



## CONTRACT FOR CONSTRUCTION

The work required by this Contract is for the following project, hereinafter identified as the "Project":

Project Name:  
Project Address:  
City/State/Zip:  
BID #:  
General Project  
Description:

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This Contract for General Construction Services is entered into between:

**County**

Macon-Bibb County: Mayor, Macon-Bibb County, Georgia  
County's Address: 700 Poplar Street  
P.O. Box 247  
Macon, Georgia 31202-0247

and

**Contractor**

Contractor's Name:  
Contractor's Address:

This Contract is executed under seal and shall be effective on the date signed by the last party to do so.

**AUTHORIZED REPRESENTATIVES:**

The authorized representatives and addresses of County, Architect, and Contractor are:

**County's Representative**

Name:  
Address:  
City/State/Zip:  
Email Address:  
Phone:

**Architect's Representative**

Firm Name:  
Name:  
Address:  
City/State/Zip:  
Email Address:  
Phone:

## **Contractor's Representative**

Firm Name:  
Name:  
Address:  
City/State/Zip:  
Email Address:  
Phone:

THEREFORE, in consideration of the mutual promises, covenants and agreements herein and other good and valuable consideration, the sufficiency of which is acknowledged, Macon-Bibb County ("County") and \_\_\_\_\_ ("Contractor"), collectively referred to as the "Parties", agree as follows:

### **ARTICLE 1: REPRESENTATIONS**

Contractor makes the following express representations to County:

- 1.1 Contractor is professionally qualified to act as Contractor for the Project and is licensed to perform construction by all public entities having jurisdiction over Contractor and the Project;
- 1.2 Contractor has and shall maintain all necessary licenses, permits or other authorizations necessary to act as Contractor for the Project until Contractor's duties have been fully satisfied;
- 1.3 Contractor has become familiar with the Project site and the local conditions under which the Project is to be constructed;
- 1.4 Contractor assumes full responsibility to County for the negligent or willful acts and omissions of Contractor's employees, subcontractors, or others employed or retained by Contractor;
- 1.5 Contractor has reviewed and familiarized itself with this Contract and is bound thereby;
- 1.6 Contractor represents that it is experienced in the type of labor and services, is qualified, willing and able to perform general construction services for the Project, and has the expertise and ability to provide construction which will meet County's objectives and requirements, and which will comply with the requirements of all applicable governmental, public authorities, and agencies.

### **ARTICLE 2: NOTICES**

2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is hand delivered; delivered by facsimile; sent by U.S. Mail, postage prepaid, or sent via email. All notices shall be given to the authorized representatives at the addresses above. Notices that are hand delivered, delivered by facsimile, or sent by email shall be deemed given as of the first business day after the date of delivery. Notices given by U.S. Mail shall be deemed given as of the third business day following the date of posting.

### **ARTICLE 3: DEFINITIONS**

The following words and phrases have the following meanings:

- 3.1 Project - The Project shall be as described above.

3.2 Compensation - Compensation shall be the fixed fee and unit prices, if any, as designated in Article 7.1 to be paid to Contractor for Services by Contractor.

3.3 Change Order – A written order to Contractor executed by County and Architect directing a change in the Project and may include a change in the Contract Amount or the time for Contractor's performance, or any combination thereof.

3.4 Site - The geographical location of a Project, defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

3.5 Work - Any and all construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project.

#### **ARTICLE 4: RELATIONSHIP OF THE PARTIES**

4.1 Architect - Architect's performance of services shall be as an Architect consultant to County to carry out the activities of Project design and construction administration and to provide the technical documents and supervision to achieve County's Project objectives. Architect will deal with Contractor on all design and technical matters and will administer this Contract for General Construction Services. Unless otherwise directed by County, County and Contractor shall communicate with each other in the first instance through Architect. County's instructions to the General Contractor will be issued through Architect.

4.2 Other Consultants - County may provide drawings, consultation, recommendations, suggestions, data and/or other information relating to the Project from other consultants, including, but not limited to: Land Surveying Consultant, Geotechnical Consultant, and/or Materials Testing Consultant.

4.3 Contractor:

4.3.1 Contractor shall, in consultation with County, Architect, County's Representatives and their Subcontractors, implement and maintain a spirit of cooperation, collegiality and open communication among the parties so the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.

4.3.2 Contractor shall provide County a list of the proposed key project personnel of Contractor and its Subcontractors to be assigned to the Project. This list shall include such information on Contractor background of each of the assigned personnel as may be requested by County's Representative. Such key personnel and consultants shall be satisfactory to County and shall not be changed except with the consent of County unless said personnel cease to be in Contractor's (or its subcontractors, if applicable) employ.

4.3.3 Contractor agrees that should consultants provide any estimating or scheduling assistance, cost or time control recommendations or other consultation, recommendations or suggestions, any or all such activities shall in no way relieve Contractor of the responsibility of fulfilling its obligations and responsibilities under this Agreement.

#### **ARTICLE 5: CONTRACT DOCUMENTS**

5.1 The Contract for General Construction Services (Contract) is comprised of the following:

This Agreement, including all attached documents, appendices and addenda;

Special conditions, if any;

Bid submitted by Contractor and accepted by County;

The Drawings, Specifications, and all Addenda now existing or issued hereafter;  
Any amendments or addenda executed by County and Contractor hereafter;  
Approved Change Order(s) or field orders;  
Notice of Commencement to be filed with the Bibb County Superior Court Clerk  
Additional documents listed hereafter, if any:

Documents not contemplated in this Article do not, and shall not, form any part of this Contract.

5.2 County shall furnish Contractor with three (3) sets of drawings and specifications and one CD-ROM with drawing and specification files in PDF format. Any additional copies of the Contract Documents required by Contractor for execution of the Project shall be made by Contractor at its cost and expense from the reproducible sets, or electronic media furnished by County.

5.3 Architect shall prepare documents for the Project, including the plans and specifications, which are to be complete, accurate, coordinated, and adequate for bidding, negotiating and constructing the Project. County makes no representation or warranty to Contractor concerning such documents. Contractor represents that it has not relied, and will not rely, upon any representations or warranties by County concerning such documents, as no such representations or warranties exist.

5.4 In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract for General Construction Services, the following shall control: As between figures given on plans and scaled measurements, the figures shall govern; As between large-scale plans and small-scale plans, the large-scale plans shall govern; As between plans and specifications, the requirements of the specifications shall govern; As between this document and the plans, specifications, general conditions or general requirements, this document shall govern.

5.5 Shop drawings and other submittals from Contractor or its Subcontractors and Suppliers do not constitute a part of this Contract for General Construction Services.

## **ARTICLE 6: SCOPE OF PROJECT**

6.1 Contractor shall provide all management, supervision, financing, goods, products, materials, equipment, systems, labor, services, permits, licenses, construction machinery, transportation and any and all other facilities necessary for the proper execution and completion of the scope of the Project per all of the terms and conditions of this Contract. The general nature of the scope of Project that Contractor is to complete is briefly described as follows:

6.1.1 See **Exhibit A – Invitation for Bids for Convenience Center #1**, attached hereto and incorporated by reference.

## **ARTICLE 7: COMPENSATION FOR CONTRACTOR**

7.1 County shall pay Contractor, as full and complete payment for Contractor's timely and complete performance of its obligations hereunder, the fixed contract amount of \$\_\_\_\_\_.

7.2 Within fourteen (14) days after execution of this Contract, Contractor shall prepare and present to County's Representative and Architect, Contractor's Cost Loaded Schedule per the Specifications. It shall be presented in the format, and with such detail and supporting information, specified in this Contract. Contractor shall not artificially inflate any element of its Cost Loaded Schedule. Upon Architect's acceptance, the Cost Loaded Schedule shall be used as back-up to process and pay Contractor's requests for payment. The Cost Loaded Schedule shall not be changed without written change order authorized by County.

7.3 Within ten (10) days after receipt by County of Contractor's approved invoice, County shall pay Contractor ninety percent (90%) of the amount approved by County, withholding the balance as retainage,

unless there is a dispute about the amount of compensation. Thirty (30) days after receipt of the approved invoice is defined as the Payment Date.

7.4 At least every thirty (30) days after commencement of performance, but no more frequently than once a month, Contractor shall submit invoices to Architect on AIA Documents G702 and G703 (Application and Certificate for Payment) requesting payment for labor and services rendered during the preceding thirty days. Each invoice shall contain such detail and be backed up with supporting information Architect requests and shall at a minimum state:

7.4.1 Projected total Contract Amount (listed as the Bid Amount);

7.4.2 Amount due for labor, materials and equipment incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by County), to be accompanied by written proof that County has title to such and that such material and equipment is fully insured against loss or damage;

7.4.3 A breakdown of the various phases or parts of the Project as related to the Contract Amount;

7.4.4 The value of the various phases or parts of the Project actually performed;

7.4.5 Previously invoiced amounts and credit payments made;

7.4.6 The total amount due, less the amount of retainage;

7.4.7 And shall also have attached such lien waivers (partial or final) and other documentation verifying Contractor's payment to subcontractors and suppliers.

7.5 Architect will review Contractor's applications for payment, including such accompanying data, information and schedules as the Contract requires, to determine the amounts due Contractor, and based on such review, together with its inspections of the Project, shall authorize payment by County to Contractor in writing. Such authorization will constitute Architect's certification to County that:

7.5.1 The Project described in Contractor's invoice has progressed to the level indicated and has been performed per the Contract;

7.5.2 All necessary and appropriate lien waivers have been submitted;

7.5.3 The amount requested is currently due and owing to Contractor.

7.6 Architect's approval of Contractor's invoice shall not preclude County from exercising any of its remedies under this Contract. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any reductions made by County. County shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to Contractor due to:

7.6.1 Contractor's failure to perform the work required per this Contract;

7.6.2 Contractor's failure to correctly and accurately represent the Project performed in a payment request, or otherwise;

7.6.3 Contractor's performance of the Project at a rate or in a manner that, in County's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed;

7.6.4 Contractor's failure to use funds paid Contractor by County, to pay Contractor's Project-related obligations including, but not limited to, Contractor's subcontractors, materialmen, and suppliers;

7.6.5 Claims made, or likely to be made, against County or its property;

7.6.6 Loss caused by Contractor or Contractor's subcontractors, or suppliers;

7.6.7 Contractor's failure or refusal to perform any of its obligations to County.

7.7 If after thirty (30) days from the Payment Date, County without cause fails to pay Contractor amounts then due to Contractor, Contractor shall have the right, in addition to all other rights and remedies contained herein, to cease performance of work on the Project until receipt of proper payment after first providing thirty (30) days' written notice to County of its intent to cease work.

7.8 All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and / or the final payment. If any invoice contains a defect or impropriety which would prevent payment by the Payment Date, County shall notify Contractor in writing of such defect or impropriety. Any disputed amounts determined by County to be payable to Contractor shall be due thirty (30) days from the date that the dispute is resolved.

7.9 Interest shall accrue on amounts owed by County to Contractor which remain unpaid thirty (30) days following the Payment Date, as defined in Article 7.3. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in *The Wall Street Journal* on the weekday following each such Weekly Auction.

7.9.1 No interest shall accrue when payment is delayed because of a dispute between County and Contractor, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage which is withheld to assure performance of this Contract.

7.10 Contractor expressly warrants and guarantees to County that:

7.10.1 Title to all goods, materials, equipment and systems covered by an invoice will pass to County by incorporation into the Project or on receipt of payment by Contractor, whichever occurs first;

7.10.2 All goods, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests, or encumbrances;

7.10.3 No goods, materials, equipment or systems covered by an invoice have been acquired by Contractor, or its subcontractors or suppliers, subject to an agreement under which an interest therein or encumbrance thereon is retained by the seller or otherwise imposed by Contractor, or its subcontractors or suppliers.

7.11 The signature of Contractor on any invoice constitutes Contractor's certification to County that Contractor's services listed in the invoice have progressed to the level indicated and have been performed as required by this Contract, Contractor has paid its subcontractors and suppliers their share of all payments received from County; and the amount requested is currently due and owing.

7.12 Contractor shall incorporate into the Contract Amount, and shall pay, all taxes for goods, materials, equipment and systems incorporated into the Project which were legally required at the time of execution of this Contract, whether or not the taxes are yet effective or merely scheduled to go into effect. Contractor shall secure, defend, protect, hold harmless, and indemnify County from and against any and all liability, loss, claims, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against County by any taxing authority with respect to such taxes. Contractor shall cooperate with and assist County in securing qualified refunds of any sales or use tax paid by County or Contractor on goods,

products, materials, equipment or systems. Any refund secured shall be paid to County.

7.13 Upon receipt of payment from County, Contractor shall pay its subcontractors and suppliers out of said payment, the amount to which each entity is entitled, reflecting percentages actually retained from payments to Contractor on account of such entity's portion of the work. County shall have no obligation to pay Contractor's subcontractors or suppliers. County reserves the right to make payment jointly to Contractor and to any of its subcontractors or suppliers if County becomes aware that Contractor fails to pay any of those entities. Such joint check procedure, if employed by County, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not commit County to repeat the procedure in the future.

7.14 Prior to being entitled to receive final payment, Contractor must achieve Final Completion per Article 18 of this Contract. County shall, subject to its rights set forth above in this Article, make final payment of all sums due Contractor within thirty (30) days from Architect's execution of a final approval for payment.

### **ARTICLE 8: PERSONNEL, SUBCONTRACTORS, AND SUPPLIERS**

8.1 Contractor shall promptly inform County in writing of the reasons for, and the names and qualifications of, personnel replacements. County may request rejection of any proposed replacement.

8.2 Contractor should not use any Subcontractor or Supplier to which County raises a reasonable, timely objection; and shall promptly inform County in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacements. County may request rejection of any proposed replacement.

8.3 Contractor shall staff the Project with qualified individuals and entities. Contractor's Representative will serve as its primary communication contact with Architect. Contractor shall employ persons and subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all other individuals on the Project. Contractor shall immediately remove, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.

8.4 Contractor shall enter into written contracts with its subcontractors and suppliers, consistent with this Contract. Contractor shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable requirements of this Contract that are included by reference in its written contract with Contractor, and that it will abide by those requirements. Said contracts shall preserve and protect the rights of County and include the acknowledgment and agreement of each subcontractor or supplier that County is a third-party beneficiary of the contract. Contractor's agreements with its subcontractors and suppliers shall require that if there is a default or termination of this Contract and upon request of County, Contractor's subcontractors and suppliers will perform services for County.

8.5 Contractor shall promptly resolve claims, complaints, labor disputes and disputes over assignment of Project tasks by and among its subcontractors and suppliers.

8.6 Contractor shall remain responsible for the performance of subcontractors, remain County's sole point of contact for services, and be responsible for the payment of subcontractors. The terms, covenants, and conditions of this Agreement shall be binding on the successors and assigns of either party. In no circumstances shall any subcontractor have any greater rights as against the County than the Contractor has under this Agreement, and in no circumstances shall the County's responsibilities towards any subcontractors be greater than County's responsibilities to Contractor under this Agreement.

### **ARTICLE 9: CONSTRUCTION SCHEDULE**

9.1 Contractor shall commence construction of the scope of the Project within ten (10) days after receipt of the Notice-to-Proceed. Contractor shall file Notice of Commencement with the Bibb County Superior



Court Clerk within fifteen (15) days of physically commencing work as stated in O.C.G.A. § 36-91-92, and provide a stamped, filed copy of said notice to:

Macon-Bibb County Attorney's Office  
P.O. Box 247  
Macon, Georgia 31202-0247

9.2 Contractor shall accomplish Final Completion of the scope of the Project within one hundred eighty (180) calendar days following the date of the Notice to Proceed.

9.3 Contractor may, within fourteen (14) calendar days following receipt of the Notice to Proceed, submit to County an Interim Project Construction Schedule (as defined in the Project Specifications), in Critical Path Method format (or CPM).

9.4 Any Construction Schedule shall include all pertinent dates for timely completion:

9.4.1 Any Construction Schedule shall properly coordinate dates for performance of all divisions of the work, including completion of off-Site requirements and tasks, so that the work can be completed in a timely and orderly fashion per the required dates of Substantial Completion and Final Completion.

9.4.2 Any Construction Schedule shall include the Date of the Notice-to-Proceed, the date of Substantial Completion and the date of Final Completion; any guideline and milestone dates required by County; any applicable subcontractor and supplier sub-schedules; a submittal schedule which allows sufficient time for review of documents and submittals; the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and required approval dates.

9.4.3 County and Architect do not assume any of Contractor's responsibility that the Construction Schedule be coordinated or complete; or for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by County.

9.4.4 Contractor may review weekly, the actual progress against the Construction Schedule. Contractor shall discuss progress weekly with Architect.

9.5 If work will be or has been delayed, Contractor should immediately notify Architect of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and shall take all corrective actions reasonably necessary to deliver the Project by the required dates of Substantial Completion and Final Completion, and other milestone dates.

9.6 Contractor should promptly notify Architect in writing when it believes adjustments to the required dates are necessary. No such adjustments shall be effective unless approved in writing by County.

9.7 County shall not pay Contractor any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates.

9.8 Contractor shall provide documents to Architect for review per the schedule requirements and with sufficient lead time to allow Architects reasonable time for review.

## **ARTICLE 10: BONDS**

10.1 Contractor shall purchase payment and performance bonds prior to the commencement of any construction on the Project. Each bond shall: be in a form approved by County; incorporate by reference the terms of this Contract; be executed by a company certified by the Secretary of the United States Department of Treasury pursuant to the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13); be executed by a company licensed and authorized to do business in the state of Georgia; and be accompanied by a power of attorney certifying that the persons executing the bond have the authority to do so. The penal sum of each bond shall be an amount not less than the contract price.

10.2 Contractor shall deliver bonds and powers of attorney to County prior to commencement of the work. The bonding company that issues the bonds must be registered with The Surety Association of America (SAA).

10.3 In the event the Contract Price is adjusted by Change Order executed by the parties, the penal sum of both of the performance bond and the payment bond shall be deemed to be automatically increased by like amount without requiring additional notice to the Surety.

## **ARTICLE 11: CONTRACTOR'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

11.1 Contractor shall complete its obligations using its best skill and attention, and furnish management, supervision, coordination, labor and services which expeditiously, economically and properly complete the work per the Contract Documents and this Contract; and per the standards in the Middle Georgia area for projects similar in size, complexity and cost to this Project.

11.1.1 All services rendered by Contractor for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.

11.1.2 Contractor shall cooperate and communicate with County and all other persons or entities as required for satisfactory completion of the Project.

11.1.3 In the event that the Project is part of a larger overall project which may include the construction of other structures or other construction activities on the same Site, Contractor shall not interfere with the construction of other structures on the Site.

11.1.4 Contractor shall verify all existing conditions on site and for any contiguous work to form the layout of Contractor's own work, making all necessary measurements, lines, and levels, and shall assume the responsibility for the correctness of the layout of the work. Contractor shall confine work to as small an area as possible, using only the areas designated for on-site storage.

11.1.5 Contractor shall not damage, endanger, compromise or destroy any part of the overall project or the Site, including without limitation, work by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures. In case of violation, Contractor shall be exclusively responsible for all costs associated with any repairs required to bring the condition back to the original state prior to the damage.

11.1.6 Contractor shall protect all surrounding adjoining private and public property, taking every precaution to prevent damage or injury to trees, shrubs, curbs, sidewalks, driveways, and fences along or adjacent to the work. Should damage occur, Contractor shall restore such property damage or injuries to a condition equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed by, and to the satisfaction of County. Should Contractor fail to restore damaged property, or make good such damages or injury, County may, after forty-eight (48) hours written notice, proceed to repair, rebuild, or otherwise restore such property as may be deemed necessary, and the cost thereof shall be deducted from any monies due or which may become due Contractor under the terms of this agreement.

11.1.7 Contractor shall verify all underground utilities and their locations prior to commencing any work under this agreement. Damages to underground utilities and costs to repair same shall be the responsibility of Contractor.

11.2 Contractor shall: Comply with all applicable laws, codes, rules, regulations and lawful orders of all governmental, public authorities and agencies having jurisdiction over the Project; obtain all necessary governmental approvals and permits, including building permits; and give all notices required of it by governmental authorities relating to the Project.

11.3 Contractor shall be responsible for Project safety. Contractor shall maintain detailed records of safety related precautions and activities.

11.4 Contractor shall maintain traffic by utilizing construction signs and flagman when needed. Contractor shall furnish, install, maintain, and eventually remove all traffic control devices necessary to properly protect and divert traffic. Such barricades and detour signs shall be illuminated after dark. All costs associated with traffic control shall be the responsibility of the Contractor. Contractor shall be responsible for all damages resulting from the failure of the signs and / or barricade to properly protect the work from traffic.

11.5 Contractor shall take every precaution necessary to protect the equipment and materials and will store them in such a way as to prevent new or existing work from being reached, defaced, and / or stolen. Contractor will be responsible for any of its own equipment and materials that are stolen and /or damaged except as may be covered by applicable insurance.

11.6 Contractor shall not allow trash, dirt, stumps, tree trunks, or excess material to accumulate and shall be responsible for removing same from the premises. Contractor shall dispose of these items off premises. No onsite burning of materials will be permitted. Contractor shall be responsible for all costs pertaining to removing trash and for determining the place and method of disposal.

11.7 Contractor shall maintain at the Site one accurate, updated copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications. As-built drawings shall be available at all times to County, Architect, County's Representative, County's Consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and Contractor shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.

11.8 Contractor shall not: Induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled; give any governmental or public official having any authority or influence over the Project any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised; offer nor accept any bribes or kick-backs in connection with the Project; without the express written permission of County, call for or by exclusion use any subcontractor, consultant, product, material, equipment, system, process or procedure in which Contractor has a direct or indirect proprietary interest.

11.9 Contractor shall use a quality management program to insure quality construction. Unless otherwise specified in this Contract, County shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Contract Documents. Contractor shall arrange for tests and inspections, without any interference with the progress of work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of work.

11.10 Contractor shall immediately notify County and Architect in writing of the details of all incidents which may adversely affect the work.

11.11 Contractor shall immediately notify County and Architect in writing of information regarding environmental contamination on the Site. Contractor shall immediately stop performance of work affected by or affecting such contamination; secure the contaminated area against intrusion, not disturb or remove the contamination, and take any other steps necessary to protect life and health.

11.12 Contractor shall perform the work so as not to interrupt any operations of County on the Site. County may need certain areas of the Site prior to Substantial Completion. Such occupancy, access or use shall not constitute County's acceptance of any Project. Contractor shall not enter any County-occupied area unless first approved by County. County may incur damages if County's operations on the Site are interrupted or impaired as a result of the work.

11.13 County shall provide and pay for water, gas, electrical connections, and all other utilities and services at the Site through Substantial Completion.

## **ARTICLE 12: GOODS, PRODUCTS AND MATERIALS**

12.1 Contractor shall furnish goods, products, materials, equipment and systems which: comply with this Contract; conform to applicable specifications; are new (unless otherwise specified or permitted) and without apparent damage; are of quality equal to or higher than that required by the Contract Documents; are free from defects.

12.2 All goods, products, equipment and systems shall be installed, employed and protected in strict compliance with the instructions of the manufacturer, unless such instructions deviate from accepted construction practices, or the Contract Documents, in which case Contractor shall so inform Architect and shall proceed as directed by Architect.

12.3 Contractor shall inform County of goods, products, equipment or systems which are unsuitable or unavailable at the time of bid submission, and claims relating to claims that goods, products, equipment or systems are unsuitable or unavailable shall not be entertained unless Contractor, subcontractor, or supplier notified County in writing at the time of bid submission, along with proposed alternatives. Should Contractor furnish alternatives which require supplemental materials or installation procedures different from the specified items, Contractor shall provide such at no increased cost to County.

## **ARTICLE 13: SUBMITTALS**

13.1 Contractor shall include a schedule for all submittals per Article 9 with all submittals required by each section of the specifications, in a format acceptable to Architect, and set forth dates for submission.

13.2 Contractor shall in timely fashion review, approve if appropriate, and forward submittals to Architect for review and approval along with such detail and information as Architect requires. No part of the work requiring a submittal shall be fabricated or performed until such approval has been given.

13.3 Architect will verify that the submittals comply with the Contract. Subject to County's approval, Architect will review and approve, reject or take other appropriate action on submittals within ten (10) days, and will not approve any submittals unless such submittals conform to this Contract. Architect's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should not comply with the Contract Documents.

13.4 If Architect makes any changes which will require a change in the contract amount, Contractor shall follow the change procedures in this agreement, prior to performing the work. If Architect does make a change on the approved submittals, and Contractor proceeds with the work prior to receiving a change order to the Contract, Contractor waives further compensation for the change.

13.5 All work shall be performed per approved submittals. Approval of submittals by Architect does not relieve Contractor from complying with this Contract, except as modified by Change Order.

## **ARTICLE 14: CONTRACTOR'S QUALITY ASSURANCE**

14.1 Contractor shall inspect and promptly reject any work which does not conform to the Contract Documents; or which does not comply with any applicable law, building code, rule or regulation of any governmental, public authorities and agencies having jurisdiction over the Project.

14.1.1 Contractor shall promptly correct all rejected work at its cost, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.

14.1.2 Contractor shall pay for correcting destroyed or damaged work caused by Contractor's correction or removal of rejected work.

14.2 If a portion of the work has been concealed, Contractor shall, if notified to do so by Architect, uncover the designated portion for observation and then replace it.

14.2.1 If work was concealed contrary to the request of Architect, or to requirements in the Contract Documents, Contractor shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.

## **ARTICLE 15: CHANGES TO THE PROJECT**

15.1 This Contract cannot be changed except by written documents signed by the parties.

15.1.1 Changes shall be by Change Order. Contractor shall prepare and submit change order request proposals to Architect. Contractor shall promptly review and respond to change order requests submitted by Architect. When requested, Contractor shall submit to Architect drawings, specifications or other data in support of a change order request. Each change order request proposal shall include time and monetary consequences associated with the proposed change.

15.1.2 Architect does not have authority to order changes to the Project that involve changes in cost or time, without County's written permission. Architect, without County's prior approval, may by written field order authorize or direct Contractor to make minor changes, consistent with the intent of the Contract Documents and which do not involve a change in Project cost, time, scope, or approved design elements. Contractor shall promptly carry out such changes. Neither compensation nor schedules can be changed by implication, oral agreement, or unwritten changes.

15.2 County may unilaterally direct Contractor to implement changes in the Project if the work County is requiring is not outside of the general scope of this Contract, and Contractor, upon written direction from County, shall proceed with such change.

15.3 Architect will administer and manage all change orders that have been approved by County and prepare required supporting data.

15.4 Any change in the Contract Amount from a Change Order shall be determined as follows:

15.4.1 The change in the Contract Amount shall be set forth in the Change Order; such change shall be initialed by both parties. The General Contractor and subcontractors shall be entitled to mark-up(s) for direct job site overhead, profit, and additional general conditions as a result of changed or extra Work in an amount not to exceed a combined total of 15%. The General Contractor shall determine a reasonable apportionment of the total mark-up by percentage between the General Contractor and the subcontractors, not to exceed a combined total of 15%, and shall notify the County of such determination. Insurance and bond premiums shall be added on top of the 15% combined total markup.

15.4.2 Alternatively, the change in the Contract Amount, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved. Such shall include a component for overhead and profit calculated as described above. Any such costs or savings shall be documented in the format and with such content and detail as Architect requires.

15.5 Contractor shall obtain the best possible price quotations, review such to ascertain whether they are reasonable, prepare an itemized estimate with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the work, and provide a reasonable price quotation to Architect. If Architect determines that the change order request is unreasonable, Contractor shall provide

additional back-up. If Architect still determines that the quotation is unreasonable, County may require the Project be performed on a time and material basis.

15.6 Upon receipt of a field order or change order, changes in the work shall be promptly performed.

15.7 If there is a dispute about a change order, the change shall be carried out if County so directs. Contractor shall notify County in writing prior to performance of the work and recite the reasons for its dispute in the written notice. Failure to notify County in writing shall constitute a waiver of any claim resulting from the change.

15.8 If a change order request is approved by County in the absence of an agreement as to cost, time, or both, Architect will receive and maintain all documentation, examine such documentation, take such other action as may be reasonably necessary or as County may request, and make a recommendation to County concerning any appropriate adjustment.

15.9 The execution of a Change Order by Contractor is Contractor's agreement to the ordered changes in the work, the Contract Amount and the time for performance. Contractor, by executing the Change Order, waives any claim for additional time or compensation related to the Change Order.

15.10 Contractor's execution of the Change Order is Contractor's warranty to County that the Surety has been notified of, and / or consents to, such Change Order.

#### **ARTICLE 16: CLAIMS AND LIENS**

16.1 Contractor shall immediately notify Architect and County in writing of liens or claims against County, County's Representative, Architect, Contractor or any subcontractor or supplier or against the Project.

16.2 Contractor shall obtain the prompt discharge of any liens or claims if County with the requisite bond. If Contractor fails to do so, County may pay all sums necessary to obtain such release, and Contractor shall bear all such expenses incurred by County.

16.3 All Contractor claims against County shall be initiated by a written claim submitted to County and Architect no later than ten (10) days after the first appearance of the circumstances causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim. If Contractor fails to make such claim as required in this Article, the claim shall be waived. Contractor shall continue performance hereunder regardless of claims by Contractor.

16.4 In connection with any claim for compensation in excess of the Contract Amount, any liability of County for Contractor's cost shall be strictly limited to direct cost incurred by Contractor and shall in no event include indirect cost or consequential damages of Contractor. County shall not be liable to Contractor for claims of third-parties, including subcontractors, unless and until liability of Contractor has been established in a court of competent jurisdiction.

16.5 If Contractor is delayed in performing any task which is then critical, or during the delay becomes critical, as the sole result of an act or omission by County or someone acting in County's behalf, or by County-authorized Change Orders, or Acts of God, the date for achieving Substantial Completion, or, as applicable, Final Completion, shall be appropriately adjusted by County upon the written claim of Contractor to County and Architect. A task is critical within the meaning of this Article only if a delay in performing such task will delay the ultimate completion of the Project.

16.6 The date for Substantial Completion or Final Completion as stated in this Contract includes an allowance for weather delays of three (3) workdays. The date for Substantial Completion or Final Completion will not be extended due to bad weather conditions until that allowance has been exceeded, the Contractor requests a time extension in writing, and a Change Order has been signed by both parties.

## ARTICLE 17: PROJECT ARCHITECT

17.1 Architect for this project is \_\_\_\_\_. Architect will perform those duties and discharge those responsibilities allocated to Architect and described generally in this Contract, and more specifically described in the \_\_\_\_\_. The duties, obligations, and responsibilities of the Architect shall include, but are not limited to, the following:

17.1.1 Architect shall act as the administrator of this Contract until final payment.

17.1.2 County and Contractor shall primarily communicate with each other through Architect.

17.1.3 When requested by Contractor in writing, Architect shall render interpretations necessary for the proper execution or progress of the Project.

17.1.4 Architect shall administer required changes to scope of work and draft proposed Change Orders.

17.1.5 Architect shall approve or respond otherwise as necessary concerning shop drawings or other submittals received from Contractor.

17.1.6 Architect shall not accept work which is defective or otherwise fails to comply with the Contract. Architect may call for extra inspection or testing for compliance with this Contract.

17.1.7 Architect shall review Contractor's Payment Requests and approve in writing those amounts which, in the opinion of Architect, are properly owing to Contractor per this Contract.

17.1.8 Architect shall upon written request from Contractor perform inspections required in this Contract.

17.2 The duties, obligations and responsibilities of Contractor under this Contract shall not be changed, released, or satisfied by any duty of Architect. Contractor is not a third-party beneficiary of any contract between County and Architect. The duties of Contractor to County are independent of, and are not diminished by, any duties of Architect to County.

17.2.1 Architect be County's representative and advise County on all design and technical matters.

17.2.2 Architect will be initial interpreter of the Contract and County's advisor on claims.

17.3 Architect will visit the Site to inspect the progress and quality of the work and to inspect the work to determine compliance with this Contract, including approved shop drawings and other submittals, the Construction Schedule, and—to the best of Architect's knowledge, information, and belief--applicable laws, building codes, or regulations.

17.4 Architect shall reject work which does not comply with this Contract or—to the best of Architect's knowledge, information, and belief--applicable laws, building codes, or regulations.

17.5 Architect will review and evaluate the results of all inspections, tests and written reports required by this Contract and by any governmental entity having jurisdiction over the Project. Architect will take appropriate action on test results, including acceptance, rejection, or those requiring additional testing or corrective measures, or such other action deemed appropriate by Architect. Architect will promptly reject work which does not conform to and comply with testing requirements.

17.6 Architect may require inspection or testing of any work in addition to that required by this Contract or governmental entities having jurisdiction over the Project when such additional inspections and testing is necessary or advisable. Architect will take appropriate action on all such special testing and inspection

reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by Architect.

17.7 Architect will, when requested to do so in writing by Contractor, promptly and so as to not cause unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the work.

17.8 Architect will review applications for payment, including such accompanying information as the Contract requires, to determine amounts due Contractor, and shall authorize payment to Contractor in writing to County. After the Project is determined to be complete and Architect determines that Contractor has completed the Project, Architect will determine whether Contractor is entitled to final payment, and if so will certify to County in writing.

## **ARTICLE 18: SUBSTANTIAL AND FINAL COMPLETION**

18.1 Substantial Completion of the Project occurs when a Certificate of Substantial Completion has been issued by Architect, and the required documentation has been produced. The date of Substantial Completion will fix the commencement date of warranties and guaranties and allocate between County and Contractor responsibility for security, utilities, damage to the work and insurance.

18.2 When Contractor believes the Project is substantially complete, Contractor shall notify Architect that the Project is ready for a Substantial Completion Inspection.

18.3 Prior to the Substantial Completion inspection, Contractor shall prepare and furnish to Architect a letter requesting a Substantial Completion inspection, which at a minimum must: provide a blank line for entry of the date of Substantial Completion; include a list of items to be completed or corrected and the time in which the items will be completed or corrected and cost to do so; and provide signature lines for County, Contractor and Architect.

18.4 Upon receipt of notification from Contractor, Architect will coordinate with County's Representative, their Consultants, and Contractor on a date for inspection of the Project.

18.5 During the inspection, Architect will: inspect the Project; provide a list of items to be completed or corrected; and determine, in consultation with County's Representative, whether Substantial Completion of the Project has occurred.

18.6 If the Project is determined not to be substantially complete, Contractor shall continue working until the Project is substantially complete and the inspection process shall be repeated at no additional cost to County until the Project is substantially complete.

18.7 On the date of Substantial Completion, Contractor shall deliver to Architect permits, the certificate of occupancy, and other necessary and customary documents and items required for County's occupancy and use of the Project for its intended purpose. Architect will obtain and review Substantial Completion documentation and items and inform Contractor of any deficiencies.

18.8 County, Contractor and Architect shall then sign the Certificate of Substantial Completion establishing the actual date of Substantial Completion. The Certificate of Substantial Completion shall also include a list of and timeline for the completion of items needing completion and correction.

18.9 Final Completion of the Project shall occur when the Project passes a Final Completion Inspection and Contractor has produced all required close-out documentation and items. Final Completion shall not occur, and no final payment shall be due Contractor or any of its subcontractors or suppliers until the Project has passed the Final Completion Inspection and all required Final Completion close-out documentation and items have been submitted to Architect.



- 18.10 When Contractor believes that the Project is complete, Contractor shall notify Architect that the Project is ready for a Final Completion Inspection.
- 18.11 Upon receipt of such notification from Contractor, Architect will coordinate with County's Representative and Contractor and schedule a date for inspection of the Project to determine whether the Project is finally complete.
- 18.12 At the Final Completion inspection, Architect will: inspect the Project; determine whether all items on the list included with the Certificate of Substantial Completion have been satisfactorily completed and corrected; determine whether the completed Project complies with this Contract and—to the best of Architect's knowledge, information, and belief—all applicable laws, codes, rules or regulations. Architect shall determine whether the required inspections and approvals by the local building officials have been satisfactorily completed; and determine, in consultation with County's Representative, whether the Project is finally complete.
- 18.13 If the Project is not finally complete, Contractor shall complete the Project, and the inspection process shall be repeated at no additional cost to County, until the Project is finally complete.
- 18.14 On the date of Final Completion, Contractor shall deliver to Architect the following Final Completion close-out documentation and items:
- 18.14.1 All operating, maintenance, and instruction manuals not previously produced during Substantial Completion and required maintenance stocks;
- 18.14.2 At least one (1) set of as-built drawings and markups and at least one (1) CD of final, as-built drawings;
- 18.14.3 Certification and affidavit that all insurance required of Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to County;
- 18.14.4 Written consent of the surety to release final payment;
- 18.14.5 Full, final and unconditional waivers of mechanics or construction liens, releases of Contractor's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each contractor, subcontractor, supplier or other person or entity who has, or might have a claim against County or County's property;
- 18.14.6 Full, final and unconditional certification and affidavit that all of Contractor's obligations to contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- 18.14.7 All written warranties and guarantees relating to the labor, goods, materials, equipment and systems incorporated into the Project, endorsed, countersigned, and assigned as necessary;
- 18.14.8 All affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Project;
- 18.14.9 A list of any items due but unable to be delivered and the reason for non-delivery;
- 18.14.10 Any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Project.
- 18.15 Architect will review and determine the sufficiency of all items required for Final Completion and will immediately inform Contractor about any deficiencies and omissions.

## **ARTICLE 19: CONTRACTOR'S WARRANTIES AND GUARANTEES**

19.1 In addition to the warranties and guarantees elsewhere in this Contract, Contractor shall promptly correct all failures or defects in the Project for one (1) year after Substantial Completion.

19.1.1 County's Representative and Contractor shall jointly schedule and participate in a walk-through inspection of the Project one (1) month prior to the expiration of the one (1) year warranty period, and shall notify Architect and any required subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection. The walk-through inspection will be to determine if there are any defects or failures which require correction.

19.1.2 Should Contractor fail to promptly correct any failure or defect, County may take whatever actions it deems necessary to remedy such, and Contractor shall promptly reimburse County for any expenses or damages it incurs as a result of Contractor's failure to correct the failure or defect.

19.2 In addition to the warranties and guarantees elsewhere herein, Contractor expressly warrants and guarantees to County:

19.2.1 The work complies with the Contract and all applicable laws, codes, rules and regulations.

19.2.2 That all goods, materials, equipment and systems in the Project conform to the Contract;

19.2.3 That all management, supervision, labor and services required shall comply with this Contract.

19.3 Contractor shall require that all of its subcontractors and suppliers provide written warranties and guarantees to County and Contractor per the Contract.

19.4 The warranties and guarantees are in addition to all other warranties, express or implied, and shall survive County's payment, acceptance, inspection of or failure to inspect the Project.

19.5 Nothing in Article 19.1 shall establish a period of limitation with respect to Contractor's obligations under this Contract. Paragraph 19.1 has no relationship to the time within which Contractor's contractual obligations under this Contract may be enforced, or to the time within which proceedings may be commenced to establish Contractor's liability.

19.6 All warranty and guarantee obligations shall begin on the actual date of Substantial Completion.

## **ARTICLE 20: COUNTY'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

20.1 County shall timely compensate Contractor per this Contract.

20.2 Unless otherwise required to be provided by Contractor in its scope of services, County shall secure and pay for all Project testing.

20.3 County shall review documents prepared by Contractor in a timely manner and per schedule requirements. Review by County shall be solely for determining whether such documents are generally consistent with County's intent and shall not relieve Contractor of any of its responsibilities.

20.4 County shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project.

20.5 If required for the Project, County shall furnish a certified land survey of the site.

20.6 County shall pay for the services of a soils engineer or other consultants, when such services are deemed necessary by Architect or County's Representative.

20.7 County shall pay for structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law that are not otherwise called for in this Agreement.

20.8 County may furnish such legal, accounting, and insurance counseling services as County may deem necessary for the Project and such auditing services as may be required to ascertain how, or for what purposes, Contractor has used the monies paid to it under the Construction Contract.

20.9 County shall furnish information and approvals required of it expeditiously.

20.10 County shall provide Contractor with all written and tangible material in its possession concerning conditions below ground at the Site.

20.11 If the Project involves an existing structure, County shall provide Contractor with all available as-built drawings, record drawings, plans, specifications and structure system information.

20.12 County will provide Contractor with the Provisional Project Schedule of pertinent Project dates and key milestone dates.

## **ARTICLE 21: CONSTRUCTION TIME**

21.1 Time is of the essence in the performance of this Contract. Contractor warrants that the Project shall be Substantially Complete within the Contract Time, provided that there are no unreasonable and unanticipated delays in completion of the design documents, unusual and unreasonable delays in obtaining any approval from a State or local governing agency or authority, or other occurrences which would form the basis for an extension of the Contract Time in accordance with this Agreement. The Contractor shall notify the County in writing of any deadline by which the Contractor needs design documents, approvals, or other information sufficiently in advance of such deadline so that any delay can be avoided.

21.2 The Contractor shall perform the services required herein as expeditiously as is consistent with reasonable skill and care for the orderly progress of the Work and as required hereinabove. In the event of any delay in achieving Substantial Completion of the Project resulting from any act or omission of the Contractor or any Trade Contractor, the Contractor shall pay the County the sum of one hundred fifty dollars (\$150.00) per day for each and every calendar day of such delay in achieving Substantial Completion beyond the Contract Time. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the County, estimated at or before the time of executing this Agreement. When the County reasonably believes Substantial Completion will be inexcusably delayed, the County shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the County to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the County has withheld payment, the County shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. The term "Substantial Completion" as used in this Agreement shall mean that stage in the progression of the Work, as certified in writing by the Architect, when the Project is sufficiently complete in accordance with this Agreement that the County can enjoy beneficial use or occupancy of the Project and can utilize it for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed Substantially Complete and such partial use and occupancy shall not be evidence of Substantial Completion. All limitations of time set forth in the Contract Documents are of the essence of this Agreement.

## **ARTICLE 22: CONCEALED AND UNFORESEEN CONDITIONS**

22.1 If Contractor encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Project; or the conditions vary from those indicated by the Contract Documents; and such conditions are not ordinarily found to exist or differ materially from those generally recognized as

inherent in this type of project, Contractor shall within three (3) days after first observance of the conditions, notify Architect before conditions are disturbed and give Architect the opportunity to observe the condition in its undisturbed state. If the conditions differ substantially and cause a material change in Contractor's cost of, or time required for, performance of the work, compensation or time or both will be equitably adjusted. All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen (14) days from the date of observation of the changed conditions. Contractor's failure to notify Architect as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

### **ARTICLE 23: CONTRACTOR'S RECORDS**

23.1 Contractor shall contemporaneously prepare substantiating records of all work. Contractor shall retain copies of all written communications, accounting records (including original estimates and estimating sheets, purchase orders and invoices), daily logs, reports, all subcontract files (including proposals of successful and unsuccessful bidders), change order files, written policies and procedures, records necessary to verify direct and indirect costs, and other documents such as plans, specifications, submittals, correspondence, recordings, documents reflecting the unit price of construction and other writings or things which document the work, its design, its cost, and its construction.

23.1.1 Contractor shall maintain such records for seven (7) years after Final Completion. If Contractor receives notice of a dispute or litigation, it shall maintain all such records until final resolution.

Contractor shall make its records available during normal business hours to County, its authorized representative(s) or to any state, federal or other regulatory authority, which may inspect, examine, review and copy Contractor's records. Failure by Contractor to supply records shall be reason to exclude the related costs from amounts which might otherwise be due per this Contract.

### **ARTICLE 24: PROPRIETARY DOCUMENTS AND CONFIDENTIALITY**

24.1 All information, documents, and electronic media furnished by County to County, are proprietary and confidential and solely for use on County's Project, shall be kept confidential by Contractor, and shall not be used by Contractor on any other project. County grants Contractor a limited license to use and reproduce applicable portions of the Contract Documents necessary for the Project. All copies shall bear the statutory copyright notice, if any, shown on the documents.

24.2 All information, documents, and electronic media prepared by or on behalf of Contractor for the Project are the sole property of County free of any retention rights of Contractor. County has an unconditional right to use such free of any copyright claims, trade secrets or other proprietary rights.

24.3 Contractor shall not disclose information it receives from County to any other person or entity except as necessary to allow it to perform its duties under this Contract.

24.4 Contractor shall instruct its employees and agents to regard all information not in the public domain as proprietary and confidential.

24.5 Submission or distribution of documents to meet official regulatory requirements or for other legally required purposes in connection with the Project will not violate County's rights.

### **ARTICLE 25: INSURANCE REQUIREMENTS**

25.1 Insurance coverage shall be carried with an insurance company licensed to do business in the State of Georgia. Insurance shall be obtained prior to commencement of work and shall remain in force throughout the period of the contract.

25.2 Contractor agrees to purchase and have the authorized agent state on the insurance certificate that Contractor has purchased the following types of insurance coverages, consistent with the policies and requirements of O.C.G.A. §50-21-37.

25.2.1 Workers' Compensation Insurance. Contractor agrees to provide, at a minimum, Workers' Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Workers' Compensation stating the contractor qualifies to pay its own workers' compensation claims. Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Workers' Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language:

*This is to certify that all subcontractors performing work on this Project are covered by their own workers' compensation insurance or are covered by the Contractor's workers' compensation insurance.*

25.2.2 Employer's Liability Insurance. Contractor shall also maintain Employer's Liability Insurance Coverage with limits of at least:

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 each employee
Bodily Injury/Disease aggregate	\$1,000,000 each accident

Contractor shall require all Subcontractors performing work under this Contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the Contractor in the following language:

*This is to certify that all subcontractors performing work on this Project are covered by their own Employers Liability Insurance Coverage or are covered by the Contractor's Employer's Liability Insurance Coverage.*

25.2.3 Commercial General Liability Insurance (CGL). Contractor shall provide Commercial General Liability Insurance (2001 ISO Occurrence Form or equivalent) that shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, lasting and explosion, collapse of structures, underground damage, water damage, personal injury liability and contractual liability. The CGL policy must include separate aggregate limits per Project and shall provide at a minimum the following limits:

Premises and Operations	\$1,000,000 per occurrence
Products and Completed Operations	\$1,000,000 per occurrence
Personal Injury	\$1,000,000 per occurrence
Contractual	\$1,000,000 per occurrence
General Aggregate	\$2,000,000 per project

25.2.4 Commercial Business Automobile Liability Insurance. Contractor shall provide Commercial Business Automobile Liability Insurance that shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned, or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 combined Single Limits for each accident.

- (a) The policy shall name as additional Insureds elected officials, officers, agents, and employees of the County and the Using Agency.
- (b) The policy must be on an "occurrence" basis.

25.3 Disposition of Insurance Documents. One original certificate of insurance with all endorsements attached must be deposited with County for each insurance policy required.

25.4 Termination of Obligation to Insure. Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the Design Professional/Project Manager has executed the Certificate of Material Completion.

25.5 Failure of Insurers. Contractor is responsible for any delay resulting from the failure of its insurance carriers to furnish proof of proper coverage in the prescribed form.

25.6 Additional Insured. All liability policies obtained by Contractor in satisfaction of this Contract shall be primary and noncontributory, and shall name as additional insureds the County, all elected officials, officers, agents, and employees. All such policies shall apply separately to each insured against whom any claim is made, or suit is brought, except with respect to limits of insurance provided.

25.7 General. Contractor shall pay all deductibles. All coverage shall be provided on a "pay on behalf" basis, with defense costs paid in addition to policy limits and there shall be no cross liability performed by Contractor. Contractor shall provide current certificates of insurance for all insurance types required under this Contract and shall provide updated certificates of insurance no later than thirty (30) days prior to the renewal or amendment of any required insurance policy. Contractor shall provide complete copies of any or all insurance policies upon written demand. No policy shall be cancelled, non-renewed, or have policy limits reduced outside of this Agreement unless County is given thirty (30) days advance notice from Contractor. Contractor shall further require that no insurer shall cancel, non-renew, or reduce the policy limits of any policy required under this Agreement without first giving thirty (30) days written notice to County.

25.8 Proof of Insurance. County shall be under no obligation to ensure that Contractor or subcontractors comply with the insurance requirements of this Contract, and Contractor assumes all liability arising from failure to acquire and/or maintain adequate insurance to cover its operations and business. Contractor agrees to indemnify and hold harmless the County for any claims arising from Contractor's or subcontractor's failure to acquire and/or maintain adequate insurance.

## **ARTICLE 26: COUNTY'S RIGHT TO STOP PROJECT**

If Contractor fails to perform or fails to correct defective work, or persistently fails to carry out the work per the Contract, County may order Contractor to stop the work or any portion thereof until the cause for the order has been eliminated to the reasonable satisfaction of County. Contractor shall not get an adjustment in Contract time or Contract Amount under this clause. If County issues an order to stop work, and Contractor fails within seven (7) days to provide adequate assurance to County that the cause of such order will be eliminated or corrected, then Contractor may carry out the work with its own forces, or with the forces of another Contractor, and Contractor shall be responsible for the cost of such.

## **ARTICLE 27: TERMINATION OR SUSPENSION OF CONTRACT**

27.1 County may terminate this Contract for cause if Contractor materially breaches this Contract by failing to: properly manage or perform work on the Project; supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules; make prompt payment to subcontractors or suppliers; substantially perform per the Contract; or if Contractor disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project;

27.2 Upon such breach, County shall give written notice to Contractor describing the default and requesting cure within seven (7) days. If Contractor fails to initiate the cure or expeditiously continue such cure until complete, County may give written notice to Contractor of immediate termination, and County, without

prejudice to any other rights or remedies, may take any or all of the following actions: complete all or any part of the Project; contract with others to complete all or any part of the Project; take such other action necessary to correct such breach; take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by Contractor; directly pay Contractor's subcontractors and suppliers; require Contractor to assign Contractor's right, title and interest in any or all of Contractor's subcontracts or orders to County.

27.3 If County terminates and takes possession of materials, tools, construction equipment and machinery on the Site, Contractor's compensation shall be increased by fair payment, by purchase or rental at the election of County, for such, subject to County's right to recover damages.

27.4 If County terminates for cause, and it is subsequently determined by a court that such was without cause, then said termination shall be deemed a termination for convenience per 27.6.

27.5 Contractor may terminate this Contract for cause if County materially breaches this Contract by: failing to make prompt payment to Contractor without just cause; disregarding laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Project; or failing to substantially perform per this Contract. Contractor may then give written notice to County setting forth the nature of the default and requesting cure within seven (7) days. If County fails within seven (7) days to initiate the cure or expeditiously continue such cure until complete, Contractor may give written notice to County of immediate termination.

27.6 County may upon fourteen (14) days written notice to Contractor terminate or suspend the Project, in whole or in part, for County's convenience and without cause. Contractor shall immediately reduce its staff, services and outstanding commitments to minimize the cost of suspension.

27.7 If this Contract is terminated for convenience, by Contractor, or suspended more than three (3) months, County shall pay Contractor for work actually performed prior to the termination. Absent agreement on any additional amount due Contractor, County shall pay Contractor as follows:

Reasonable costs incurred in preparing to perform the terminated portion of the Project, and in terminating Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages). Provided, however, that if it appears that Contractor would not have profited or would have sustained a loss if the Project had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any.

27.8 If this Contract is terminated by County for cause per 27.1, no further payment shall be made to Contractor until Final Completion of the Project. Contractor shall then be paid the remainder of the Contract Amount less all costs and damages incurred by County due to the default of Contractor, including liquidated damages as provided for herein. Contractor shall reimburse County for any additional costs or expenses incurred.

27.9 Irrespective of the reason for termination or the party terminating, the total sum paid to Contractor shall not exceed the Contract Amount, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract, and shall in no event include duplication of payment.

27.10 Irrespective of the reason for termination or the party terminating, if this Contract is terminated, Contractor shall, unless notified otherwise by County: immediately stop work; terminate outstanding orders and subcontracts; settle liabilities and claims arising out of the termination of subcontracts and orders; transfer title and deliver to County such completed or partially completed work, and, if paid for by County, materials, equipment, parts, fixtures, information and such contract rights as allowed Contractor.

27.11 If Contractor fails to file a claim within one (1) year from termination, County shall pay Contractor only for services actually performed and expenses actually incurred prior to the effective termination date.

## **ARTICLE 28: APPLICABLE LAW AND DISPUTE RESOLUTION**

28.1 This Contract shall be deemed to be entered into in and shall be interpreted under the laws of the State of Georgia. Exclusive jurisdiction and venue for any legal proceeding related to this Contract shall be in the Superior Court of Bibb County or the United States District Court for the Middle District of Georgia (Macon Division). County does not agree to arbitration nor waive its right to a jury trial. Nothing in this Contract shall be construed as waiving any immunity held by the County under the Eleventh Amendment of the United States Constitution.

28.2 In case of any dispute, the parties may first attempt resolution through negotiation. Then, but not as a condition precedent to any litigation, the parties may upon mutual agreement to do so, in good faith participate in mediation.

28.3 No party to this Contract shall enter into any contract which contradicts the dispute resolution procedures required by this Article.

28.4 County and Contractor agree that pending the resolution of any dispute, Parties shall each continue to perform their obligations hereunder, including the work on the Project.

## **ARTICLE 29: DAMAGES AND REMEDIES**

29.1 Contractor shall promptly reimburse County for any expenses or damages incurred by County as a result of: Contractor's failure to substantially perform the work per this Contract; breach of any warranty or guarantee; or other deficiencies or omissions of Contractor. Contractor waives any monetary claims for, or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages. County is entitled to interest on any amount due from Contractor that remains unpaid thirty (30) days after the amount is deemed due.

29.1 In the event that performance of this project is delayed by neglect or default by another Contractor or County, or by any damage which is the result of an unforeseen circumstance, act of God, or by a general strike of employees, Contractor shall have reason to claim for delay and request an extension of time to complete the terms of this contract.

## **ARTICLE 30: MISCELLANEOUS PROVISIONS**

30.1 This Contract represents the entire agreement between County and Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instruments signed by both County and Contractor.

30.2 If any part of this Contract, or the application thereof, is determined to be invalid or unenforceable, the remainder shall remain valid and enforceable.

30.3 No provision of this Contract may be waived except by written agreement. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing.

30.4 No failure of County to insist on strict compliance by Contractor with any provision of this Contract shall operate to release, discharge, modify, change or affect any of Contractor's obligations.

30.5 This Contract shall inure solely to the benefit of the parties and their successors and assigns, and, except as otherwise specifically provided in this Contract, nothing in this Contract shall create a contractual relationship with, or any rights or cause of action in favor of, any third party.



30.6 All continuing obligations herein shall survive Contract expiration or termination.

30.7 Neither party shall assign any or all of its benefits or obligations under this Contract without the approval of the other party, except assignment solely for security nor assignment by County to a Related Party of County, or except as otherwise specifically provided for in this Contract in case of default. County and Contractor bind their successors and assigns to the other party to this Contract.

30.8 Whenever renderings, photos, drawings, announcements, or other illustration or information of the Project are released for public information, appropriate and proper credit for architectural and other services shall be given to Architect and County.

30.9 The payment of any sums by County shall not constitute a waiver of any claims for damages by County for any breach of the Agreement by Contractor.

30.10 County is subject to the Georgia Open Records Act and cannot agree to protect confidential information from public disclosure unless that information is subject to an exception. Contractor shall cooperate fully with County in response to all requests made under the Georgia Open Records Act.

30.11 Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, disability, national origin, or any other category protected by applicable federal or state law. 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. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of Equal Opportunity laws. Contractor shall comply with the appropriate provisions of the Americans with Disabilities Act (the "ADA"), as enacted and as from time to time amended, and any other applicable federal regulations. A signed certificate confirming compliance with the ADA may be requested by County at any time during the term of this Agreement.

30.12 Contractor, personnel and sub-contractors shall not be in possession of or use a controlled substance or marijuana during the performance of this Agreement, except for those controlled substances prescribed by a licensed medical provider. County has a no tolerance policy for violation of this rule.

30.13 Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement and will verify immigration status to confirm employment eligibility. Contractor shall not enter into an agreement with a sub-contractor that fails to certify to Contractor that the sub-contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

30.14 This Agreement represents the entire and integrated agreement between County and Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both parties

30.15 This Agreement may be executed in two or more counterparts, each of which taken together shall constitute one and the same instrument. This Agreement shall be fully executed when each party whose signature is required has signed at least one counterpart, even though no one counterpart contains all of the signatures of all the parties to this Agreement. Reproduced or electronic signatures shall be considered the same as an original signature. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission, by electronic mail, or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.

30.16 Parties hereby agree to regard electronic representations of original signatures as legally sufficient for executing this Agreement and scanned signatures emailed by PDF or otherwise shall be as valid as the original. Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. Parties agree not to object

to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

### **ARTICLE 31: INDEMNIFICATION**

31.1 Contractor shall indemnify, defend and hold harmless County, County's Representative, their agents, and employees from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, related to Contractor's performance or failure to perform its obligations and any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of personal and/or real property including the loss of use resulting there from and caused by any negligent act or omission of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable.

31.1.1 Contractor, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any Workers or Workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by County or County's related parties pursuant to the indemnification provision above.

### **ARTICLE 32: CONTRACTOR'S REVIEWS AND EVALUATIONS**

32.1 Contractor acknowledges its continuing duty to review and evaluate the Contract Documents during the work and shall immediately notify Architect of any problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in the Contract Documents.

32.2 If Contractor performs work which it knows involves a problem, conflict, defect, deficiency, inconsistency or omission in the Contract Documents without notifying Architect and prior to receiving written authorization from Architect to proceed, Contractor shall be responsible for the consequences of such action.

32.3 The drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any work, Contractor and Subcontractors shall verify all measurements at the site and then be responsible for the correctness of same. Any discrepancies shall be reported in writing to Architect prior to the work. No extra charge or compensation will be considered due to differences between actual measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of work or if Architect failed to receive written notice before the work was performed.

32.4 County may inspect all materials used and work performed, which may extend to all or part of the work and to the preparation or manufacture of the materials to be used. County's designated inspectors will not be authorized to revoke, alter, enlarge, or relax the provisions of the agreement specifications, nor will they be authorized to approve or accept any portion of the completed work or to issue instruction contrary to the plans and specifications. County shall have authority to reject defective material and to suspend work that is being improperly done.

32.5 County and its designees shall have free access to all parts of the work, and to all material intended for use in the work. Work will be inspected as it progresses, but failure to reject or condemn defective work at the time it is done will in no way prevent its rejection whenever it is discovered before the work is finally accepted and approved, nor will final acceptance and approval constitute waiver by County of any right of action for defective work or the failure to perform the contract according to its terms.

32.6 Prior to signing this Contract, Contractor affirms that it has: visited the site and become familiar with local conditions; reviewed and familiarized itself with the site survey and any existing structures on the site, and gathered all other information necessary for a full understanding of the Project; reviewed the record drawings, plans and specifications which are incorporated into the Contract Documents; and thoroughly inspected the on-site conditions prior to submission of bid and prior to signing this Contract.

32.7 Claims resulting from Contractor's failure to familiarize itself with the site or documents are hereby waived.

**ARTICLE 33: PROHIBITION AGAINST CONTINGENT FEES**

33.1 Contractor by execution of this Contract warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Contract and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fees, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

**ARTICLE 34: EXHIBITS AND ATTACHMENTS**

34.1 Attached hereto and incorporated herein as part of this Contract are the following Exhibits:

Exhibit A -

**IN WITNESS WHEREOF**, the parties have executed this Agreement to be effective as of the date executed by both parties.

**Macon-Bibb County:**

**By:** \_\_\_\_\_  
Lester M. Miller, Mayor Date

**Attested:** \_\_\_\_\_  
Janice S. Ross, Clerk of Commission Date

**Contractor:**

**By:** \_\_\_\_\_  
Date

**Attested:** \_\_\_\_\_  
Date

\_\_\_\_\_  
(Printed Name & Title)