2,000,000 General Aggregate
Personal and Advertising Injury	\$ 1,000,000.00 per Occurrence
Commercial Automobile Liability Coverage	Minimum Coverage Limit

	\$ 1,000,000.00 combined single limits covering all owned, non-owned, leased or borrowed vehicles used by Contractor in connection with the Work
Commercial Umbrella Liability	Minimum Coverage Limit
Projects with Contract Sum Less than \$5,000,000	\$ 5,000,000 Per Occurrence and General Aggregate
Projects with Contract Sum Less than \$15,000,000	\$ 10,000,000 Per Occurrence and General Aggregate
Projects with Contract Sum Equal to or Greater than \$15,000,000	\$20,000,000 Per Occurrence and General Aggregate
Builder's Risk	Minimum Coverage Limit
	Coverage in an amount equal to Contract Sum

1.2.3.1 **Workers' Compensation Policy Requirements.** A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan.

1.2.3.2 **Commercial General Liability Policy Requirements.** Commercial General Liability Insurance shall be provided by the 2004 ISO Occurrence Form, or its equivalent, that shall include, without limitation, coverage for bodily injury and property damage arising from premises and operations liability, independent contractors, products and completed operations, blasting and explosion, collapse of structures, underground damage, personal and advertising injury, and contractual liability. The Commercial General Liability policy shall contain no exclusion for Subcontractor work and may not contain ISO endorsement CG 22 94 10 01 or similar. The policy must include separate aggregate limits per project.

1.2.3.3 **Commercial Business Automobile Liability Requirements.** The Commercial Business Automobile Liability Insurance shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile and shall be issued on an "occurrence" basis.

1.2.3.4 **Commercial Umbrella Liability Requirements.** Commercial Umbrella Liability Insurance shall provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability and shall be issued on an "occurrence" basis.

1.2.3.5 **Additional Insured Requirements.** Contractor shall cause its insurer to issue an additional insured Endorsement naming Owner and all Indemnitees as additional insureds on all required liability policies (except for Workers Compensation and, if required, Professional Liability).

1.2.3.6 **Builders Risk Policy Requirements.** Builder's Risk Policy shall be made payable to Owner and Contractor, as their interests may appear, and shall include in the interests of Contractor's Subcontractors. The policy shall be written on a Builder's Risk "All Risk," or its equivalent, and include coverage for collapse, pollution, water or flood damage, earthquake, subsidence, testing, and boiler and machinery perils (unless covered by separate insurance). The form of policy for Builder's Risk shall be "Completed Value." The Builder's Risk Policy shall have a deductible of not more than \$25,000 (or such other amount as approved by Owner in writing), and payment of the deductible shall be the responsibility of Contractor, except to the extent the loss is caused by Owner, in which case Owner shall pay a share of the deductible proportionate to its fault. The Builder's Risk Policy shall cover portions of the Work stored off site or in transit. The policy shall be endorsed as follows:

The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:

- (i) Furniture and equipment may be delivered to the insured premises and installed in place ready for use;*
- (ii) Partial or complete occupancy by Owner; and*
- (iii) Performance of work in connection with construction operations insured by Owner, by agents or lessees or other Contractors of Owner*

In the event that the Contract is for renovation, addition, or modification of an existing structure and Builders Risk Insurance is not available, Owner will accept an Installation Floater Insurance Policy with the above endorsements in lieu of the Builders' Risk Insurance Policy. Such floater must insure loss to

materials and equipment prior to acceptance by Owner and must be on an ALL RISK BASIS with the policy written on a specific job site.

1.2.3.7 Waiver of Subrogation. Contractor hereby waives all rights of subrogation against Owner and all Indemnitees and additional insureds required under this Contract to the extent a loss is covered by any insurance maintained by any party hereto, and Contractor shall require similar waivers from its Subcontractors. All insurance policies required to be maintained by Contractor shall contain a waiver of subrogation by the insurer in favor of the Owner and all Indemnitees and additional insureds required under this Contract.

1.2.3.8 Insurer Qualifications. All insurance providers shall be authorized by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and shall have an A.M Best Policyholders Rating of "A" or better and with a financial size rating of Class V or larger.

1.2.3.9 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until Design Professional issues the Certificate of Final Completion. Contractor's obligation to provide Builder's Risk insurance shall terminate upon the issuance of the Certificate of Material Completion. In addition, any "claims-made" policies required hereunder shall be kept in full force and effect for a period of four (4) years after the issuance of the Certificate of Material Completion.

1.2.3.10 Deductibles. All deductibles shall be paid for by Contractor, except as provided in Section 1.2.3.6. The maximum deductible, except for Builder's Risk and Workers' Compensation qualified self-insurers or group self-insurers, in any policy shall not exceed one hundred thousand dollars (\$100,000.00). Owner will consider larger deductible amounts on a case-by-case basis.

1.2.3.11 Certificate of Insurance Requirements. Contractor shall provide Owner with certificates of insurance, completed by a duly authorized representative, evidencing that at least the minimum coverages required herein are in effect and specifying that the liability coverages (except professional liability, if required) are written on an occurrence form. The certificates of insurance shall contain a provision that the coverage afforded under the policy or policies will not be canceled or non-renewed without thirty (30) days' prior written notice to Owner. The failure of Owner to demand such a certificate or other evidence of full compliance with these requirements or the failure of Owner to identify a deficiency from evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance. The acceptance of delivery by Owner or its designated representative of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by Owner that the insurance requirements have been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements. Owner shall have the right, but not the obligation, of prohibiting Contractor and its Subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner. If Contractor fails to maintain the insurance as set forth herein, Owner shall have the right, but not the obligation, to purchase said insurance at Contractor's expense. Alternatively, Contractor's failure to maintain the required insurance shall constitute a material breach hereof and may result in termination of this contract at Owner's option. Provision of proper certificates of insurance as set forth herein by Contractor on behalf of itself and all Subcontractors actively operating on site is a condition precedent to payment hereunder. If any of the coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverages shall be submitted with Contractor's final invoice and annually thereafter. Upon demand by the Owner, Contractor shall provide certified copies of any policy set forth herein.

1.2.3.12 Subcontractor Insurance Requirements. Contractor shall require each Subcontractor performing Work or performing any activity on the Project Site to obtain an insurance certificate showing proof of Commercial General Liability, Workers' Compensation Coverage and Employers Liability Insurance, Commercial Automobile Liability, Umbrella Liability, and Professional Liability (where required) with limits commercially appropriate for the work of such Subcontractor and in no event less than \$1,000,000 per occurrence, claim, accident, or employee, as applicable to each line of coverage, and Contractor shall provide Owner with an insurance certificate for each Subcontractor evidencing compliance with this provision annually and before such Subcontractor begins work on the Project.

1.3 Defined Terms and Basic Definitions

1.3.1 Defined Terms. Wherever used in the Contract, the terms defined in this Contract will have the meanings indicated that are applicable to both the singular and plural, and to the masculine and feminine thereof.

1.3.1.1 Meaning of Words and Phrases. Unless the context or the Contract taken as a whole indicate to the contrary, or unless otherwise defined, words used in the Contract that have usual and common meanings shall be given their usual and common meanings; words having technical or trade meanings shall be given their customary meaning in the subject business, trade, or profession. Materials or Work described in words that, so applied, have a well-known technical or trade meaning shall refer to such recognized meaning.

1.3.1.2 Install, Deliver, Furnish, Supply, Provide and Other Such Words. Install, deliver, furnish, supply, provide, and other such words mean that the Work in question shall be put in place by Contractor ready for use unless expressly provided to the contrary.

1.3.1.3 Sections Not Plenary. This Section and Section 1.3.2 are not entire, plenary, or exhaustive of all terms used in this Contract.

1.3.2 Basic Definitions.

1.3.2.1 Bidding Documents. The Bid Requirements, Contract, Specifications, Drawings, and all Addenda, which form the basis for the bid submitted by the bidder.

1.3.2.2 Certificate of Material Completion. The Notice from Design Professional certifying achievement of Material Completion.

1.3.2.3 Change Order. A document which, in conformity with the Contract, authorizes a change or changes to the Contract Sum, the Contract Time, or the Contract.

1.3.2.4 Change Order Sum. The amount of compensation payable under a Change Order or, when applicable, a portion thereof.

1.3.2.5 Change Order Work. Work that is authorized or changed by a Change Order.

1.3.2.6 Claim. A demand or assertion by Contractor seeking an adjustment of the Contract Sum, Contract Time, or both, or regarding other disputes or requests by Contractor for relief arising out of or relating to the terms of the Contract.

1.3.2.7 Construction Documents. The Specifications and Drawings that set forth the design for the Project, including any Drawings and Specifications that have been incorporated into the Contract by Change Order.

1.3.2.8 Construction Phase. The phase of the Project, commencing with the first Proceed Order, when physical work is performed on the Site.

1.3.2.9 Construction Progress Schedule. A schedule, as more fully defined in Section 2.1.4, prepared by Contractor indicating proposed milestone dates, activity sequences, and durations.

1.3.2.10 Contract. The Contract include the Contract, General Requirements, Supplementary General Requirements, Change Orders, and any Construction Documents that have been incorporated into the Contract by Change Order.

1.3.2.11 Contract Sum. The sum of all compensation authorized by the Contract and any Change Orders.

1.3.2.12 Contract Time. The period of time established for completion of the Work and the Project by the Contract.

1.3.2.13 Cure Period. The time stated in a Notice of Non-Compliant Work for correction of Non-Compliant Work.

- 1.3.2.14 Days, Months, Years. All references to the terms "day," "days," "month," or "months" mean calendar day, calendar days, calendar month, or calendar months, respectively.
- 1.3.2.15 Drawings. The graphic portion of the Construction Documents showing the design, location and dimensions of the Work.
- 1.3.2.16 Certificate of Final Completion. The certificate issued by Design Professional stating that all Work has been completed in accordance with the terms of the Contract.
- 1.3.2.17 Final Completion. The full and final completion of all Work in accordance with the Contract.
- 1.3.2.18 Final Punchlist. The Punchlist compiled by the Design Professional at the Inspection for Material Completion which lists all Minor Items and Permitted Incomplete Work.
- 1.3.2.19 Initial Punchlist. Punchlist prepared by Contractor prior to the inspection for Material Completion that lists all Minor Items and Permitted Incomplete Work.
- 1.3.2.20 Material Completion. Material Completion occurs when the Work of the Project is complete in accordance with the Contract, except for any Minor Items or Permitted Incomplete Work, so that Owner can occupy and utilize the Work for its intended use.
- 1.3.2.21 Material Completion Date. The date by which Contractor shall achieve Material Completion of the Project.
- 1.3.2.22 Minor Item. A Minor Item is a portion of Work designed by Design Professional that is incomplete at Material Completion but does not interfere with the complete use and enjoyment of the Project by the Owner and which can be completed within thirty (30) days while the Owner occupies the Project without interfering with the Owner's use and occupation of the Project.
- 1.3.2.23 Notice. The written document from any Project Team Member that invokes a right or requests a remedy under this Contract or provides any notice required by the terms of this Contract.
- 1.3.2.24 Non-Compliant Work. Work that, for any reason, is not in compliance with the Contract in any respect, including but not limited to quality of Work or timeliness of Work. Such term shall also include the failure of Contractor to perform any obligation of the Contract in a proper or timely manner, to meet the Overall Project Schedule, or to supply an adequate and skilled work force.
- 1.3.2.25 Notice of Non-Compliant Work. The official Notice from Design Professional or Owner regarding Non-Compliant Work.
- 1.3.2.26 Notice of Readiness. The Notice provided by Contractor stating that the Work is ready for inspection by Design Professional.
- 1.3.2.27 Overall Project Schedule or OPS. The final Construction Progress Schedule that is recommended by Design Professional and approved by Owner, as amended from time to time as provided in this Contract.
- 1.3.2.28 Payment Application. The form, and any required supporting documentation, that must be submitted by Contractor to request payment from Owner.
- 1.3.2.29 Permitted Incomplete Work. Work that is required by the Contract to be completed after Material Completion, such as HVAC Seasonal Test and Balance or seasonal landscaping or Work that is incomplete through no fault of Contractor, such as recently added Change Order Work that is permitted by the Change Order to be performed after Material Completion.
- 1.3.2.30 Proceed Order. Notice from Owner to Contractor that authorizes Contractor to commence Work at the Project Site.
- 1.3.2.31 Project. The total and complete undertaking for the public works facility to be constructed under this Contract.

1.3.2.32 Request for Information (RFI). A request issued by Contractor to Design Professional requesting information or clarification of the Construction Documents.

1.3.2.33 Separate Contractor. Any person or entity other than Contractor that contracts directly with Owner to perform work on the Site.

1.3.2.34 Site. The real property furnished by Owner for the Work and use of Contractor.

1.3.2.35 Specifications. The portion of the Construction Documents consisting of written requirements for materials, equipment, and standards of workmanship.

1.3.2.36 Maximum Sum. The amount stated in a Force Account Authorization that sets the maximum amount payable for Work thereunder.

1.3.2.37 Subcontractor. Generic term for any party contracting to perform the Work or supply materials for the Work.

1.3.2.38 Submittals. Shop drawings, samples, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae, or other documents that are submitted by Contractor to illustrate some portion of the Work or for use in installing the Work. Submittals are not Construction Documents.

1.3.2.39 Warranty Complaint. Notice that is given by the Owner to Contractor of apparent non-compliant or defective Work that arises or is discovered after Material Completion.

1.3.2.40 Work. All construction, materials, and services required by the Contract or reasonably inferable therefrom. The Work may refer to the whole Project or only a part of the Project.

1.4 Time

1.4.1 Duty to Commence and Complete Work. Contractor shall commence physical Work at the Project Site within ten (10) days of the issuance of the Proceed Order but shall not commence any physical Work on the Site until a Proceed Order is issued. Contractor shall achieve Material Completion of the Project not later than the Material Completion Date.

1.4.1.1 Time is of the Essence. Time is of the essence of this Contract and all obligations hereunder. Time being of the essence, it is mutually agreed that Owner will suffer damages if Contractor does not achieve Material Completion by the Material Completion Date and Contractor shall therefore compensate Owner for the delay as provided herein. Contractor has carefully examined and analyzed the Site, the Contract, Construction Documents, and all known factors related to its ability to achieve Material Completion by the Material Completion Date. Contractor agrees that the stipulated Contract Time is fair and reasonable.

1.4.1.2 Liquidated Damages for Delay. The parties may agree to an amount to be paid as Liquidated Damages if Contractor fails to achieve Material Completion by the Material Completion Date. If the parties agree to Liquidated Damages, such Liquidated Damages shall be stated in Section **Error! Reference source not found.** of the Form of Contract. The specified liquidated damages are not a penalty but are agreed to in advance because of the difficulty of determining and proving the amount of delay damages incurred by the Owner as a result of the delay. Liquidated Damages shall be charged beginning upon the day following the contractually required Material Completion Date and ending on the date that the Certificate of Material Completion is issued. Liquidated Damages shall be deducted from payments due to Contractor as they accrue and such deduction shall be in addition to the retainage provided for in the Contract. If the parties do not agree to a sum for Liquidated Damages, Owner shall be entitled to recover its actual damages if Contractor fails to reach Material Completion by the Material Completion Day.

1.4.2 General Rule – No Damages for Delay, Extension of Time Sole Remedy. If, between the Proceed Order Date and the Material Completion Date, the critical path of Work based on the Overall Project Schedule is delayed without any fault of Contractor or its Subcontractors by an event that is beyond the reasonable control of Contractor or its Subcontractors, then such delay shall be excused and the Contract Time shall be extended for such period of delay. Contractor's sole remedy for such delays shall be an extension of time with no increase to the Contract Sum.

1.4.3 Exception to General Rule – Compensable Delay. Contractor shall be entitled to an extension of Contract Time and adjustment to the Contract Sum for the delays caused by an act or neglect of Owner, Design Professional, or Separate Contractor, on the condition that it submits a Notice of Claim in conformance with, and by the time set forth in, Section 1.5.3. As an additional condition precedent to such extension of Contract Time and adjustment to the Contract Sum, Contractor must prove that (i) such delays extended the critical path of Work based on the Overall Project Schedule; (ii) Contractor has taken all reasonable actions to mitigate the effects of the delay events; (iii) the fault or negligence of Contractor or Contractor's Subcontractors did not contribute to such delay events; and (iv) Contractor shall have provided Notice to Owner of the cause or causes of such delay within seven (7) days from the date on which Contractor first becomes aware, or should have become aware, of such delay.

1.5 Design Professional's Decisions and Claims

1.5.1 Continuation of the Work. Unless otherwise agreed in writing, and notwithstanding any other rights or obligations of either of the parties under the Contract, Contractor must proceed with the performance of the Work during the pendency of any Claim, dispute, protest, and other matter in question or during any alternative dispute resolution proceeding, court proceeding, or other proceeding to resolve any Claim, dispute, protest, and other matter in question. Unless otherwise provided herein, Owner will continue to make payments in accordance with the Contract, but Owner is under no obligation to make payments on or against such Claim, dispute, protest, and other matter in question during the time required to resolve such Claim, dispute, protest, and other matter in question.

1.5.2 Design Professional's Decisions. Whenever the Contract requires the Design Professional to make a determination on any issue, Design Professional shall issue its decision ("Design Professional's Decision") promptly. All Design Professional's Decisions on matters of aesthetics are final and binding on all parties if consistent with the requirements of the Contract. If Contractor desires to protest any Design Professional's Decision, then it shall issue a Notice of Protest to Owner and Design Professional no later than thirty (30) days after the Design Professional's Decision. Contractor's Notice of Protest shall be made in writing, shall include a title or subject line that clearly identifies the document as a "Notice of Protest" and shall set forth in detail the basis for the Protest. All Design Professional's Decisions shall be final and binding on Contractor in the absence of a timely Notice of Protest

1.5.3 Claim. If Contractor desires to assert a Claim against Owner, it shall issue a Notice of Claim within the time and in the form provided in this Section. Any and all Claims not made within the required time period, or in the required form, are waived by Contractor. The requirement of Contractor to provide a Notice of Claim under this Section shall be in addition to any requirement to provide Notice under any other Section hereof.

1.5.3.1 Form of Claims. A Notice of Claim shall be made in writing, shall be hand delivered or sent via U.S. Mail with return receipt, shall include a title or subject line that clearly identifies the document as a "Claim," shall identify the specific provision of the Contract upon which the Claim is based, and must set forth in detail the basis for the Claim. Claims for adjustments to the Contract Sum or other damages or compensation shall identify the amount of the Claim and shall include appropriate documentation of the amount claimed. Claims for extensions of Contract Time shall identify the number of days claimed, the cause of any delay, the affected schedule activities, and information to demonstrate critical path was extended.

1.5.3.2 Time for Submission of Claims. A Notice of Claim shall be made within fourteen (14) days after the occurrence of the event giving rise to the Claim or within fourteen (14) days after the event giving rise to the Claim should have been first observed, whichever is first, unless the Contract specifies a shorter or longer period with respect to such event, in which case such specific provision shall govern. In the case of a continuing delay as a result of a single event, only one Notice of Claim is necessary.

1.5.4 Claims Limited to Actual Costs. Unless otherwise provided herein, Claims for increase in the Contract Sum shall be no greater than the actual direct, jobsite costs incurred by Contractor. If any other provision of the Contract limits or precludes additional compensation to Contractor in certain events or circumstances, then any Claim for additional compensation related to such event or circumstance shall be limited or precluded as provided in such provision. As an additional condition to increase the Contract Sum, Contractor shall retain contemporaneous documentation of all costs supporting such increase and shall submit copies thereof to Owner along with the Notice of Claim or, for continuing Claims, on a daily basis after submitting the Notice of Claim.

1.6 Contract Suspension and Termination

1.6.1 Right to Suspend Work. Owner or Design Professional may stop the Work upon observation of apparent Non-Compliant Work or whenever such stoppage may be necessary to protect the Work or protect the interests of Owner. The stop work order may be given orally, with Notice to be provided to Contractor within seventy-two (72) hours. If the Work is later determined by Design Professional to be conforming Work, and Contractor then complies with Section 1.5.3, Contractor shall be entitled to a compensable time extension in accordance with Section 1.4.3. If the Work is determined by Design Professional to be Non-Compliant Work, then Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time, and Owner may exercise any right hereunder with regard to such Non-Compliant Work.

1.6.2 Owner's Right to Terminate Contract Without Cause. Owner may terminate the Contract at any time, without cause, upon giving Contractor fifteen (15) days' Notice. In the event Owner elects to terminate the Contract after, Owner shall pay Contractor, in accordance with the terms of the Contract for all Work executed prior to termination, and for the costs incurred by Contractor because of the termination, up to the unpaid balance of the Contract Sum.

1.6.3 Owner's Right to Terminate Contract for Cause. Owner may terminate the Contract if Contractor is in breach of a Notice of Non-Compliant Work; if Contractor makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency; if Contractor persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the Project; if Contractor abandons the Project for a period of fourteen (14) or more days; if Contractor is otherwise guilty of a substantial violation of any provision of this Contract; or for any reason that would permit Owner to terminate the Contract under applicable law. Owner may terminate the Contract for these causes, without prejudice to any other right or remedy under this Contract, at equity, or in law, upon giving Contractor fifteen (15) days' Notice of Owner's intent to terminate for cause.

1.6.3.1 Owner's Right to Complete Work Upon Termination for Cause. Upon termination for cause, Owner shall have the right to take possession of the Work, together with all materials, equipment, tools, and improvements thereon and to finish the Work by whatever reasonable method Owner may deem expedient.

1.6.3.2 Payment Due Upon Termination for Cause. Upon termination for cause, Contractor shall not be entitled to receive any further payment until the Work is completed. Upon completion, Contractor shall pay to Owner the positive excess of (i) Owner's cost of completion of the Work, plus any damages incurred by Owner due to such termination and the basis for such termination, including but not limited to liquidated damages for delays in completion, over (ii) the unpaid balance of the Contract Sum. Upon completion, Owner shall pay the positive excess of (i) the unpaid balance of the Contract Sum over (ii) Owner's cost of completion of the Work, plus any damages incurred by Owner due to such termination or the basis for such termination, including but not limited to liquidated damages for delays in completion.

1.6.3.3 Determination of Wrongful Termination. In the event a court of competent jurisdiction determines (or the parties agree to settle with a consent determination) that a termination for cause is wrongful or not authorized by the terms of the Contract, the termination shall be considered to be a Termination For Convenience, and the sole remedy available to Contractor shall be the contractual treatment of the termination pursuant to Section 5.1.2 without any other damages, relief, or compensation.

1.6.4 Contractor's Right to Terminate for Nonpayment. If Owner fails to pay Contractor the amount due within the time required by the Contract, Contractor must give Notice to Owner of such nonpayment. If Owner fails to pay such amount or provide a Notice of a dispute as to the amount sought by Contractor within thirty (30) days after receipt of Contractor's Notice of nonpayment, Contractor may terminate this Contract by giving the Owner fifteen days' Notice of Contractor's Intent to Terminate. Upon such termination and upon providing Owner with all releases in the same manner as would be required upon Final Completion, Owner will pay Contractor, as provided in the applicable provisions of Section 4, for the Work properly executed, and, only if Contractor submits a Claim in the manner and time provided in Section 1.5.3, for any proven damages sustained or cost incurred for any materials, equipment, tools, construction equipment and machinery, and cancellation charges on obligations of Contractor outstanding as of the termination. The remedies provided in this Section shall be the sole remedies of Contractor for such termination for cause.

1.6.5 Notices of Termination. Notwithstanding any other provision of this Contract, if either party elects to terminate this Contract under any provision in Section, then the terminating party will issue a written Notice of Termination that shall be sent by Certified Mail, Return Receipt Requested.

1.6.6 Cumulative Remedies. Except as otherwise provided herein, each of Owner's rights and remedies provided for in this Contract shall be cumulative and shall be in addition to every other right or remedy provided for in this Contract, at law, or in equity, or by statute or otherwise. The exercise or beginning of the exercise of any one or more of the rights or remedies provided for in this Contract, at law, or in equity, or by statute or otherwise, shall not preclude the simultaneous or later exercise of any or all other rights or remedies provided for in this Contract, at law, or in equity, or by statute or otherwise. Owner's rights and remedies hereunder shall survive any termination by Owner or Contractor.

2 THE WORK

2.1 Pre-Construction Requirements

2.1.1 Pre-Construction Phase. The Pre-Construction Phase commences with the execution of the Contract and ends with the issuance of the Proceed Order. No physical Work may be done at the Project Site until the Proceed Order is issued.

2.1.2 Pre-Construction Meeting. Upon execution of the Contract, a Pre-Construction Meeting shall be held between the Owner, the Contractor and the Design Professional to review the Project, inspect the existing facilities, and set up the approximate work sequence schedule.

2.1.3 Inspection of Existing Facilities Prior to Commencing Work. If the Project involves renovations or modifications to existing facilities, the Owner, Contractor, and Design Professional shall jointly inspect the existing facilities to identify any damage to existing work and shall prepare a schedule identifying and showing the location of any damage to the existing work which is ascertainable by inspection. It is agreed that the preparation of the schedule is for the benefit of the Contractor and is intended to enable it to have the protection afforded by a record of such existing damage as is visually ascertainable. The Contractor shall have no responsibility to repair any damage that shall appear on the above-mentioned schedule nor shall he be responsible for repairing any existing damage which was not ascertainable by visual inspection or which was not the result of negligence on his part, unless such repair is included in the Work.

2.1.4 Submission of Overall Project Schedule. Within ten (10) days of the Pre-Construction Meeting, Contractor shall submit to the Owner and Design Professional for approval a Construction Progress Schedule showing the critical path of the Work, agreed upon milestone dates through Material Completion, and dates for submission of Submittals. Upon recommendation by Design Professional and approval by Owner, the Construction Progress Schedule shall become the Overall Project Schedule, which shall be utilized by Design Professional, Owner, and Contractor.

2.1.5 Submission of Safety Plan. Within ten days of the Pre-Construction Meeting, the Contractor shall prepare and submit to the Owner a specific safety program for the Work which shall identify the person in charge of Project Safety for the Contractor. The Contractor shall establish and require all subcontractors to establish reasonable safety programs.

2.1.6 Submission of Schedule of Values. Within ten days of the Pre-Construction Meeting, Contractor shall submit a Schedule of Values in accordance with Section 2.6.1.

2.1.7 Permits & Licenses. Contractor shall obtain and pay for all permits and licenses necessary for the prosecution of the Work. Owner shall cooperate with Contractor as it secures building and other permits, licenses, and inspections that are required to be obtained by Contractor.

2.1.8 Utilities. If permanent utilities are available at the Site, the Owner shall furnish without cost to the Contractor water and electricity as presently available at the Site as required to do the Work, provided however that the Contractor shall pay the costs of any separate connections. The Contractor shall make connection to utilities at locations agreeable to the Owner. The Contractor shall pay all costs for connections and extending these to the area where it proposes to use them. If permanent utilities are not available at the Site, Contractor shall obtain temporary utilities and provide sewage disposal at its expense until the extension and connection of permanent utilities and shall pay for all such utility services until Material Completion has been achieved.

2.1.9 Submission of Documents for Issuance of Proceed Order. Contractor shall submit the following documents as a prerequisite to Owner's issuance of the Proceed Order: Payment and Performance Bonds, Insurance Certificates, Worker's Compensation and Employer's Liability Insurance Certificates for all Subcontractors, Subcontractors' Affidavit for Georgia Security and Immigration Compliance, Project Safety Plan, Construction Progress Schedule, and Schedule of Values.

2.2 Construction Phase Requirements

2.2.1 Review of Construction Documents. Prior to commencing the Work, Contractor shall review all Construction Documents for any inconsistency, ambiguity, error, or omission. When potential design issues are identified, Contractor shall annotate the Construction Documents and shall issue an RFI in writing to the Design Professional. Design Professional shall furnish complete, definite, and clear instructions in response to the RFI in writing, or by issuing drawings, or both. In the event instructions are given orally for expediency, they shall be confirmed in writing or by drawings within five (5) days following the oral instructions. Any such additional instructions shall be consistent with the Construction Documents and reasonably inferable therefrom. Contractor shall not proceed with the affected Work until receiving a response from the Design Professional. Contractor shall exercise skill and judgment in the performance of its review of the Construction Documents but does not warrant or guarantee any design services furnished by Design Professional

2.2.2 Construction Documents at Site and Recording Changes. Contractor shall keep at the Site at least one copy of the Construction Documents in good order and available to Design Professional and to its representatives. Contractor shall record all changes and shall annotate a copy of the Construction Documents to reflect the as-built condition.

2.2.3 Progress Reports. During the Construction Phase, Contractor shall monitor the progress of the Work for conformance with the Overall Project Schedule and keep Owner informed of such progress and shall maintain records documenting the progress of the Work. Contractor shall submit progress reports at intervals reasonably determined by the Owner. Progress Reports shall document the progression of the Work and shall include information on the percentage of completion and indicate completed activities and any changes in sequencing or activity durations, including approved Change Orders. Progress Reports also note dates by which Non-Compliant Work shall have been cured and note the actual date of cure of the Non-Compliant Work.

2.2.4 Supervision of Work. Contractor shall supervise and direct the Work using diligent skill and attention in order to ensure satisfactory progress of the Work and that the quality of the Work complies with the Contract. Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures. Contractor is fully responsible to Owner for the acts and omissions of its officers, employees, agents, all Subcontractors and their respective officers, employees and agents, and all other persons on the Site at the direction of Contractor or to perform Work. Non-performance, improper performance, or other default by any Subcontractor or employee or agent of Contractor shall not excuse Contractor from its obligation to assure timely performance of the Work in compliance with the Contract.

2.2.5 Project Superintendent. Contractor shall ensure that a competent Superintendent remains on the Project, on a full-time basis, until Material Completion. A Superintendent shall be present to supervise completion of all Punchlist Items and Permitted Incomplete Work. All directions given to the Superintendent shall be as binding as if given to Contractor. The Superintendent shall not be changed except with the consent of Owner unless the Superintendent ceases to be in Contractor's employ. Contractor must obtain Owner's prior written approval before engaging a replacement Superintendent and must ensure that the replacement has similar qualifications and experience to the original Superintendent.

2.2.6 Protection of Work, Property, and People. The Contractor shall provide protection of the Work, adjacent property, and persons on the Site and adjacent thereto. Contractor shall make good any damage, injury, or loss such Work, persons, or property, except to the extent the damage, injury, or loss is directly the result of errors in the Construction Documents or such as shall be caused directly by agents or employees of the Owner.

2.2.7 Safety. The Contractor is responsible for the safety of the Site and the Work. The Contractor shall comply with the rules and regulations of OSHA and/or the Department of Labor (O.C.G.A. § 34-2-6), and, where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., for safety and prevention of accidents. Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created thereby.

2.2.8 Emergencies. In an emergency affecting the safety of life or the work or of adjoining property, the Contractor, without special instruction or authorization from the Design Professional or Owner, shall act, at his discretion, to prevent such threatened loss or injury. Any compensation claimed by the Contractor on account of emergency work shall be determined in accordance with the Allowable Costs under Section 2.4.6.

2.2.9 Use of Premises. The Contractor shall confine its operation and storage to the Project Site and any other areas specifically indicated in the Contract. The Contractor shall have access to Site between 7:30 A.M. and 5:00 P.M. Monday through Friday and, upon written permission of the Owner, may make deliveries and have access to the Site at any hour of any day. Contractor's promise to perform the Work within the Contract Time stated is not dependent on the availability of the Site for hours other than identified hereinabove unless other hours are agreed upon at Contract execution.

2.2.10 Building Occupancy. Contractor acknowledges that portions of the Site are occupied by County employees performing essential tasks necessary to the efficient operation of County government. Contractor agrees that it shall perform all Work in such a manner as to provide the least possible disruption to the occupants. Contractor shall schedule Work and provide temporary ventilation and/or isolation to insure that fumes from welding, other construction tasks, and out-gassing from construction materials do not migrate to occupied areas. The Contractor shall provide such mats, drop cloths, etc., as shall be necessary to protect the surrounding areas from soil or damage. The Contractor and its personnel shall not use the passenger elevators for transportation of equipment, supplies, goods and material unless otherwise agreed to in writing by the Owner. Contractor shall use only those bathroom facilities specifically designated by the Owner for Contractor's use unless the Owner instructs Contractor to provide for temporary toilets.

2.2.11 Cleaning Up. The Contractor shall at all time keep the Site free from accumulations of waste material or rubbish caused by his employees or Work. At the end of each working day, Contractor shall leave the premises in a broom clean condition and remove all trash and debris.

2.2.12 Cutting, Patching and Fitting. The Contractor shall do all cutting, fitting, or patching required to complete the Work or to make its several parts come together properly and fit. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the Work unless otherwise required by the Contract.

2.2.13 Submittals. Contractor shall provide all Submittals as required by the Contract in accordance with the Overall Project Schedule. Contractor shall perform no portion of the Work for which the Contract requires Submittals until Design Professional has approved the respective Submittal. Contractor shall maintain at the Site one copy of all approved Submittals.

2.2.14 Hazardous Materials. A Hazardous Material is any substance or material identified as of the date of the Agreement as hazardous under any governmental law, rule, or regulation, or otherwise subject to governmental requirements concerning handling, disposal, and/or cleanup. Except for Hazardous Materials specifically identified to be remediated by the Contract, the Contractor shall not be required to perform any work related to Hazardous Materials encountered at the Site. The Contractor is fully responsible for any Hazardous Materials brought on the Site by the Contractor or any Subcontractor. Contractor shall immediately notify Owner and Design Professional of its discovery of and the location of any Hazardous Materials at the Site that were not anticipated or contemplated as part of the Work.

2.2.15 Differing Site Conditions. If the Contractor encounters conditions at the Site that are subsurface or concealed conditions that materially differ from those expressly identified in the Contract or conditions at the Site that are materially different than those conditions anticipated or expected by a reasonably observant and prudent construction contractor, then Contractor shall promptly provide notice to the Owner and Design Professional. If Design Professional determines that such conditions differ materially from those identified in the Contract or those reasonably anticipated, and such difference shall cause an increase or decrease in the Contractor's costs or time, the Design Professional shall recommend an equitable adjustment.

2.2.16 Contract Provisions Required in All Subcontracts. Contractor agrees to bind every Subcontractor to the terms of the Contract insofar as they are applicable to its Work. Contractor shall expressly name Owner as an intended third-party beneficiary of each Subcontract.

2.3 Warranties, Inspections and Correcting the Work

2.3.1 Construction Warranty. All Work shall be free from defects and conform to the requirements of the Contract. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and Work. Such warranties are referred to herein as the Construction Warranty. In addition to the Construction Warranty, Contractor shall provide all additional warranties called for in the Construction Documents. These warranties shall be in such form as to permit direct enforcement by Owner against any Subcontractor or third party whose guaranty or warranty is called for. The calling for or the furnishing of written warranties or bonds shall in no way limit the Construction Warranty and the contractual obligations of Contractor hereunder, including but not limited to the obligation correct the Work as set forth in Section 2.3.7. The remedies stated in this Section are in addition to the remedies otherwise available to Owner, do not exclude such other remedies, and are without prejudice to any other remedies.

2.3.2 Inspection of the Work. Both Contractor and Design Professional have separate duties to inspect the Work. Inspection of the Work by Owner, Design Professional or any third party shall not diminish, relieve, or alter the responsibility of Contractor to ensure that all Work complies with the Contract. The failure of Owner, Design Professional, or other third-parties to discover or notify Contractor of the existence of Non-Compliant Work shall not relieve Contractor of its responsibility to ensure that all Work complies with the Contract, and neither Design Professional's Certificate of Material Completion or Certificate of Final Completion nor payment shall relieve Contractor of responsibility to ensure that all Work complies with the Contract.

2.3.3 Contractor's Inspection of the Work. Contractor has an indivisible, non-delegable, and nontransferable contractual obligation to Owner to make inspections of the Work at all stages to confirm at all times that all Work has been executed strictly in accordance with the Contract. Contractor shall not rely on an inspection by Owner, Design Professional, or any other third party to identify Non-Compliant Work.

2.3.4 Fire Marshal's Inspection of the Work. The State Fire Marshal may make inspections at any time. If the Work requires a Certificate of Occupancy, Contractor shall request a Fire Marshal Inspection at eighty percent (80%) completion and at one hundred percent (100%) completion and will give Notice when all items on the one hundred percent (100%) inspection report have been completed. Requests shall be in writing with a copy to Owner and Design Professional.

2.3.4.1 Eighty Percent (80%) Inspection. The Eighty Percent (80%) Inspection shall take place when the structural components, including the fire walls, vertical shafts, stairways, smoke stops, hazardous area separations, roof and ceiling assemblies, corridor and door width, and HVAC systems, are in place and open for review of the fire safety components.

2.3.4.2 One Hundred Percent (100%) Inspection. The One Hundred Percent (100%) Inspection shall take place when Contractor has completed all of the items noted on the Eighty Percent (80%) Inspection report and the building is ready for issuance of the Certificate of Occupancy.

2.3.5 Design Professional's Inspection of the Work. Design Professional shall inspect all Work for compliance with the Contract. At all times, Contractor shall permit Design Professional and its representatives to access the Work for inspection.

2.3.5.1 Notice to Design Professional Prior to Covering Work. If the Contract, laws, ordinances, or any public authority require any Work to be specially tested or inspected, Contractor shall give Design Professional timely Notice of its readiness for inspection and, if the inspection is by any authority other than Design Professional, will inform Design Professional of the date fixed for such inspection. Inspections by Design Professional shall be made promptly and, where practicable, at the source of supply.

2.3.5.2 False Starts. In the event Contractor shall have issued Notice of Readiness prematurely, its action shall be deemed to be a "false start." Contractor shall be liable for the costs and damages resulting from false starts, including but not limited to the salary, professional fees, and travel and living expenses of the persons or parties affected by false starts.

2.3.5.3 Inspection of Work Covered Without Consent of Design Professional. If any Work is covered without written approval or consent of Design Professional or contrary to any provision of the Contract, then Contractor shall uncover such Work for inspection by Design Professional. Contractor shall be liable for the costs of

uncovering such Work, as well as the cost of recovering Work and the fees of Design Professional arising from the review of such uncovered Work.

2.3.6 Notice of Non-Compliant Work. The Owner or Design Professional may issue a Notice of Non-Compliant Work if it observes Non-Compliant Work, including failure to maintain the Overall Project Schedule. The Notice of Non-Compliant Work shall be in writing, dated, and addressed to Contractor with a copy to Owner or Design Professional, as applicable. The Notice of Non-Compliant Work shall include a description of the Non-Compliant Work, a citation to the provision of the Contract (or incorporated document or standard) that has been violated, and a reasonable period to correct the Non-Compliant Work ("Cure Period"). If Contractor is unsure or unaware of any information necessary to correct the Non-Compliant Work, it shall immediately request such information in writing. In the event that Owner incurs increased costs due to re-inspection of Work that was found to be Non-Compliant, Contractor shall be liable for the costs of the re-inspection, including but not limited to the salary, professional fees, and travel expenses of the Design Professional or inspection firm.

2.3.7 Duty to Promptly Correct Work. Contractor shall promptly correct any Non-Compliant Work within the Cure Period stated in the Notice of Non-Compliant Work. The duty to correct the Work shall apply whether the Non-Compliant Work is discovered before or after Material Completion. Contractor shall bear the costs of correcting such Non-Compliant Work, including, without limitation, additional testing and inspections and shall bear the expense of restoring all Work of Separate Contractors affected or destroyed by such removal or replacement. Contractor shall give prompt Notice upon completion of the correction of the Non-Compliant Work. In the absence of such Notice, it shall be and is presumed under this Contract that there has been no correction of the Non-Compliant Work.

2.3.7.1 Notice of Non-Compliant Work for Failure to Maintain Schedule. If Design Professional issues a Notice of Non-Compliant Work for failure to maintain the Overall Project Schedule, Contractor shall deliver to Design Professional and Owner a written plan explaining how Contractor intends to bring the Project back in compliance with the Overall Project Schedule within seven (7) days of the issuance of the Notice of Non-Compliant Work. Contractor's plan must provide sufficient detail to allow Design Professional and Owner to determine the proposal's feasibility.

2.3.7.2 Owner's Option to Accept Non-Compliant Work. If Design Professional and Owner deem it inexpedient to correct Non-Compliant Work, Owner may agree, in writing, to accept the Non-Compliant Work and make an equitable deduction from the Contract Sum which shall be deducted from Contractor's next payment.

2.3.7.3 Owner's Remedies for Breach of Notice of Non-Compliant Work or Failure to Prosecute the Work. If Contractor does not correct the Non-Compliant Work within the Cure Period stated in the Notice of Non-Compliant Work, Contractor shall be deemed to have breached the Notice of Non-Compliant Work. If Contractor breaches a Notice of Non-Compliant Work or fails to prosecute the Work in accordance with the Contract, Owner may, after giving five (5) days' Notice to Contractor, correct the Non-Compliant Work, prosecute the Work, or supplement the labor of Contractor or its Subcontractors and deduct the costs thereof from any payment then or thereafter due to Contractor and recover any resulting deficit from Contractor. The remedies stated in this Section are in addition to the remedies otherwise available to Owner and are without prejudice to any other remedies.

2.3.8 Correction of Non-Compliant Work After Material Completion. Contractor shall promptly remedy any Non-Compliant Work upon receipt of a Warranty Complaint received within one (1) year from the date of Material Completion, unless such Warranty Complaint is a result of a design defect or Owner abuse. Within seven (7) days of receipt of a Warranty Complaint from the Owner, Contractor shall issue a written response to the Owner stating Contractor's plan to correct the Work and the time needed to correct the Work. Contractor shall promptly commence correction of the Work unless the Design Professional agrees that the Warranty Complaint is the result of a design defect or Owner abuse. Contractor and its Subcontractors shall make no visits to the Site without first giving Notice to the Owner. Warranty Complaints should be corrected within fourteen (14) days of receipt unless the Work cannot be corrected within fourteen (14) days, in which case Contractor shall notify the Owner in its initial response. If Contractor does not provide the initial response within seven (7) days or remedy the Warranty Complaint within the time specified in its initial response, upon five (5) days' Notice, Owner may remedy the Warranty Complaint, including but not limited to any resulting damage to the Work or other property, at the expense of Contractor.

2.3.9 Warranty Complaints - Emergency Situations. If the Warranty Complaint is an emergency, this will be noted and Owner may (i) require Contractor to correct the Work immediately or (ii) if the emergency involves risk of property

damage or personal injury or death, Owner may proceed at once to remedy the Warranty Complaint. If, pursuant to the aforementioned clause (i), Contractor is requested to correct the Work, it shall respond to the Warranty Complaint in emergency situations within twenty-four (24) hours. If Contractor fails to respond within such time limit, Owner may remedy the Warranty Complaint and charge the cost thereof to Contractor, including but not limited to any resulting damage to the Work or other property. If, pursuant to the aforementioned clause (ii), Owner proceeds to remedy the Warranty Complaint in an emergency situation, then Owner will charge the cost thereof to Contractor, including but not limited to any resulting damage to the Work or other property.

2.3.10 No Limitation. Nothing contained in this Section shall be construed to establish a period of limitation with respect to Contractor's liability for defective or Non-Compliant Work under this Contract, at law, or in equity. The remedies stated in this Section are in addition to the remedies otherwise available to Owner and are without prejudice to any other remedies.

2.4 Change Orders

2.4.1 Change Orders. The Owner, without invalidating the Contract, may order changes in the Work consisting of additions, deletions, or modifications to the Work, with the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the Work shall be authorized only by written Change Order signed by the Owner. (A sample change order form is attached hereto, however, the exact form to be used may differ and may be provided by the Design Professional or the Owner.) Without a Change Order executed by Owner, Contractor shall not make any changes in the Work or perform any work that is not a part of the Contract, nor shall Contractor receive any compensation or make any Claim therefor.

2.4.2 Change Order Sum. The Change Order Sum may be determined in one or more of the following ways: 1) by an estimate of Allowable Change Order Costs agreed upon in advance and paid as a lump sum ("Lump Sum Change Order"), 2) by Unit Prices named in the Contract or subsequently agreed upon, which Unit Prices shall include all Contractor overhead, profit, and markup ("Unit Price Change Order"), or 3) by the amount of actual Allowable Change Order Costs incurred in the performance of the Change Order Work ("Force Account Change Order").

2.4.3 Change Order Proposals. Owner shall provide Contractor with a proposed Change Order that shall include a description of Change Order Work provided by the Design Professional. Contractor shall promptly respond to the proposed Change Order with an estimate of the Allowable Costs of the Change Order Work and the impact to the Project Schedule. The response shall include an itemized breakdown of Allowable Change Order Costs and a justification to the change in the Project Schedule. The Contractor's justification is provided so that the Design Professional and Owner can determine the whether the proposed change in Contract Time or Contract Sum is reasonable and in compliance with the terms of the Contract.

2.4.3.1 Disagreement as to Change in Contract Sum. If Design Professional or Owner disagree with Contractor as to the amount of the proposed adjustment to the Contract Sum and such disagreement is not resolved promptly, then Owner, if it desires the Change Order Work to proceed, may direct the Change Order Work to commence under a Force Account Change Order in accordance with Section 2.4.5. In no event shall any increase in the Contract Sum for such Change Order Work exceed the increase identified in Contractor's response under Section 2.4.3.

2.4.3.2 Disagreement as to Change in Contract Time or Other Disagreements. If Design Professional or Owner disagrees with Contractor as to matters other than adjustments to Contract Sum, including but not limited to proposed adjustments to Contract Time, and such disagreement is not resolved promptly, then Owner, if it desires the Change Order Work to proceed, may direct the Change Order Work to commence, and the dispute shall be resolved as a Design Professional's Decision as set forth in Section 1.5.2.

2.4.4 Acceptance of Proposed Change Order. If Owner agrees with Contractor's proposed changes to the Contract Time and Contract Sum, then Owner shall execute the Change Order. Upon Owner's execution, the Change Order shall be binding and of full force and effect. All Change Orders shall be performed under the conditions of the original Contract except as specifically modified by the Change Order. The change in Contract Time and Contract Sum (if any) provided by the Change Order constitutes compensation in full to Contractor for the Change Order Work and accounts for all delays and impacts related thereto.

2.4.5 Force Account Change Orders. A Force Account may be used in the event (i) Contractor and Owner cannot agree on the Change Order Sum for a Lump Sum Change Order, (ii) costs associated with a Change Order cannot be reasonably determined prior to beginning the Change Order Work, (iii) Owner and Contractor have agreed to Unit Prices for the Work but cannot determine the number of Units involved in the Change Order, or (iv) Owner otherwise determines. To initiate a Force Account Change order, Owner will issue a Force Account Authorization that sets a Maximum Sum that shall be paid for the Change Order Work and authorizes the Contractor to proceed. Upon completion of the Force Account Change Order Work, a Change Order is executed that sets the Change Order Sum on the basis of the actual Allowable Change Order costs incurred, or in the case of Unit Prices, on the basis of the actual number of units.

2.4.5.1 Accounting for Allowable Change Order Costs. If Owner issues a Force Account Authorization, Contractor must provide a daily accounting of Allowable Change Order Costs incurred in accomplishing the Work. With respect to Unit Price Change Orders, Contractor must provide a daily accounting of units completed. Owner shall be permitted, on a daily basis, to verify such records and information, and may require such additional records as are necessary to determine the Allowable Change Order Costs of such Change Order

Work. Allowable Change Order Costs shall not exceed the Maximum Sum stated in the Force Account Authorization. Contractor is responsible for applying for an increase in the Maximum Sum if it believes the Allowable Costs incurred shall exceed the Maximum Sum.

2.4.5.2 Determining Final Cost of Force Account. Within fourteen (14) days after the conclusion the Change Order Work ordered by a Force Account Change Order, Contractor and Owner shall determine the total Change Order Sum. Such Change Order Sum shall be incorporated into and finalized in the Force Account Change Order.

2.4.6 Allowable Change Order Costs. Allowable Change Order Costs include the items in this Section, but only those costs that are incurred in the performance of the Change Order Work.

2.4.6.1 Allowable Subcontractor Costs. Allowable Subcontractor Change Order Costs shall include the costs of all materials and equipment used in completing the Change Order Work and the costs of all labor to physically perform the Change Order Work but shall not include any charges for small tools or other expendables.

2.4.6.2 Subcontractor Markup. Allowable Subcontractor Costs for Change Order Work include a markup of up to twenty percent (20%) on the Allowable Subcontractor Costs noted above to compensate the Subcontractor for its overhead and profit. If the Subcontractor uses a Sub-Subcontractor to perform a portion of the Change Order Work, the Sub-Subcontractor may receive a markup for its overhead and profit but the total markup for both the Subcontractor and the Sub-Subcontractor shall not exceed twenty percent (20%).

2.4.6.3 Contractor's Payment and Performance Bond and Insurance Costs. Allowable Change Order Costs include the increases in premiums for Contractor's Payment Bond and Performance Bonds and Insurance required under the terms of this Contract, but solely to the extent that such increased costs are a result of the Change Order. In no event shall Contractor's compensation for such costs exceed two percent (2%) of the Allowable Change Order Costs (excluding this Section).

2.4.6.4 Contractor's Costs for Self-Performed Work. If the Contractor performs Change Order Work with its own personnel ("Self-Performed Work), Allowable Change Order Costs shall include the costs of all materials and equipment used in the completing the Self-Performed Work and the costs of all labor to physically perform the Self-Performed Work but shall not include a Subcontractor markup unless expressly agreed to in advance by the Owner.

2.4.6.5 Contractor's Supervision Costs. Allowable Change Order Costs include increased costs of Contractor's Superintendent and field office personnel in direct supervision of the Change Order Work, but solely to the extent that such increased costs are a result of the Change Order.

2.4.6.6 Contractor's Mark-Up. Allowable Change Order Costs include a markup of up to seven and a half percent (7 ½%) on the Subcontractor's Allowable Costs to compensate the Contractor for its overhead and profit on the Change Order Work.

2.4.6.7 Allowable Costs for Unit Price Change Orders. Unit prices shall be inclusive of all Contractor's overhead and profit and no mark-up on top of the Unit prices shall be allowed.

2.5 Project Closeout

2.5.1 Material Completion. To achieve Material Completion, the Work shall be materially complete so that the Owner can use and occupy the entire Project for its intended purpose. Additionally, Contractor shall complete the following Work and submit the Final Documents listed below as prerequisites to Material Completion.

2.5.1.1 Operation and Maintenance Training and Manuals. Prior to the inspection for Material Completion, Contractor shall provide the Owner with training in the operation and maintenance of any mechanical, electrical, or other operating systems and equipment included in the Work and shall provide manufacturer's manuals for operating and maintaining systems and equipment.

2.5.1.2 Warranties and Service Agreements. Contractor shall submit all warranties and maintenance service agreements as called for in the Specifications to the Design Professional at least seven (7) days prior to the proposed date of Inspection for Material Completion.

2.5.1.3 Marked-up Construction Documents. At the inspection for Material Completion, Contractor shall provide a complete set of Marked-up Construction Documents to Design Professional, which shall reflect all changes caused by field changes, Change Orders, or observed changes by Contractor or Subcontractors for the purpose of Design Professional's issuance of Record Documents to Owner.

2.5.1.4 Initial Punchlist. Prior to the Inspection for Material Completion, Contractor shall prepare an Initial Punchlist itemizing all Minor Items and Permitted Incomplete Work and shall provide a copy of the Initial Punchlist to Design Professional and Owner. Contractor is encouraged to consult with Design Professional and Owner prior to finalizing the Initial Punchlist, in particular in arriving at consensus for Minor Items and Permitted Incomplete Work.

2.5.2 Inspections for Material Completion. Contractor shall request an Inspection for Material Completion when it has completed all Work, except for Minor Items and Permitted Incomplete Work and submitted all required documents, including Final Documents.

2.5.2.1 Cleaning Prior to Material Completion. Prior to the inspection for Material Completion, Contractor shall remove from the Site all waste and perform a thorough cleaning of the Work. Contractor shall dust all hard surfaces, mop all hard floors, vacuum all carpet, remove any stains and paint spots, clean and polish all plumbing fixtures and equipment, clean all electrical and mechanical equipment, and clean all ductwork and filters if dirty. Contractor shall also restore any existing facilities such as roads, landscaping, pavement, fencing, curbing, and the like at the Site to at least their pre-construction conditions. Contractor may leave equipment at the Site as necessary to achieve Final Completion of the Project. To achieve Material Completion, Contractor shall have fully cleaned the Site.

2.5.2.2 Notice of Readiness for Inspection for Material Completion. When Contractor determines that the Project is ready for Inspection for Material Completion, Contractor shall give Notice to Design Professional and Owner requesting Inspection for Material Completion. Such Notice shall be provided at least seven (7) days in advance of the date requested for Inspection for Material Completion. Such Notice shall include a copy of the Initial Punchlist. If Contractor requests inspection for Material Completion and it is determined by Design Professional that the Project has not reached Material Completion, referred to as a "false start," then Contractor shall be liable for the costs and damages resulting therefrom, including but not limited to the salary, professional fees, and travel and living expenses of the persons or parties affected by false starts.

2.5.2.3 Inspection, Certificate of Material Completion. Design Professional shall conduct the Inspection for Material Completion and shall confirm the Initial Punchlist by adding or deleting Minor Items or Permitted Incomplete Work as appropriate. Upon completion of the Inspection for Material Completion, if Design Professional determines the Work has reached Material Completion, Design Professional shall execute the Certificate of Material Completion and attach a first draft of a Final Punchlist, which may be handwritten or in electronic format and which shall list all Minor Items and Permitted Incomplete Work and assign amounts to be withheld from the Payment for Material Completion on account of each Minor Item and Permitted Incomplete Work. The Final Punchlist shall include completion dates for the Permitted Incomplete Work. All Minor Items shall be completed within thirty (30) days of Material Completion.

2.5.2.4 Payment for Material Completion. Upon Material Completion, Contractor shall submit a Payment Application along with a Payment Affidavit certifying completion of all Work in accordance with the Contract, except for Minor Items and Permitted Incomplete Work, and releasing all claims against the Owner of any nature arising out of the Project except any claims noted on the Payment Affidavit. If Contractor fails to provide a Payment Affidavit, Payment for Material Completion shall operate as settlement, waiver, release, discharge, and payment in full of all claims (including Claims) against Owner of any nature arising out of the Project except for the Work associated with the Minor Items and the Permitted Incomplete Work.

2.5.2.5 Effect of Failure to Achieve Material Completion. Should Material Completion not be achieved by the Material Completion Date, Contractor is in breach of the covenant of time, Liquidated Damages at the specified daily rate in Section **Error! Reference source not found.** of the Contract begin to accrue and are payable on the day immediately following the Material Completion Date.

2.5.2.6 Material Completion Not a Waiver. A determination that Contractor has achieved Material Completion, the issuance of a Certificate of Material Completion, or Owner's Payment for Material Completion shall not preclude or diminish Owner's rights or remedies for Non-Compliant Work discovered after such events. All such rights and remedies set forth herein shall continue after such events.

2.5.3 Final Completion, Payment. Final Completion is the completion of all Work. When Contractor has completed all Work, it shall request an inspection for Final Completion. Design Professional shall inspect all Work and if it determines that all Work is complete, it shall execute the Certificate of Final Completion. Upon Final Completion, Contractor shall submit a Payment Application requesting the remainder of the Contract Sum. Acceptance of Payment for Final Completion by Contractor shall operate as settlement, waiver, release, discharge and payment in full of all claims against Owner of any nature arising out of the Project.

2.5.4 Effect of Achieving Final Completion. A determination that Contractor has achieved Final Completion, the issuance of a Certificate of Final Completion, or Owner's Payment for Final Completion shall not preclude or diminish Owner's rights or remedies for Non-Compliant Work discovered after such events. All such rights and remedies set forth herein shall continue after such events.

2.6 Payment

2.6.1 Schedule of Values. Prior to the issuance of the Proceed Order, Contractor shall submit a Schedule of Values of the Work to assist Design Professional in reviewing Payment Applications. The Schedule of Values shall allocate the Contract Sum to the portions of the Work in such detail as Owner or Design Professional require. If requested, Contractor shall provide evidence of the accuracy of the Schedule of Values. Unless objected to the Owner or Design Professional, the Schedule of Values shall be used to determine the payment due for completion of each portion of the Work.

2.6.2 Payment Applications. Contractor shall submit a Payment Application to the Owner and Design Professional by the fifth (5th) day of each month for the Work performed during the previous month on the form supplied by the Owner. The Payment Application shall itemize the total sum billed in the same format as the Schedule of Values and shall include the percentage complete for each item of Work. Contractor shall submit no more than one (1) Payment Application during each month. No payment shall become due to Contractor until a proper Payment Application is submitted.

2.6.3 Representations of Contractor. The Payment Application constitutes a representation by Contractor to Owner that (i) the quality of the Work covered by the application is in accordance with the Contract; (ii) Contractor is entitled to payment in the amount requested; (iii) all Work covered by any previously approved Payment Application, for which Contractor has been paid, is free and clear of liens, claims, security interests or encumbrances, and (iv) title to all Work covered by the Payment Application will pass to Owner no later than the time of payment.

2.6.4 Payment. The Owner shall make payment for all Work completed in the previous month, based upon the Schedule of Values and Contractor's estimate of percentage complete, as confirmed by the Design Professional, less the retainage pursuant to Section 2.6.10 and subject to Owner's right to withhold amounts in accordance with Section 2.6.7 and Owner's right to adjust for overpayments. Owner shall make payment to Contractor no later than thirty (30) days after receipt of a properly completed Payment Application.

2.6.5 Disputed Payments. Owner and Contractor agree to use their best efforts to resolve all disputes concerning the Payment Application during the said thirty (30) day payment period. If Owner disputes a portion of the Payment Application, Owner shall make payment of all undisputed amounts within the thirty (30) day payment period.

2.6.6 Late Payments and Interest. Should Owner fail to timely pay as required by Section 2.6.7, Contractor shall provide Notice to Owner in writing by certified mail. If Owner fails to pay within seven (7) days of receipt of the Notice, Contractor shall receive, in addition to the payment due, interest thereon at the rate of one-half percent (1/2%) per month. Pursuant to O.C.G.A. § 13-11-7(b), Owner and Contractor expressly agree to payment periods for Owner's Payment to Contractor and interest rates on late payments that become due to Contractor for late payment by Owner that are different than those set forth in O.C.G.A. § 13-11-4(a) and O.C.G.A. § 13-11-7(a). The payment periods and interest rates set forth herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*, and the provisions of said Act are waived.

2.6.7 Payments Withheld. Design Professional or Owner may withhold payment, or nullify the whole or part of any previous Payment Application, to such extent necessary to protect Owner from loss on account of any one or more of the following: (i) Non-Compliant Work; (ii) failure of Contractor to make payments due to Subcontractors; (iii) reasonable evidence that the Contract cannot be completed for the unpaid Contract Sum; (iv) damage to a Separate Contractor or to any other third party, or reasonable evidence that third parties may file claims against Owner due to acts or omissions of Contractor; (v) failure to maintain the Overall Project Schedule, or (vi) requests for or prior payment of costs that are not required to be reimbursed hereunder. When the grounds for withholding payment are remedied (if applicable), payment shall be made for amounts withheld because of them. In the case of withholding payment for failure to pay Subcontractors, Owner may agree to payment upon receipt of a satisfactory Consent of Surety.

2.6.8 Payment of Subcontractors. Contractor shall pay Subcontractors the amount due for Subcontractor's Work, less applicable retainage, within seven (7) days of receipt of payment from Owner for such Work unless the contract between Contractor and Subcontractor provides that no such payment is due (e.g. without limitation, as a result of non-performance under the Subcontract). The Owner has the right to request evidence from the Contractor that the Contractor has properly paid all Subcontractors. If the Contractor fails to provide such information within seven days of Owner request, Owner shall have the right to contact Subcontractors to determine if they have been paid. Owner shall have no obligation to pay or see to the payment of money to a Subcontractor.

2.6.9 Payment Not Acceptance of Work. Neither payment by Owner nor any partial or entire use or occupancy of the Project shall constitute an acceptance of Work not in accordance with the Contract.

2.6.10 Retainage. Until the payment for Material Completion, Owner shall withhold retainage in the amount of five percent (5%) from each Payment Application, subject to the terms below.

2.6.10.1 Retainage Release. When Material Completion is achieved, retainage shall be paid to Contractor with the payment for Material Completion.

2.6.10.2 Subcontractor's Retainage Release. Upon request by Contractor, Owner may, in its sole discretion, permit an amount equal to the retainage associated with a Subcontractor to be separately released from the retainage held by Owner upon completion of the Subcontractor's Work. To request Subcontractor retainage release, Contractor shall submit an original certificate executed by the Contractor and Subcontractor certifying that the Subcontractor's Work is complete, releasing of all claims by the Subcontractor, and stating the amount due to the Subcontractor.

SECTION I: CONTRACT SUPPLEMENTARY GENERAL REQUIREMENTS

1. Liquidated damages of \$150 per day will be assessed for each day the project remains incomplete beyond the construction contract end date.

2. Owner:

Carlos Tobar
County Manager
Baldwin County
1601 N. Columbia Street, Suite 230
Milledgeville, Georgia 31042
Phone: 478-445-4791
Email: Ctobar@baldwincountyga.com

3. Design Professional:

David Freedman, PE
Freedman Engineering Group
1000 Whitlock Avenue, Suite 320, #218
Marietta GA 30064
Phone: 770-851-3175
Fax: 770-427-4228
Email: Davidf@Freedmanengineering.com

4. Contractor to include a \$15,000 allowance for geotechnical testing during construction. The testing company will be selected by the Owner/Engineer and testing services will be paid for by the Contractor. Any overhead or expenses of the contractor administering this allowance should be included elsewhere in the contractor's bid. Any funds remaining in the allowance at project completion will be credited to the Owner.

SECTION J: FEDERAL REQUIREMENTS

1. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States. The

applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract. The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such Information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

2. COPELAND ANTI-KICKBACK ACT

Compliance with the Copeland "Anti-Kickback" Act.

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. §5.12."

3. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with the Contract Work Hours and Safety Standards Act.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* Baldwin County shall upon its own

action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

4. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to Baldwin County and understands and agrees that Baldwin County will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to Baldwin County and understands and agrees that Baldwin County will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

5. DEBARMENT AND SUSPENSION

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Baldwin County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Baldwin County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6. BYRD ANTI-LOBBYING AMENDMENT

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(1) Required Certification. If applicable, contractors must sign and submit to the non-federal entity the following certification.

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING Certification for Contracts, Grants, Loans, and Cooperative Agreements.

The undersigned certifies, to the best of his or her knowledge and belief, that: 1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

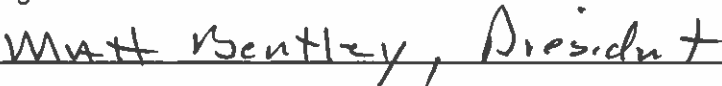
(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies or affirms the truthfulness and Accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.



Signature of Contractor's Authorized Official



Name and Title of Contractor's Authorized Official

4-9-2024
Date

7. PROCUREMENT OF RECOVERED MATERIALS

(1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

(2) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.

(3) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”