

# Darien Downtown Development Authority- Broad St. and 1st St. Parking Lots

REQUEST FOR PROPOSAL NO. 2310  
PROPOSAL DUE Tuesday, June 27, 2023 at 10 AM

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Prepared by:



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Darien Downtown Development Authority  
CONFERENCE LOCATION: Darien City Hall  
106 Washington St.  
Darien, GA 31305

**PROJECT NAME:** Broad St. and 1st St. Parking Lots

**RFP NO.:** 2310

**NON-MANDATORY PRE-PROPOSAL CONFERENCE:** Tuesday, June 13, 2023, at 10 AM

**PROPOSAL OPENING:** Tuesday, June 27, 2023 at 10 AM

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#### PURPOSE

Darien Downtown Development Authority (hereinafter "Owner") is soliciting sealed competitive proposals for several certified and qualified General Contractors to furnish all labor, equipment, materials, and other appurtenances as specified to improve the parking lot located on Lot 109A on 1<sup>st</sup> Street along with constructing a new parking lot and drainage improvements on Broad Street in Darien, Georgia.

Competitive sealed proposals will be received at the Darien City Hall, located at 106 Washington St., Darien, GA 31305 until, but **no later than** 10 AM on Tuesday, June 27, 2023 at which time the sealed proposals will be publicly opened, and vendor's names will be read aloud.

**One (1) original and two (2) copies of the required proposal documents must be submitted in a sealed envelope marked " Darien Downtown Development Authority- Broad St. and 1st St. Parking Lots, RFP #2310".**

Proposals may be withdrawn by written request only if the request is received prior to the time and date set for the opening proposals. Negligence on the part of the proposer in preparing his proposal confers no right of withdrawal or modification of his proposal after proposal has been opened. No proposal may be withdrawn for a period of sixty (60) days after the time and date of opening of proposals.

The Owner reserves the exclusive right to determine which Proposer should be awarded the Contract. The Owner also reserves the right to waive any irregularity or informality in a proposal and accept or reject any item or combination of items, when to do so would benefit the Owner. Also, the Owner may reject proposals that do not contain all elements and information requested. The Owner will not be liable for any cost/losses incurred by proposers throughout this process. The Owner does not discriminate based on race, religion, color, sex, national origin, age, or disability.

To the extent permitted by Georgia Law, the Proposer will indemnify, defend, and hold harmless the Owner from and against any and all claims, damages, losses, and expenses including, but not limited to, fees and charges of attorneys and court and arbitration costs, arising out of or resulting from the negligent acts, negligent omissions, willful misconduct, or reckless misconduct of the Proposer or anyone for whom the Proposer is responsible.

**A non-mandatory Pre-Proposal Conference will take place at the Darien City Hall located at 106 Washington St., Darien, GA 31305 at 10 AM on Tuesday, June 13, 2023.**

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## SCOPE

The scope of work consists of constructing two public parking lots in Darien, Georgia. The parking lot on 1<sup>st</sup> Street is located on lot 109A, (parcel D006 0138) and is proposed to be approximately 0.19 acres. It includes clearing, grading, installing base material, pervious surface overlay, and signage. The parking lot on Broad Street is approximately 0.16 acres and is located in the right-of-way of parcel D007 0002001, across from First Georgia Hardware & Marine, Inc. This parking lot will consist of clearing, grading, installing base material, concrete paving, striping, concrete sidewalk, curb and gutter, and storm drainage improvements. Please see Construction Plans for detailed scope.

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## SPECIFICATIONS

### 1. Workmanship and Inspection

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The Owner may, in writing, require the Contractor to remove any employee from work that they deem incompetent or careless. Further, the Owner may, from time to time, make inspections of the work performed under this contract. Any inspection by the Owner does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements.

### 2. Cleaning Up

The Contractor(s) shall at all times keep the adjacent areas of the work area free from rubbish and the accumulation of any waste materials.

### 3. Safety

All contractors and subcontractors performing services for the Owner are required and shall comply with all Occupational Safety and Health Administration (OSHA), State and County Safety and Occupational Health Standards and any other applicable rules and regulations. Also, all contractors and subcontractors shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract.

### 4. Incidental and Consequential Damages

No proposer may require contractual language limiting or eliminating liability for incidental and consequential damages.

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## CONTRACT TERMS AND CONDITIONS

The Contract with the successful proposer will contain the following contract terms and conditions:

### 1. Procedures

The extent and character of the services to be performed by the Contractor shall be subject to the general control and approval of the Project Manager. Any change to the contract must be submitted in writing and approved by the Owner.

2. **Contract Quantities**

The quantities specified in this contract are estimated only. They do not indicate the actual quantity which may be ordered, since such volume will depend upon requirements which develop during the contract period. Quantities shown shall not be construed to represent any amount which the Owner shall be obligated to purchase under the contract or relieve the Contractor of his obligation to fill all orders placed by the Owner. **NO PROPOSAL WILL BE CONSIDERED WHICH STIPULATES THAT THE OWNER SHALL GUARANTEE TO ORDER A SPECIFIC QUANTITY.**

3. **Schedule**

Proposers shall provide, with their proposal, a proposed schedule for the project. Failure to include the schedule may be ample cause for rejection of proposal as non-responsive. The completion of this project shall not exceed October 31, 2023.

4. **Delays**

If a delay is foreseen, the Contractor shall give ample notice to the Owner. The Owner has the right to extend completion date if reasons appear, in the sole discretion of the Owner, to be valid. Contractor must keep the Owner advised at all times of status of order. Default in promised completion (without accepted reasons) or failure to meet specifications, authorizes the Owner to purchase supplies elsewhere and charge full increase in cost and handling to defaulting Contractor.

5. **License Requirement**

All General Contractors doing business in the City of Darien are required to hold a current valid business license within the municipality where the home office is located and **must be a certified contractor with the State of Georgia.**

6. **Insurance**

The Contractor shall procure, maintain, and provide proof of, insurance coverage for injuries to persons and/or property damage as may arise from or in conjunction with, the work performed on behalf of the Owner by the Contractor, his agents, representatives, employees or subcontractors. Proof of coverage as contained herein shall be submitted prior to the commencement of work and such coverage shall be maintained by the Contractor for the duration of the contract period. The Contractor shall not perform any work unless he has obtained and continues to maintain for the duration of such work, such worker's compensation coverage as may be required pursuant to the provisions of Title 34 Chapter 9 of the Official Code of Georgia.

**A. Liability**

The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and from any other claims for damages to property, and for personal injury, including death, which may arise from operations under this contract, whether such operations be by himself or by any sub-contractor or anyone directly or indirectly employed by either of them. Such certificates shall be in form and substance reasonably acceptable to the Owner, shall indicate that, except in respect to workers compensation insurance coverage and professional errors and omissions, Owner is an additional insured with respect to such coverage, and shall indicate that such coverage is primary and not contributory with any similar insurance purchased by the Owner. The

certificates shall contain a provision that the insurer will endeavor, if allowed by the policy, to provide Owner with thirty (30) calendar days' notice of nonrenewal, cancellation, or termination of the coverage. If the successful proposer receives a nonrenewal, cancellation, or termination notice from an insurance carrier affording coverage required herein, the successful proposer agrees to notify Owner by fax within two (2) business days with a copy of the nonrenewal, cancellation, or termination notice, or written specifications as to which coverage is no longer in compliance. Failure to comply with any of the provisions relating to insurance coverage herein shall be deemed a material breach if not cured. The contractor shall be responsible for providing adequate limits of insurance when working within property owned by railroads, as established by such railroad company.

#### **B. Indemnity**

To the fullest extent permitted by laws, statutes, rules and regulations, the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's Consultants and the Officers, Directors, Employees, Agents, and other Consultants of each and any of them from and against claims, costs, damages, losses, and expenses, including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court costs, arising out of or resulting from performance of the work, but only to the extent caused in whole or in part by negligent, reckless, willful and wanton, or wrongful acts or omissions of the Contractor, its Officers, Directors, Employees, Agents, and anyone directly, or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, cost, damage, loss, or expense is caused in part by a party indemnified hereunder, except that no party shall indemnify any other party or person for their own sole negligence. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph. In as much possible, the contractor shall be responsible for damages they may cause, unforeseen damages are responsibility.

#### **C. Bonds**

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

#### **D. Comprehensive General Liability**

The successful Proposer shall always exercise proper precaution for the protection of persons and property. He shall carry approved insurance from insurance companies authorized to do business in Georgia and having an A.M. Best's rating of A+ or better with the following minimums:

**\*The limits of insurance are as follows:**

a) General liability insurance of at least One Million (1,000,000) Dollars (Combined Single Limit per occurrence) and Two Million (2,000,000) Dollars aggregate;

b) Automobile liability insurance of at least One Million (1,000,000) Dollars (Combined Single Limit per occurrence for bodily injury or property damage); and

c) Statutory Workers' Compensation Insurance as will protect potential proposer or offeror from Workers' Compensation Acts.

Employers Liability

Bodily Injury Accident - \$100,000 Each Accident

Bodily Injury by Disease - \$500,000 Policy Limit

Bodily Injury by Disease - \$100,000 Each Employee

**7. Exemption from Taxes**

The Contractor shall not charge the Owner directly for any sales or excise tax. The Owner is exempt from State Sales Tax. Tax Exemption Certificates indicating the Owner's tax-exempt status will be furnished by the Owner on request. The Contractor shall be responsible for any payment of any sales, use, or excise tax. This exemption does not include materials purchased and used by a contractor for a construction project.

**8. Method of Payment**

Contractors shall provide their federal employer identification number on a standard W-9 form within 15 days after award in order not to delay payment. Contractor shall submit request for payment from the Owner via Roberts Civil Engineering, LLC (RCE).

Invoices shall be made out to: Darien Downtown Development Authority

Invoices shall be emailed to: jnajar@robertscivilengineering.com

Upon RCE's inspection and acceptance of the work, RCE will approve the invoice and forward it to the Owner to render payment, less any retainage if applicable, within thirty (30) days.

**9. Termination**

Subject to the provisions below, the Contract may be terminated by the Owner upon thirty (30) days advance written notice to the other party; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the Contract may be extended upon written approval of the Owner until said work or services are completed and accepted.

A. Termination for Convenience -- The Owner may terminate this Contract for convenience at any time in which case the parties shall negotiate reasonable termination costs.

B. Termination for Cause -- In the event of Termination for Cause, the thirty (30) days advance notice is waived, and the Contractor shall not be entitled to termination costs.

**10. Severability**

In the event that any provision of this contract shall be adjudged or decreed to be invalid, such ruling shall not invalidate the entire Agreement but shall pertain only to the provision in question and the remaining provisions shall continue to be valid, binding and in full force and effect.

**11. Applicable Laws**

This contract shall be governed in all respects by the laws of the State of Georgia.

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**INSTRUCTIONS TO PROPOSERS**

1. One (1) original and two (2) copies of required proposal documents must be submitted in sealed envelope marked with the Request for Proposal number, due date, and the proposer's name and address on sealed submission package.

Darien City Hall  
C/O Darien Downtown Development Authority  
106 Washington St.  
Darien, GA 31305

Proposals *must be dropped off in person* and will be accepted at the above address until the time and date specified above, and immediately after will be publicly opened and vendor names will be read aloud.

Proposals received after the required time or in any other location other than the Darien City Hall will not be accepted. The Owner will not be held liable for misdirected deliveries. Faxed or email submissions will not be accepted.

All proposals submitted in response to this invitation shall become the property of the Owner and will be a matter of public record available for review after award.

**Proposal Package Checklist:**

- Executed RFP
- References
- E-Verify Affidavit Contractor
- List of Subcontractors Form
- E-Verify Affidavit Sub-Contractor
- Statement of Proposer's Qualifications
- Proposal Sheet
- Proposal Form
- Bid Bond
- Non-Collusion Affidavit
- Certificate of Insurances
- Professional Certifications



**2. Inquiries**

Questions and inquiries will be accepted from proposers. Roberts Civil Engineering, LLC is the sole point of contact for this solicitation unless otherwise instructed herein. Questions regarding this construction project may be directed in writing via email to the Project Engineer, Jessica Najar, [inajar@RobertsCivilEngineering.com](mailto:inajar@RobertsCivilEngineering.com) by 5 p.m. on Friday, June 16, 2023. No phone calls, please. Unauthorized contact with other Owner staff regarding the RFP may result in the disqualification of the proposer. Inquiries pertaining to Requests for Proposals must give RFP number and title. Material questions will be answered in writing, typically via email and will be posted to the Owner's website and the State Procurement Website as an addendum. It is the sole responsibility of the proposer to check the website <https://cityofdarienga.com/government/boards-and-commissions/dda/> regularly up to, and including, the date the proposals are due.

**3. Inspection of Site**

A mandatory on-site inspection is required for this project. The contractor is responsible for inspecting the sites on their own.

**4. Completion**

Proposal must show number of days required to complete each project under normal conditions. Failure to state completion time obligates proposer to complete the project according to the Owner's schedule. Unrealistically short or long completion promised may cause proposal to be disregarded. Consistent failure to meet delivery promises without valid reason may cause removal from vendor list.

**5. Firm Pricing for the Owner Acceptance**

Proposal price must be firm for the Owner acceptance for 60 days from proposal opening date.

**6. Authority to Bind Firm in Contract**

Proposals MUST give full firm name and address of proposer. Failure to manually sign proposal may disqualify it. Person signing proposal should show TITLE or AUTHORITY TO BIND HIS/HER FIRM IN A CONTRACT. Firm name and authorized signature must appear on proposal in the space provided.

**7. References**

All proposers shall include, with their proposals, a list of at least three (3) current references for whom comparable work has been performed. This list shall include company name, person to contact, telephone number, email address, address where work completed and days to complete. Failure to include references may be ample cause for rejection of proposal as non-responsive.

**8. Basis for Award**

The contract will be awarded to the responsible, responsive proposer(s) whose submission, conforming to the solicitation, will be most advantageous to the Owner – price and other factors considered. Unless otherwise specified in this RFP, the Owner reserves the right to accept a proposal in whole or in part, and to award by item or by group, whichever is deemed to be in the best interest of the Owner when applicable. Any proposer who is in default to the Owner at the time of submittal of the proposal shall have that proposal rejected. The Owner reserves the right to clarify any contractual terms with the concurrence of the Contractor; however, any substantial nonconformity in the offer, as determined by the Owner, shall be deemed non-responsive and

the offer rejected. In evaluating proposals, the Owner shall consider the qualifications of the proposers, timeframe, cost, references and guarantees of materials and equipment.

**9. Negotiation with the Responsible Proposer**

Unless all proposals are canceled or rejected, the Owner reserves the right to negotiate with the lowest responsive, responsible proposer to obtain a contract price within the funds available whenever such proposal exceeds the available funds. Negotiations with the low proposer may include both modifications of the proposal price and the specifications/scope of work to be performed.

**10. Notice of Award**

A notice of award will be issued once the project is awarded by the Owner at an open meeting.

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**SOLICITATION SCHEDULE**

Pre-Proposal Conference	Tuesday, June 13, 2023
Deadline for Questions	Friday, June 16, 2023
Proposal Due Date	Tuesday, June 27, 2023
Public Proposal Opening	Tuesday, June 27, 2023
Owner Approval	July 2023

Person to contact regarding this proposal: \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Email Address: \_\_\_\_\_

Name of person authorized to bind the Firm: \_\_\_\_\_

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

Date: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**FAILURE TO RETURN THIS PAGE AS PART OF YOUR PROPOSAL MAY RESULT IN PROPOSAL BEING DEEMED NON-RESPONSIVE.**

## REFERENCES

The Owner requests a minimum of three, (3) references where work of a similar size and scope has been completed.

### References

Proposers shall provide references on this form.

1. Firm Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
Completion Date \_\_\_\_\_  
\_\_\_\_\_  
Contact \_\_\_\_\_ Phone \_\_\_\_\_  
Title \_\_\_\_\_ E-mail \_\_\_\_\_
  
2. Firm Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
\_\_\_\_\_  
Completion Date \_\_\_\_\_  
Contact \_\_\_\_\_ Phone \_\_\_\_\_  
Title \_\_\_\_\_ E-mail \_\_\_\_\_
  
3. Firm Name \_\_\_\_\_  
Brief Description of Project \_\_\_\_\_  
\_\_\_\_\_  
Completion Date \_\_\_\_\_  
Contact \_\_\_\_\_ Phone \_\_\_\_\_  
Title \_\_\_\_\_ E-mail \_\_\_\_\_

## CONTRACTOR AFFIDAVIT AND AGREEMENT

(THIS FORM SHOULD BE FULLY COMPLETED AND RETURNED WITH YOUR PROPOSAL PACKET)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the Darien Downtown Development Authority has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

\_\_\_\_\_  
Federal Work Authorization User Identification Number (E-verify Number)

\_\_\_\_\_  
Date of Authorization

\_\_\_\_\_  
Name of Contractor

\_\_\_\_\_  
Address of Contractor

\_\_\_\_\_  
City, State and Zip Code

\_\_\_\_\_  
Name of Project

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

Executed on \_\_\_\_\_, \_\_\_\_\_, 20\_\_ in \_\_\_\_\_ (City), \_\_\_\_\_ (State).

\_\_\_\_\_  
Signature of Authorized Officer or Agent (Contractor)

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

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

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## LIST OF SUBCONTRACTORS FORM

(FAILURE TO RETURN THIS PAGE AS PART OF YOUR PROPOSAL MAY RESULT IN PROPOSAL BEING DEEMED NON-RESPONSIVE.)

I do \_\_\_\_\_, do not \_\_\_\_\_ propose to subcontract some of the work on this project. I propose to Sub-contract work to the following subcontractors:

NAME AND ADDRESS	TYPE OF WORK

## SUBCONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (name of contractor) on behalf of the Darien Downtown Development Authority has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

\_\_\_\_\_  
EEV / Basic Pilot Program\* User Identification Number

\_\_\_\_\_  
BY: Authorized Officer or Agent Signature  
(Subcontractor Name)

\_\_\_\_\_  
Date

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

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

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## STATEMENT OF PROPOSER’S QUALIFICATIONS

(TO BE SUBSCRIBED AND SWORN TO BEFORE A NOTARY PUBLIC)

The proposer submits the following statement of proposer’s qualification for consideration by the Owner.

Legal Name of Proposer/Firm: \_\_\_\_\_

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

Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

When Organized: \_\_\_\_\_

Where Incorporated: \_\_\_\_\_

Number of years engaged in the contracting business under the present firm name: \_\_\_\_\_

Plan of Organization: \_\_\_Proprietorship \_\_\_Corporation \_\_\_Partnership

The proposer has never refused to sign a contract at the original proposal.      T      F

The proposer has never been declared default on a contract.      T      F

The proposer has never been debarred by the Federal Government      T      F

Remarks: \_\_\_\_\_  
\_\_\_\_\_

The foregoing statement of qualifications is submitted under oath.

Under oath, I certify that I am a principal or other representative of the firm of

\_\_\_\_\_ and I am authorized by it to execute the foregoing offer on its behalf. I am a principal person of the foregoing with management responsibility for the foregoing subject matter and as such, I am personally knowledgeable of all its pertinent matters. The foregoing statements of facts in the foregoing proposal are true.

I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm or person submitting a proposal for the same materials, labor supplies or equipment

and is in all respects, fair and without collusion or fraud. We understand collusive bidding is violation of state and federal law and can result in fines, prison sentences and civil damage awards. We agree to abide by all conditions of this proposal.

The full name and addresses of persons and firms interested in the foregoing proposal as principals are as follows:

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Date: \_\_\_\_\_

Legal Name of Firm: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn to and subscribed before this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_



## PROPOSAL SHEET

FROM: \_\_\_\_\_

### 1st Street Parking Lot

Line Item No.	DOT Ref. No.	Item Description	TOTAL QTY	Units	Unit Cost	Cost
1	150	Traffic Control	1	LS		
2	151	Mobilization	1	LS		
3	161	Control of Soil Erosion and Sedimentation	1	LS		
4	210	Grading Complete	1	LS		
5	444	Concrete Saw Cutting	20.00	LF		
6		Concrete Removal	325.00	SF		
7	815	6" #57 Stone or Class II Type Road Base	985.00	SY		
8		Crushed Shell Surface @ 3" Depth (locally sourced)	985.00	SY		
9		Geotextile Fabric	985.00	SY		
10		TrueGrid Pavers	545.00	SF		
11		TrueGrid Super Spot	1.00	LS		
12		1.8" TrueGrid Fill Material- Clean Aggregate 3/4" or 5/8" dia.	545.00	SF		
13		Signage	6.00	EA		
14		Concrete Wheel Stops with #4 bars	15.00	EA		
15		6" Timber Barrier Border	465.00	LF		
16		Landscape border	165.00	LF		
17		Irrigation and well capping	1.00	LS		
18		4' Picket Fence replacement	83.00	LF		
19		6' Privacy Fence installation	83.00	LF		

**SUBTOTAL** \_\_\_\_\_

### Broad Street Parking Lot

Line Item No.	DOT Ref. No.	Item Description	TOTAL QTY	Units	Unit Cost	Cost
20	150	Traffic Control	1	LS		
21	151	Mobilization	1	LS		
22	161	Control of Soil Erosion and Sedimentation	1	LS		
23		Saw cutting asphalt pavement at joint	300	LF		
24		Saw cut and storm drain installation (per GDOT Detail 1401)	40	LF		
25	210	Grading Complete	1	LS		
26	430	6" Concrete Pavement	622	SY		
27	430	4" Concrete Sidewalk (5' wide) with curb	155	LF		
28		ADA Compliant Wheelchair Ramp	1	EA		
29		6.5' Grass strip with Irrigation	125	LF		
30	652	4" White Striping	1	LS		
31	652	Crosswalk striping	2	EA		
32	652	ADA Stall Striping	1	EA		
33		Concrete Wheel stop	6	EA		
34		Storm Curb Inlet	1	EA		
35	550	24" RCP Cross Pipe	40	LF		
36		Concrete Curb and Gutter	115	LF		
37		18" Concrete Valley Gutter	250	LF		
38		24" Concrete Valley Gutter	30	LF		
39		Signs	3	EA		

**SUBTOTAL** \_\_\_\_\_

**TOTAL** \_\_\_\_\_

*Note:*

*Georgia Department of Transportation Standard Specification will apply unless otherwise specified  
The Contractor shall write "no bids" in all appropriate spaces.*

# PROPOSAL FORM

DATE: \_\_\_\_\_

TO: Darien Downtown Development Authority

Having carefully examined the Proposal Documents entitled RFP # 2310, the Civil Engineering Plans and Addendum(s) No. (s) \_\_\_\_\_ as well as the premises and conditions affecting the work, we propose to furnish all services, labor, equipment and materials called for them for the entire work, in accordance with aforesaid documents.

Darien Downtown Development Authority : Broad St. and 1st St. Parking Lots

Total Cost \$ \_\_\_\_\_ Days to Complete \_\_\_\_\_

Warranty \_\_\_\_\_

We agree that this proposal may not be revoked or withdrawn for a period of sixty (60) days following such time. In the case we are notified in writing, by mail, or email of acceptance of this proposal within sixty (60) days after the time set for the opening of proposals, we agree to begin work for the above stated project within ten (10) days of receipt of the Notice to Proceed.

The undersigned agrees to commence actual physical work on the site within ten (10) days of the notice to proceed to the undersigned.

Legal Name of Firm: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## BID BOND

KNOW ALL MEN BY THESE PRESENTS THAT:

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

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

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

hereinafter called Principal, and

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

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

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

\_\_\_\_\_  
Darien Downtown Development Authority

(Name of Obligee)

\_\_\_\_\_  
PO Box 452, Darien, GA 31305

(Address of Obligee)

Thereinafter referred to as Obligee: in the penal sum of 5% of (\$ \_\_\_\_\_) in lawful money of the United States, for the payment of which sum will and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to submit, or has submitted, to Obligee, a proposal for furnishing materials, labor, and equipment for: Darien Downtown Development Authority: Broad St. and 1st St. Parking Lots WHEREAS, the Principal desires to file this Bond in accordance with law in lieu of a certified Proposer's check otherwise required to accompany this Proposal.

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

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

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

ATTEST:

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

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

(SEAL)

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

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

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

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

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

ATTEST:

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

(Attorney-in-Fact)

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

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

(SEAL)

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

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

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

## NON-COLLUSION AFFIDAVIT

CITY OF: \_\_\_\_\_

STATE OF: \_\_\_\_\_

Before me, the Undersigned Proposer being duly sworn on oath, a Notary Public, for and in the City and State aforesaid, personally appeared \_\_\_\_\_ and made oath that the Contractor herein, his agents, servants, and/or employees, to the best of his knowledge and belief, have not in any way colluded with anyone for and on behalf of the Contractor, or themselves, to obtain information that would give the Contractor an unfair advantage over others, nor have they colluded with anyone for and on behalf of the Contractor, or themselves, to gain any favoritism in the award of the contract herein. He or she further states that no person or person, firms, or corporation has, have or will receive directly or indirectly, any rebate, fee gift, commission or thing of value on account of such sale.

### Oath and Affirmation

I hereby affirm under the penalties for perjury that the facts and information contained in the foregoing proposal for public works are true and correct.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Authorized Signature for Contractor: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor's name (print): \_\_\_\_\_

SWORN TO BEFORE ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_\_

NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Notary Public Signature \_\_\_\_\_

Printed Name: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
(Note: Notary seal required for foreign Contractor.)

## GENERAL CONDITIONS

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## **01 - Definitions**

Where used in the project manual, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine and feminine of the words and terms.

**Acceptance.** Formal action of the Owner in determining that the Contractor's work has been completed in accordance with the contract and in notifying the Contractor in writing of the acceptability of the work.

**Act of God.** A cataclysmic phenomenon of nature, such as a hurricane, earthquake or abnormal flood. Rain, wind, high water, or other natural phenomenon which might reasonably have been anticipated from historical records of the general locality of the work shall not be construed as acts of God.

**Addenda.** Supplemental written specifications or drawings issued prior to execution of the contract which modify or interpret the project manual by addition, deletion, clarification, or corrections.

**Bid.** Offer of a bidder submitted on the prescribed form setting forth the price or prices of the work to be performed.

**Bidder.** Individual, partnership, corporation, or a combination thereof, including joint ventures, offering a bid to perform the work.

**Contract.** The writings and drawings embodying the legally binding obligations between the Owner and the Contractor for completion of the work; Contract Documents attached to the Contract and made a part thereof as provided herein.

**Contract Documents.** The Contract, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award), the Notice to Proceed, the Bonds, these General Conditions, the Special Conditions, the Specifications and Drawings, together with all Written Amendments, Change Orders, Work Change directives, Field Orders, and Drawing submittals. **THE OWNER WILL NOT ENTERTAIN OR ACCEPT ANY CHANGES TO THE CONTRACT FORMAT PROVIDED.**

**Contract Drawings.** The drawings which show the scope, extent and character of the work to be furnished and performed by the Contractor and which have been prepared and reviewed by the Engineer and are referred to in the Contract Documents.

**Contract Price.** Amount payable to the Contractor under the terms and conditions of the contract. Based on the price given on the bidding schedule, with adjustments made in accordance with the contract. The base amount given in

the bidding schedule shall be either a lump sum bid or the summation of the unit price bids multiplied by the estimated quantities set forth in the bid form.

**Contract Time.** Number of calendar days stated in the contract for the completion of the work or portions thereof.

**Contractor.** The individual, partnership, corporation, or combination thereof, including joint ventures who enter into the contract with the Owner for the performance of the work. The term covers subcontractors, equipment and material suppliers, and their employees.

**Contractor's Plant and Equipment.** Equipment, material, supplies, and all other items, except labor, brought onto the site by the Contractor to carry out the work, but not to be incorporated in the work.

**Contract Technical Representative.** The day-to-day Representative designated by the Owner.

**City/County.** Owner.

**Day.** Calendar day.

**Defective.** An adjective which when modifying the word "work" refers to work, including but not limited to the furnishing of materials, that is unsatisfactory, faulty, deficient, or performed in an unworkmanlike manner, in that it does not conform to or meet the requirements of the Contract, any inspection, reference standard, test or approval referred to in the Contract, or has been damaged prior to a recommendation of final **payment**.

**Direct.** Action of the Owner by which the Contractor is ordered to perform or refrain from performing work under the contract.

**Directive.** Written documentation of the actions of the Engineer or the Owner in directing the Contractor.

**Engineer.** Whenever the word "Engineer" is used in the contract, it shall be understood as referring to the Engineer of the Owner, or such other Engineer, supervisor or inspector as may be authorized by the Owner to act in any particular area of the Contract.

**Equipment.** Mechanical, electrical, instrumentation, or other device with one or more moving parts, or devices requiring an electrical, pneumatic, electronic, or hydraulic connection.

**Furnish.** To deliver to the job site or other specified location any item, equipment or material.

**Herein.** Refers to information presented in the project manual.

**Holidays.** Legal holidays designated by the Owner.

**Install.** Placing, erecting, or constructing complete in place any item, equipment, or material.

**May.** Refers to permissive actions.

**Owner.** Darien Downtown Development Authority

**Person.** The term, person, includes firms, companies, corporations, partnerships, and joint ventures.

**Project.** The undertaking to be performed under the provisions of the contract.

**Project Manual.** Those contract documents prepared for bidding and as amended by addenda.

**Provide.** Furnish and install, complete in place.

**Punch List.** List of incomplete items of work and of items of work which are not in conformance with the contract. The list will be prepared by the Engineer when the Contractor (1) notifies the Engineer in writing that the work has been completed in accordance with the contract and (2) requests in writing that the Owner accept the work.

**Shall.** Refers to actions by either the Contractor or the Owner and means the Contractor or Owner has entered into a covenant with the other party to do or perform the action.

**Shown.** Refers to information presented on the drawings, with or without reference to the drawings.

**Specifications.** That part of the contract documents consisting of written descriptions of the technical features of materials, equipment, construction system, standards, and workmanship.

**Specify.** Refers to information described, shown, noted or presented in any manner in any part of the contract.

**Submittals.** The information which is specified for submission to the Owner in accordance with Division of the project manual.

**Substantial Completion.** Sufficient completion of the project or the portion thereof to permit utilization of the project, or portion thereof for its intended purpose. Substantial completion requires not only that the work be sufficiently completed to permit utilization, but that the Owner can effectively utilize the substantially completed work. Determination of substantial completion is solely at the discretion of the Owner. Substantial completion does not mean complete in accordance with the contract nor shall substantial completion of all or any part of the project entitle the Contractor to acceptance under the contract.

**Substantial Completion Date.** Date shown on the certificate of Substantial Completion.

**Will.** Refers to actions entered into by the Contractor or the Owner as a covenant with the other party to do or to perform the action.

**Work.** The labor, materials, equipment, supplies, services, and other items necessary for the execution, completion and fulfillment of the contract.

## **02 - Royalties and Patents**

The Contractor shall pay all royalties and license fees and assume all costs incident to the use in the performance of the work or the incorporation in the work of any invention, design, process, product or device which is the subject of the patent rights or copyrights held by others. He shall defend all suits or claims for infringement of any patent rights and shall hold harmless the Owner, its officers, employees, and agents from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular manufacturer, product, or process is specified by the Owner and properly installed by the Contractor pursuant to the manufacturer's specifications.

## **03 - Permits and Regulations**

The Contractor shall obtain and pay for all construction permits, licenses, and easements of a temporary nature necessary for the prosecution of the work. The Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the work. The Contractor shall pay all charges of utility owners for connections to the work, and Owner shall pay all charges of such utility owners for capital costs related thereto. (See the table of "Required Permits" located in the "Project Technical Specifications-Special Conditions")

The Contractor shall comply with all City, State, and Federal laws, statutes, ordinances, rules and regulations applicable to furnishing and performance of the work.

## **04 - Verbal Agreements**

No verbal agreement or conversation with any officer, agent or employee of the Owner either before or after execution of this Contract shall affect or modify any of the terms of obligations contained in any of the documents comprising said Contract.

## **05 - Lands for Work**

The Owner shall provide, as indicated on the drawings and not later than the date when needed by the Contractor, the Lands upon which the work under this Contract is to be done, rights-of-way for access to same, and such other lands which are designated on the drawing for the use of

the Contractor. Any delay in the furnishing of these Lands by the Owner shall be deemed proper cause for an equitable adjustment in both Contract Price and time of completion.

The Contractor shall provide at his own expense and without liability to the owner any additional land and access thereto that may be required for temporary construction facilities, or for storage of materials.

**06 - General Warranty and Guarantee Against Defective Work**

The Contractor shall warrant and guarantee the work required under this Contract for a period of twelve months from the date of Final Acceptance. The Contractor warrants and guarantees to Owner, that materials and equipment furnished under the Contract shall be of good quality and new unless otherwise required or permitted by the Contract Documents, that all work will be in accordance with the Contract Documents, and that all work will be of good quality, free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Owner or the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Contractor's obligation to perform and complete the work in a workmanlike manner, free from faults and defects and in accordance with the Contract Documents shall be absolute. The Contractor shall remedy, at his own expense, and without additional cost to the Owner, all defects arising from either workmanship or materials, as determined by the Owner, or Owner's representative. The obligations of the Contractor under this Paragraph shall not include normal wear and tear under normal usage.

**07 - Bonds**

The Contractor shall furnish payment and performance bonds with good and sufficient surety or sureties acceptable to the Owner for the protection of persons furnishing materials or labor in connection with the performance of the work. The penal sum of such payment and performance bond will be 100% of the contract price. The bonds required hereunder will be dated as of the same date as the contract and will be furnished to the Owner at the time the contract is executed. These bonds shall be issued from a company licensed to do business in Georgia and shall be signed or counter signed by a Georgia resident agent and shall have a proper Power of Attorney evidencing the authority of the individual signing the bond. Included with the Bonds shall be a signed Affidavit on the form provided herewith.

Out of state contractors shall post a bond with the State Tax Commissioner for each tax year during construction of the project to guarantee payment of taxes on the work of this

Contract.

**08 - Contractor's Insurance**

**A. Liability.**

The Contractor shall maintain such insurance as will protect him from claims under workmen's compensation acts and from any other claims for damages to property, and for personal injury, including death, which may arise from operations under this contract, whether such operations be by himself or by any sub-contractor or anyone directly or indirectly employed by either of them. Certificates of such insurance shall be filed with the Owner. The Contractor shall be responsible for providing adequate limits of insurance when working within property owned by railroads, as established by such railroad company.

**B. Indemnity.**

To the fullest extent permitted by laws, statutes, rules and regulations, the Contractor shall indemnify and hold harmless the Owner, Engineer, Engineer's Consultants and the Officers, Directors, Employees, Agents, and other Consultants of each and any of them from and against claims, costs, damages, losses, and expenses, including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court costs, arising out of or resulting from performance of the work, but only to the extent caused in whole or in part by negligent, reckless, willful and wanton, or wrongful acts or omissions of the Contractor, its Officers, Directors, Employees, Agents, and anyone directly, or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, cost, damage, loss, or expense is caused in part by a party indemnified hereunder, except that no party shall indemnify any other party or person for their own sole negligence.

Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.

Comprehensive General Liability -The successful Bidder shall exercise proper precaution at all times for the protection of persons and property. He shall carry approved insurance from insurance companies authorized to do business in Georgia and having an A.M. Best's rating of B+ or better with the following minimums:

**\*The limits of insurance are as follows:**

1. General liability insurance of at least One Million (1,000,000) Dollars (Combined Single Limit per occurrence) and Two Million (2,000,000) Dollars aggregate;
2. Automobile insurance of at least One Million (1,000,000) Dollars (Combined Single Limit per accident for bodily injury or property damage); and
3. Workers' Compensation Insurance as will protect potential bidder or offeror from Workers' Compensation Acts.

#### **09 - Liens**

Neither the final payment nor any part of the retained percentage shall become due until the Contractor shall deliver to the Owner a complete release of all claims or liens arising out of this Contract and an affidavit that so far as he has knowledge or information the release and receipts include all the labor and materials for which a lien or claim could be filed; but the Contractor may, if any Subcontractor refuses to furnish a release or receipt in full, furnish an additional bond satisfactory to the Owner, to indemnify the Owner against any claim or lien (in cases where such payment is not already guaranteed by Surety Bond). If any claim or lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all monies that the latter may be compelled to pay on discharging such a lien, including all costs and a reasonable attorney's fee.

#### **10 - Assignment**

The Owner shall have the right to reject the assignment or sub-letting of any portion of the Contract by the Contractor. Assigning or sub-letting the Contract shall not relieve the Contractor or his surety from any Contract obligations.

#### **11 - Joint Venture Contractor**

In the event the Contractor is a joint venture of two or more contractors, the grants, covenants, provisos and claims, rights, power, privileges and liabilities of the contract shall be construed and held to be several as well as joint. Any notice, order, direct request or any communication required to be or that may be given by the Engineer to the Contractor under this contract, shall be well and sufficiently given to all persons being the Contractor if given to any one or more of such persons. Any notice, request or other communication given by any one of such persons to the Engineer under this Contract shall also be given to the Owner and shall be deemed to have been given by and shall bind all persons being the Contractor.

#### **12 - Successors' Obligations**

The grants, covenants, provisos and claims, rights, powers, privileges and liabilities obtained in the contract documents shall be read and held as made by and with, and granted to

an imposed upon, the Contractor and the Owner and their respective heir, executors, administrations, successors and assigns.

#### **13 - Business License**

Contractors and subcontractors shall have a current Occupation Tax Certificate and shall furnish certificate and license numbers prior to entering into a contract with the Owner.

#### **14 - Obligations and Liability of the Contractor**

The Contractor shall do all the work and furnish all the materials, tools, and appliances, except as herein otherwise specified, and everything necessary for properly performing and completing the work required by the Contract, in the manner and within the time specified. He shall complete the entire work to the satisfaction of the Owner, and in accordance with the Specifications and Plans herein mentioned, at the prices herein agreed upon and fixed, therefore.

All the work labor and materials to be done and furnished under this Contract shall be done and furnished strictly pursuant to, and in conformity with, the Contract Documents, and the directions of the Engineer as given from time to time during the progress of the work, under the terms of this Contract.

All loss or damage arising out of the performance or nature of the work, or any damage to the work itself to be done under this contract or from any unforeseen obstruction or difficulties which may be encountered in the prosecution of the same, or from the action of the elements or from any cause or causes whatsoever, until the same shall have been finally accepted, shall be sustained and paid for by the Contractor.

The Contractor shall coordinate his operations with those of any other contractors who may be employed on other work of the Owner and shall avoid interference therewith and cooperate in the arrangements for storage of materials.

The Contractor shall conduct his work so as to interfere as little as possible with private business and public travel. He shall, at his own expense, wherever necessary, or required, maintain fences, furnish watchmen, maintain lights, and take such other precautions as may be necessary to protect life and property.

The Contractor shall take all responsibility for the work done under this Contract, for the protection of the work, and for preventing injuries to persons, and damage to property and utilities on or about the work.

He shall in no way be relieved of his responsibility by any rights of the Owner, its officers, employees and agents to

give permission or issue orders relating to any part of the work, or by any such permission given or orders issued, or by failure of the Owner, its officers, employees and agents to give such permission or issue such orders. The Contractor shall bear all losses resulting to him or to the Owner, its officers, employees and agents on account of the amount or character of the work, or because of the nature of the land in or on which the work is done is different from what was estimated or expected, or on account of the weather elements or other causes. The Contractor shall assume the defense of all claims arising out of injury or damage to persons, corporations, or property, whether said claims arise out of negligence or not, or whether said claims are for unavoidable damage or not, and from all claims relating to labor and materials furnished for the work and from all expenses incurred in defending or settling such claims, including reasonable attorney's fees.

The Contractor shall so conduct his operations as not to damage existing structures or work installed either by him or by other contractors. In case of any such damage resulting from his own operations, he shall repair and make good as new the damaged portions at his own expense.

The Contractor warrants that he is familiar with the codes applicable to the work and that he has the skill, knowledge, competence, organization, and plant to execute the work promptly and efficiently in compliance with the requirements of the Contract Documents. The Contractor having the obligation to keep a competent superintendent on the work during its progress, to employ only skilled mechanics, and to enforce strict discipline and good order among his employees, the Contractor, himself is responsible for seeing that the work is installed in accordance with the Contract Documents.

Failure or omission on the part of the Owner, representative of the Owner, agents of the Owner, Project Representative, clerk-of-the-works, engineers employed by the Engineer, representatives of the Engineer or the Engineer either to discover or to bring to the attention of the Contractor any deviation from, omission from, or non-compliance with the Contract Documents shall not be set up by the Contractor as a defense of failure to his part to install the work in accordance with the Contract Documents or for any other neglect to fulfill requirements of the Contract; nor shall the presence of any one, or all, or any of the foregoing at the site of the fact that any one, or all, or any of the foregoing may have examined the work or any part of it be set up as a defense by the Contractor against a claim for failure on his part to install the work in accordance with the Contract Documents or for any neglect to fulfill requirements of the Contract. No requirement of this Contract may be altered or waived except in pursuance of a written order of the Owner and in strict accordance with the provisions in the Contract for changes in the work.

#### **15 - Responsibilities of the Contractor**

#### **A. Subcontractors, Manufacturers and Suppliers.**

The Contractor shall be responsible for the adequacy, efficiency and sufficiency of subcontractors, manufacturers, suppliers and their employees.

#### **B. Contractor's Employees.**

The Contractor shall be responsible for the adequacy, efficiency and sufficiency of his employees. Workers shall have sufficient knowledge, skill and experience to perform properly the work assigned to them.

#### **C. Payment for Labor and Materials.**

The Contractor shall pay and require his subcontractors to pay any and all accounts for labor including Workers Compensation premiums, State Unemployment and Federal Social Security payments and other wage and salary deductions required by law. The Contractor also shall pay and cause his subcontractors to pay any and all accounts for services, equipment, and materials used by him and his subcontractors during the performance of work under this contract. Such accounts shall be paid as they become due and payable. If requested by the Owner, the Contractor shall furnish proof of payment of such accounts to the Owner.

#### **D. Attention to Work.**

The Contractor, acting through his representative, shall give personal attention to and shall manage the work so that it shall be prosecuted faithfully. When his representative is not personally present at the project site, his designated alternate shall be available and shall have the authority to act on the contract.

#### **E. Employee Safety.**

The Contractor alone shall be responsible for the safety of his and his subcontractor's employees. The Contractor shall maintain the project site and perform the work in a manner which meets the Owner's responsibility under statutory and common law for the provision of a safe place to work.

#### **F. Public Safety and Convenience.**

The Contractor shall conduct his work so as to insure the least possible obstruction to traffic and inconvenience to the general public and the residents in the vicinity of the work and to insure the protection of persons and property. No road or street shall be closed to the public except with the permission of the Owner. Fire hydrants on or adjacent to the work shall be accessible to fire fighting equipment. Temporary provisions shall be made by the Contractor to insure the use of sidewalks, private and public driveways and

proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses.

**G. Cooperation with the Construction Inspector.**

The Contractor, when requested, shall assist the Construction Inspector in obtaining access to work which is to be inspected. The Contractor shall provide the Construction Inspector with information requested in connection with the inspection of the work.

**16 - Compliance with Laws**

The Contractor shall keep himself fully informed of all existing and future State and Federal Laws, all regulations of the various departments or agencies of the State of Georgia, and local ordinances and regulations in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered, in the Plans, Drawings, Specifications, or Contract for this work in relation to any such law, ordinance, regulations, order, or decree, he shall forthwith report the same to the Engineer and Owner in writing.

He shall at all times himself observe and comply with, and cause all his agents and employees to observe and comply with, all such existing and future laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Owner, its officers, employees and agents against any claim or liability arising from or based upon violation of any such law, ordinance, regulation, order, or decree, whether by himself or his employees or any subcontractor.

**17 - Plans, Specifications and Design**

The Owner shall furnish plans and specifications which represent the requirements of the work as far as practical to be performed under the Contract. All such drawings and instructions shall be consistent with the Contract Documents. Plans and specifications which represent the work to be done shall be furnished prior to the time of entering into the Contract. The Owner may, during the life of the Contract, and in accordance with Paragraph 82, issue additional instructions, by means of drawings or otherwise, necessary to illustrate change in the work.

**18 - Drawings Furnished**

Unless otherwise provided in the Contract Documents, the Owner will furnish to the Contractor, free of charge, up to 1 hard copy and 1 electronic copy of the drawings and specifications necessary for the execution of the work.

**19 - Ownership of Drawings**

All drawings, specifications and copies thereof furnished by the Owner shall not be reused on other work, and with the exception of the signed Contract, sets are to be returned to him on request, at the completion of the work. All models are the property of the Owner.

**20 - Reference Standards**

Reference to the Standards of any technical society, organization or association or to codes of local or state authorities, shall mean the latest standard, code, specifications, or tentative standard adopted and published at the date of taking bids, unless specifically stated otherwise.

**21 - Division of Specifications and Drawings**

Specifications and drawings are divided into groups for the convenience of the Owner. These divisions are not for the purpose of apportioning work or responsibility for work among subcontractors, suppliers and manufacturers.

**22 - Order of Completion**

Before starting work and within ten (10) days of issuance of the Notice of Award with the work, the Contractor shall submit to the Engineer a schedule which shall show the order in which the Contractor proposes to carry on the work, indicating the starting and completion dates and locations of the various stages of the work. The schedule shall be in a bar graph form suitable for periodic updating to show actual work completed.

Monthly progress reports shall be delivered with the pay estimate to the Engineer showing the progress of the past month's construction in relation to the approved work schedule.

No payments will be made to the Contractor until the construction schedule has been submitted by the Contractor and approved by the Engineer.

If the progress report does not agree with the approved work schedule, the Contractor shall deliver in writing an explanation with the report. Upon request from the Engineer, the Contractor shall submit a revised schedule for approval.

**23 - Materials, Appliances & Employees**

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, supervision and other facilities necessary for the execution and completion of the work. Unless otherwise specified, all materials incorporated in the permanent work shall be new. The Contractor shall furnish

satisfactory evidence as to the kind and quality of materials in accordance with section 49 below.

The Contractor shall at all times enforce strict discipline and good order among his employees and shall seek to avoid employing on the work any unfit person or anyone not skilled in the work assigned to him. If at any time before the commencement or during the progress of work, tools, equipment and supervision appear to the Engineer to be insufficient, inefficient or inappropriate to secure the quality of work required or the proper rate of progress, the Engineer may order the Contractor to increase their efficiency, to improve their character, to augment their number, or to substitute new tools, plant or equipment, as the case may be, and the Contractor shall conform to such order; but the failure of the Engineer to demand such increase of efficiency, number, or improvements shall not relieve the Contractor of his obligation to secure the quality of work and the rate of progress necessary to complete the work within the time required by this contract to the satisfaction of the Owner.

#### **24 - Survey Information**

The Owner will establish reference benchmarks and base line identified on the drawings. From the information provided, the Contractor shall develop and make such additional surveys as are needed for construction, such as control lines, slope stakes, batter boards, stakes for pipe locations and other working points, lines, and elevations. Survey work shall be performed under the supervision of a licensed land surveyor or registered civil engineer. Contractor shall reestablish reference benchmarks and survey control monuments destroyed by his operations at no cost to the Owner.

#### **25 - Project Completion**

A. General: If the specifications, the Engineer's or Owner's instructions, laws, ordinances, or any public authority require any work to be specially tested or approved, the Contractor shall give the Engineer notice of its readiness for inspection. Such notice shall be a minimum of two working days. Inspections by the Owner shall be promptly made and where practicable at the source of supply.

If the Engineer instructs the Contractor that inspection of certain phases of the work must be made prior to proceeding, he shall furnish such inspection, promptly and in such manner as to allow the Contractor to prosecute the work without delay. At such time as the Contractor has completed the work in its entirety the Contractor shall make written request for a final inspection. Such request shall be made no less than seven (7) calendar days prior to the requested date of inspection.

An inspection will be made by the Engineer and a determination will be made as to whether the work is in fact complete. Acceptance will not be given, nor final payment released until all "punch list" items are complete and as-built drawings have been approved. "Punch List" shall not be considered all inclusive and therefore each requested final inspection may generate additional "punch list" items as the Contractor is responsible for completion of all work described in the contract documents.

B. After the punch list is completed, the Contractor shall submit a final bill to the Engineer for review. If the Contractor does not submit a final bill within thirty (30) days, the Engineer will notify the Contractor that the Contractor has thirty (30) more days in which to submit a final bill. The Contract will be closed, and no payment will be due to the Contractor sixty (60) days after the punch list is complete and notification by the Engineer as per above.

#### **26 - Inspection and Testing of Materials**

A. Before acceptance of the whole or any part of the work, it shall be subject to tests to determine that the accomplished work is in accordance with the plans and specifications. The Contractor shall be required to maintain all work in a first-class condition for a 30-day operating period after the same has been completed as a whole and the Engineer has notified the Contractor in writing that the work has been finished to his satisfaction. The retained percentage as provided herein will not be due or payable to the Contractor until after the 30-day operating period has expired.

B. For all Project involving professionally designed structures falling under the "Special Inspections" requirements of the Georgia State Minimum Standard Building Code (most recent edition International Building Code) the Owner shall be responsible for and pay for all required testing.

On all other Project the Contractor shall be responsible for and pay for all testing in accordance with the project plans and specifications.

C. No portion of the work will be accepted for partial or final payment until tests prove it has been satisfactorily completed. All such tests shall be documented, signed by the person conducting the tests and reviewed by the Engineer and approved by the Owner prior to payment.

#### **27 - Substantial Completion**

At such time as the Contractor has completed the work and prior to requesting a final inspection, the Contractor shall

make written request for an inspection for substantial completion. Such request shall be made no less than seven (7) calendar days prior to the requested date of inspection. An inspection will be made by the Engineer and the Owner and a determination will be made as to whether or not the work is in fact substantially complete and a "punch list" will be developed. "Punch Lists" containing numerous items or items which may affect the intended use of the work will be considered cause to delay issuance of a document of Substantial Completion. Operation and Maintenance manuals shall be submitted and approved prior to issuance of any document of Substantial Completion.

### **28 - Rights of Various Interests**

Wherever work, being done by the Owner's forces or by other Contractors, is contiguous to work covered by this Contract, the respective rights of the various interests involved shall be established by the Owner, to secure the completion of the various portions of the work in general harmony.

### **29 - Separate Contracts**

The Owner reserves the right to let other Contracts in connection with this work. The Contractor shall afford other Contractor's reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs.

### **30 - Subcontractors**

The Contractor shall notify the Engineer and Owner in writing of the names and addresses of all proposed Subcontractors for the work at the Preconstruction Meeting. Subcontractors will not be recognized as having a direct relationship with the Owner. The persons engaged in the work, including employees of subcontractors and suppliers, will be considered employees of the Contractor and their work shall be subject to the provisions of the contract. References in the contract documents to actions required of subcontractors, manufacturers, suppliers, or any person, other than the Contractor, the Owner, the Engineer or the Construction Inspector, shall be interpreted as requiring that the Contractor shall require such subcontractor, manufacturer, supplier or person to perform the specified action.

A subcontractor for any part of the work must have experience on similar work and, if required, furnish the owner with a list of Projects and the Owners or Engineers who are familiar with their competence.

### **31 - Access**

The Contractor shall maintain access to the property owners adjacent to the Project covered by the Contract.

### **32 - Construction Schedule and Procedures**

The Contractor shall submit and continually update a time schedule for the work and a sequence of operations.

Before starting any work, and from time to time during its progress, as the Engineer may request, the Contractor shall outline to the Engineer the methods he plans to use in doing the work, and the various steps he intends to take. Failure of the Engineer to reject the methods or steps proposed by the Contractor shall not relieve the Contractor of his responsibility for the correct and timely performance of the work.

### **33 - Project Management**

The Contractor shall schedule and coordinate the work of the Contractor and all subcontractors and others involved to maintain the accepted progress schedule. His duties shall also include the planning of the work, the scheduling of ordering and delivery of materials, and checking and control of all work under this contract.

The Contractor shall be responsible for complete supervision and control of his subcontractors as though they were his own forces. Notice to the Contractor shall be considered notice to all affected subcontractors.

### **34 - Entry**

The right of access to the work wherever it is in preparation or progress shall be extended to the Owner and representatives of appropriate regulatory agencies. The Contractor shall provide facilities for such access and inspection.

### **35 - Preservation and Restoration**

- A. The Contractor shall use every precaution to prevent damage or destruction of buildings, poles and shrubbery. The Contractor shall provide an approved consultant whose responsibilities shall be to provide direct supervision of all removal and relocation of all shrubbery, hedges, plants and bushes shown to be relocated and plants not shown for relocation but requiring relocation due to the lay out of the sidewalk. He shall protect and carefully preserve from disturbance and damage all survey land monuments and property markers until an authorized agent has witnessed or otherwise referenced their location and such monuments and markers shall be properly and accurately restored at no cost to the Owner.
- B. When direct or indirect damage or injury is done to public or private property by the Contractor, he shall



restore, at his own expense, such property to a condition similar or equal to that existing before the damage was done, by repairing or otherwise restoring, or he shall make good such damage in an acceptable manner. All restoration by the Contractor shall be accomplished as soon as construction in the disturbed area is complete.

- C. Throughout the performance of the work, the Contractor shall construct and adequately maintain suitable and safe crossings over the trenches and such detours as are necessary to care for public and private traffic. The material excavated from trenches shall be deposited in such manner as shall give as little inconvenience as possible to the traveling public, to adjoining property owners, to other contractors, or to the Owner.
- D. Prior to commencing work on private property, the Contractor shall contact the Owner and/or occupant two (2) days in advance of the time work will commence.
- E. The Contractor shall keep the premises, rights-of-way and adjacent property free from accumulations of waste materials, rubbish and other debris resulting from the work, and progressively as the work is completed he shall remove all waste materials, rubbish and debris from and about the work areas as well as all tools, construction equipment and machinery, and surplus materials, and shall leave the site clean. Prior to approval of a request for partial payment, the Contractor shall clean-up the work areas where construction has been performed during the period for which payment is requested.
- F. When the work involves the laying of utility lines across grassed areas, streets, sidewalks, and other paved areas, it shall be the responsibility of the Contractor to restore such areas to their original sound condition using construction techniques and materials which are the same as existing. In the case of planted areas, Contractor shall maintain the restoration work until positive growth has evidenced.
- G. In case of dispute, the Owner may remove the rubbish and surplus materials or perform restoration work and charge the cost of the Contractor.

### **36 - Completion of "Punch List" Items**

Prior to completion of the project, the Contractor shall request an inspection and any deficiencies found at that time will be noted on a "Punch List". The development of a "Punch List" shall not delay or terminate the accumulation or assessment of liquidated damages as established in Paragraph 86.

### **37 - Authority of Contractor**

#### **A. Contractor's Representative.**

The Contractor shall notify the Engineer and Owner in writing of the name of the person who will act as the Contractor's representative and shall have the authority to act in matters relating to this contract. This person shall have authority to carry out the provisions of the contract and to supply materials, equipment, tools and labor without delay for the performance of the work.

#### **B. Construction Procedures.**

The Contractor shall supervise and direct the work. He has the authority to determine the means, methods, techniques, sequences and procedures of construction, except in those instances where the Owner, to define the quality of an item of work, specifies in the contract, a means, method, technique, sequence or procedure for the construction of that item of work.

### **38 - Authority of Engineer**

Engineer will be the initial interpreter of the requirements of the Contract Documents and shall review the work for acceptability of the work thereunder. Neither the Engineer's authority or responsibility under the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility of Engineer shall give rise to any duty owed by Engineer to Contractor, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

### **39 - Owner-Contractor Coordination**

#### **A. Service of Notice.**

Notice, order, direction, request or other communication given by the Engineer or Owner to the Contractor shall be deemed to be well and sufficiently given to the Contractor if left at any office used by the Contractor or delivered to any of his office, clerks or employees or posted at the site of any work or mailed to any post office addressed to the Contractor at the address given in the contract document or mailed to the Contractor's last known place of business. If mailed by first-class mail, any form of communication shall be deemed to have been given to and received by the Contractor two days after the day of mailing.

#### **B. Suggestions to Contractor.**

Plan or method of work suggested by the Engineer or Owner to the Contractor but not specified or required,

if adopted or followed by the Contractor in whole or in part, shall be used at the risk and responsibility of the Contractor.

The Engineer and Owner assume no responsibility therefor and in no way will be held liable for any defects in the work which may result from or be caused by the use of such plan or method of work.

**C. Cooperation.**

The Contractor agrees to permit entry to the site of the work by the Owner or other contractors performing work on behalf of the Owner. The Contractor shall afford the Owner, other subcontractors and their employees, reasonable facilities and cooperation and shall arrange his work and dispose of his materials in such a manner as to not interfere with the activities of the Owner or of others upon the site of the work. The Contractor shall promptly make good any injury or damage that may be sustained by other contractors or employees of the Owner at his hands. The Contractor shall join his work to that of others and perform his work in proper sequence in relation to that of others.

If requested by the Contractor, the Owner shall arrange meetings with other contractors performing work on behalf of the Owner to plan coordination of construction activities. The Owner shall keep the Contractor informed of the planned activities of other contractors.

Differences or conflicts arising between the Contractor and other contractors employed by the Owner or between the Contractor and the works of the Owner with regard to their work, shall be submitted to the Engineer for his review of the matter. If the work of the Contractor is affected or delayed because of any act or omission of other contractors or of the Owner, the Contractor may submit for the Engineer's consideration, a documented request for a change order.

**40 - Interpretation of Specifications and Drawings**

**A. General.**

The specifications and drawings are intended to be explanatory of each other. Work specified on the drawings and not in the specifications, or vice versa, shall be executed as if specified in both.

**B. Request for Clarification.**

In the event the work to be done or matters relative thereto are not sufficiently detailed or explained in the contract documents, the Contractor shall apply to the Engineer for further explanations as may be necessary and shall conform thereto so far as may be consistent

with the terms of the contract. In the event of doubt or question arising respecting the true meaning of the specifications or drawings, reference shall be made to the Engineer for his decision.

**41 - Discrepancies in Specifications and Drawings**

**A. Errors and Omissions.**

If the Contractor, in the course of the work, becomes aware of any claimed errors or omissions in the contract documents or in the Owner's field of work, he shall immediately inform the Engineer and Owner in writing. The Engineer shall promptly review the matter and if he finds an error or omission has been made; he shall determine the corrective actions and advise the Contractor accordingly.

If the corrective work associated with an error or omission increases or decreases the amount of work called for in the contract, the Engineer shall issue an appropriate change order. After discovery of an error or omission by the Contractor, related work performed by the Contractor shall be done at his risk unless authorized, in writing, by the Engineer.

**B. Conflicting Provisions.**

In cases of conflict between the specifications and drawings, the drawings shall govern. Figure dimensions on drawings shall govern over scale dimensions and detail drawings shall govern over general drawings. In the event an item of work is described differently in two or more locations on the drawings and in the specifications, the Contractor shall request a clarification from the Engineer. For any event where the Contractor claims any ambiguities or discrepancies within the specifications, the Contractor must request clarification from Engineer.

**42 - Material, Equipment and Workmanship**

Unless otherwise specifically stated in the contract documents, the Contractor shall provide and pay for material, labor, tools, equipment, water, light, power, transportation, supervision, and temporary construction of any nature, and other services and facilities of any nature, whatsoever necessary, to execute, complete and deliver the work within the specified time. Material and equipment shall be new, free of defects and of the quality specified. Equipment offered shall be current modifications which have been in successful regular operation under comparable conditions. Construction work shall be executed in conformity with the standard practice of the trade.

**43 - Demonstration of Compliance with Contract**

**Requirements**

**A. Inspection.**

To demonstrate his compliance with the contract requirements, the Contractor shall assist the Engineer and Owner in the performance of inspection work.

The Contractor shall grant the Engineer access to the work and to the site of the work, and to the places where work is being prepared, or whence materials, equipment or machinery are being obtained for the work. The Contractor shall provide information requested by the Engineer in connection with inspection work.

If the contract documents, laws, ordinances, or any public regulatory authority require parts of the work to be specially inspected, tested or approved, the Contractor shall give the Engineer adequate prior written notice of the availability of the subject work for examination.

If parts of the work are covered in contravention of the Engineer's directive, the cost of exposing the work for inspection and closing shall be borne by the Contractor regardless of whether or not the work is found to be in compliance with the contract.

If any work is covered in the absence of the Engineer's directive to the contrary, the Contractor shall, if directed by the Engineer, uncover, expose or otherwise make available for inspection, portions of covered work.

If it is found that such work is defective, the Contractor shall bear the expense of uncovering and reconstructing. If the work is found to be in compliance with the contract, the Contractor will be allowed an increase in the contract price, or an extension in the contract time, or both via a change order. The Owner reserves the right to require additional documentation from the Contractor as necessary to determine compliance with the Contract Documents.

**B. Certification.**

In cases where compliance of materials or equipment to contract requirements is not readily determinable through inspection and tests, the Engineer shall request that the Contractor provide properly authenticated documents, certificates or other satisfactory proof of compliance. These documents, certifications and proofs shall include performance characteristics, materials of construction and the physical or chemical characteristics of materials.

**C. Inspection at Point of Manufacturing.**

If inspection and testing of materials or equipment in the vicinity of the work by the Owner is not practical, the specifications may require that such inspection and testing or witnessing of tests take place at the point of manufacture. In this case and in the event the remote inspection and testing is not specified and is requested by the Owner, the required travel, subsistence, and labor expenses shall be paid by the Owner. If the Contractor request the Owner to inspect and test material or equipment at the point of manufacture, then the additional costs to the Owner for travel, subsistence, and labor expenses shall be paid by the Contractor.

**44 - Project Meetings**

Project meetings will be held on site as often as deemed necessary by the Engineer throughout the construction period. Meetings will normally be held monthly. Contractor's representatives shall attend.

The purpose of the meetings will be to discuss schedule, progress, coordination, submittals and job-related problems.

**45 - Overtime and Shift Work**

Overtime and shift work may be established as a regular procedure by the Contractor with reasonable notice and written permission of the Owner. No work other than overtime and shift work established as a regular procedure shall be performed between the hours of 6:00 p.m. and 7:00 a.m. nor on Sundays or holidays except such work as is necessary for the proper care and protection of the work already performed or in case of an emergency.

Contractor agrees to pay the Owner's costs of overtime inspection except those occurring as a result of overtime and shift work established as a regular procedure. Overtime inspection shall include inspection required during holidays and weekends, and between the hours of 6:00 p.m. and 7:00 a.m. on weekdays. Costs of overtime inspection will cover engineering, inspection, general supervision and overhead expenses which are directly chargeable to the overtime work. Contractor agrees that Owner shall deduct such charges from payments due the Contractor.

**46 - Construction Schedule**

**A. Scope.**

This section specifies reports and schedules for planning and monitoring the progress of the work. The construction schedule shall reflect the Contract Time stated in the Invitation for Bid.

**B. Description.**

The Contractor shall provide a graphic construction schedule (bar chart) indicating various subdivisions of the work with a reasonable breakdown for each task to include the days in duration and the dates of commencing and finishing each task.

**C. Submittal Procedures.**

Within ten (10) days after Notice of Award of the Bid, the Contractor shall submit six (6) copies of the construction schedule.

Within fourteen (14) calendar days after receipt of the submittal, the Engineer shall review the submitted schedule and return two copies with comments to the Contractor. If the Engineer finds that the submitted schedule does not comply with specified requirements, the corrective revisions will be noted on the submittal copy returned to the Contractor.

**D. Schedule Revisions.**

Revisions to the accepted construction schedule may be made only with the written approval of the Contractor and Owner. A change affecting the contract value of any activity, the completion time, and sequencing shall be made in accordance with applicable provisions of Paragraph 82.

**E. Project Status Update.**

Project status, review and update shall be provided with each pay request and at least monthly as specified in Paragraph 79.

**47 - Quality**

Where the contract requires that materials or equipment be provided or that construction work be performed, and detailed specifications of such materials, equipment or construction work are not set forth, the Contractor shall perform the work using materials and equipment of the best grade in quality and workmanship obtainable in the market from firms of established good reputations, and shall follow standard practices in the performance of construction work. The work performed shall be in conformity and harmony with the intent to secure the standard of construction and equipment of work as a whole and in part.

**48 - Material and Equipment Specified By Name**

Although the plans and specifications make reference to particular manufacturers and model numbers for various products, such reference is made only to establish function and quality of such products. If it is desired to use materials

or equipment of trade names or of manufacturer's names which are different from those mentioned in the Contract Documents, applicable for the approval of the use of the specified materials or the specified items of equipment as manufactured by firms other than those named in the Contract Documents must reach the hands of the Engineer at least ten (10) days prior to the date set for the opening of bids. The burden of proving equivalent of a proposed substitute to an item designated by trade name or by manufacturer's name in the Contract Documents rests on the party submitting the request for approval.

The written application for approval of a proposed substitute must be accompanied by technical data which the party requesting approval desires to submit in support of his application. The Engineer will give consideration to reports from reputable independent testing laboratories, verified experience records showing the reputation of the proposed product with previous users, or any other written information that is reasonable in the circumstances.

The application to the Engineer for approval of a proposed substitute must be accompanied by a schedule setting forth in what respects the material or equipment submitted for consideration differs from the materials or equipment designated in the Contract Documents. The degree of proof required for approval of a proposed substitute as equivalent to a named product is the amount of proof necessary to convince the Engineer beyond all doubt. To be acceptable, a proposed substitute must, in addition, meet or exceed all express requirements of the Contract Documents.

If submittal is approved by the Engineer, an addendum will be issued to all prospective bidders at least five (5) days prior to the date set for the opening of bids. Unless requests for changes are received and approvals are published by addendum in accordance with the above procedure, the successful bidder shall be held responsible for furnishing items and materials of the trade names or manufacturer's names called for in the specifications. The Engineer shall be the final judge on questions of equivalence.

**49 - Submittal Procedure**

**A. General.**

The Contractor shall submit descriptive information which will enable the Engineer to determine whether the Contractor's proposed materials, equipment, or methods of work are in general conformance to the design concept and in compliance with the drawings and specifications.

**B. Contractor's Responsibilities.**

The Contractor shall be responsible for the accuracy

and completeness of the information contained in each submittal and shall assure that the material, equipment, or method of work shall be as described in the submittal. The Contractor shall verify in writing that all features of all products conform to the requirements of the specifications and drawings. Submittal documents shall be clearly edited to indicate only those items, models, or series of material or equipment which are being submitted for review. All extraneous materials shall be crossed out or otherwise obliterated.

The Contractor shall insure that there is no conflict with other submittals and shall notify the Engineer in each case where his submittal may affect the work of another contractor or the Owner. The Contractor shall insure coordination of submittals among the related crafts and subcontractors.

The Contractor may authorize in writing a material or equipment supplier to deal directly with the Engineer with regard to a submittal. These dealings shall be limited to contract interpretations.

**C. Transmittal Procedure.**

**1. General.**

Before each submittal, the Contractor shall have determined and verified all field measurements, quantities, dimensions, specified performance criteria, installations requirements, materials, catalog numbers and similar information with respect thereto; all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the work; and all information relative to the Contractor's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

Submittal documents common to more than one piece of equipment shall be identified with all the appropriate equipment numbers and specification section and paragraph.

Each submittal will bear a stamp or specific written indication that the Contractor's obligations under the Contract documents with respect to the Contractor's review and approval of that submittal.

**2. Deviation from the Contract.**

If the Contractor proposes to provide material, equipment, or method of work which deviates

from the project manual, the Contractor shall give the Engineer specific written notice of such deviations or variations that the submittal may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, the Contractor shall cause a specific notation to be made on each shop drawing and sample submitted to the Engineer.

**3. Submittal Completeness.**

Submittals which do not have all the information required to be submitted, including deviations, are not acceptable and will be returned without review.

**D. Review Procedure.**

Review shall not extend to means, methods, techniques, sequences, or procedures of construction, or to verifying quantities, dimensions, weights or gages, or fabrication processes, or to safety precautions, or programs incident thereto. Review of a separate item, as such, will not indicate approval of the assembly in which the item functions.

The Contractor shall submit six copies of all specified information. Unless otherwise specified, within 30 calendar days after receipt of the submittal, the Engineer shall review the submittal and return one copy of the submittal with comments. The returned submittal shall indicate one of the following actions:

1. If the review indicates conformance with the drawings and specifications, submittal copies will be marked "NO EXCEPTIONS TAKEN". In this event, the Contractor may begin to implement the work or incorporate the material or equipment covered by the submittal.
2. If the review indicates limited corrections are required, submittal copies will be marked "MAKE CORRECTIONS NOTED".

The Contractor may begin implementing the work or incorporate the materials or equipment covered by the submittal in accordance with the noted corrections. Where submittal information will be incorporated in Operations and Maintenance (O&M) data, a corrected copy shall be provided.

3. If the review indicates that the submittal is insufficient or contains incorrect data, submittal copies will be marked "AMEND AND RESUBMIT". Except at his own risk, the Contractor shall not undertake work covered by this submittal until it

has been revised, resubmitted and returned marked either "NO EXCEPTION TAKEN" or "MAKE CORRECTIONS NOTED".

4. If the review indicates that the submittal does not comply with the plans and specifications, submittal copies will be marked "REJECTED - SEE REMARKS". Submittals with deviations which have not been clearly identified will be rejected. Except at his own risk, the Contractor shall not undertake work covered by this submittal until it has been revised, resubmitted and returned marked either "NO EXCEPTIONS TAKEN" or "MAKE CORRECTIONS NOTED".

**E. Effect of Review of Contractor's Submittals.**

Review of drawings, methods of work, or information regarding materials or equipment the Contractor proposed to provide, shall not relieve the Contractor of his responsibility for errors and omissions therein and shall not be regarded as an assumption of risks or liability by the Owner or by any officer or employee thereof, and the Contractor shall have no claim under the contract on account of the failure, or partial failure, or the method of work, material, or equipment so reviewed. A mark of "NO EXCEPTION TAKEN" or "MAKE CORRECTIONS NOTED" shall mean that the Engineer has no objection to the Contractor, upon his own responsibility, using the plan or method of work proposed, or providing the materials or equipment proposed.

**50 - Requests for Substitution**

The Engineer and Owner will consider offers for substitution only from the Contractor and will not acknowledge or consider such offers from suppliers, distributors, manufacturers, or subcontractors. The Contractor's offers of substitution shall be made in writing to the Engineer and shall include sufficient data to enable the Engineer to assess the acceptability of the material or equipment for the particular application and requirements.

**51 - Manufacturer's Directions**

Manufactured articles, material and equipment shall be applied, installed, connected, erected, adjusted, tested, operated and maintained as recommended by the manufacturer, unless otherwise specified. Manufacturer's installation instructions and procedures shall be provided prior to installation of the manufactured articles, material and equipment.

**52 - Product Data**

Data required by the Engineer or Owner for inspecting, testing, operating or maintaining parts of the work shall be

provided by the Contractor.

Unless otherwise specified, such information shall consist of six (6) copies and shall be provided at the time the referenced material or equipment is delivered to the job site. The data shall include such items as shop drawings, erection drawings, reinforcing steel schedules, testing and adjusting instructions, operations manuals, maintenance procedures, parts lists and record drawings. When applicable, information and data to be provided shall be identified by the specified equipment number. Extraneous material on the pages or drawings provided shall be crossed out, and the equipment or material to be supplied shall be clearly marked. Such information is to be provided as part of the work under this contract and its acceptability determined under normal material submittal procedures. The certificate of substantial completion shall not be issued for any portion of the work for which complete product data has not been submitted and approved.

**53 - Operation and Maintenance Information**

Six (6) complete sets of operation and maintenance information shall be provided for all mechanical and electrical equipment. Such operating and maintenance information shall consist of the name and address of the manufacturer, the nearest representative of the manufacturer, and the nearest supplier of the manufacturer's equipment and parts. In addition, the following items of information shall be provided where applicable.

- A. Lubrication Information: This shall consist of the manufacturer's recommendations regarding the lubricants to be used and the lubrication schedule to be followed.
- B. Control Diagrams: Diagrams shall show internal and connection wiring.
- C. Start-up Procedures: These instructions consist of the equipment manufacturer's recommendations for installation, adjustment, calibration, and troubleshooting.
- D. Operating Procedures: These instructions consist of the equipment manufacturer's recommended step-by-step procedures for starting, operating, and stopping the equipment under specified modes of operation.
- E. Preventive Maintenance Procedures: These instructions consist of the equipment manufacturer's recommended steps and schedules for maintaining the equipment.
- F. Overhaul Instructions: These instructions consist of the manufacturer's directions for the disassembly, repair and reassembly of the equipment and any

safety precautions that must be observed while performing the work.

- G. Parts List: This list consists of the generic title and identification number of each component part of the equipment.
- H. Spare Parts List: This list consists of the manufacturer's recommendations of numbers of parts which should be stored by the Owner and any special storage precautions which may be required.
- I. Original warranties as required by the contract documents and as supplied by the manufacturer.

#### **54 - Record Drawings**

Record drawings refer to those documents maintained and annotated by the Contractor during construction and are defined as (1) a neatly and legibly marked set of contract drawings showing the final location and elevations, as appropriate and referenced to the bench marks shown on the plans, for all piping, manholes, equipment, electrical conduits, outlet boxes, cables and electrical wiring diagrams; (2) additional documents such as schedules, lists, drawings, and electrical and instrumentation diagrams included in the specifications; (3) Contractor layout and installation drawings; and (4) general and specific notes and detailed, dimensioned sketches regarding interferences, high water tables, poor soil conditions, relocation of existing utilities or other information pertaining to unusual or unexpected construction techniques, installations or conditions.

Unless otherwise specified, record drawings shall be full size and maintained in a clean, dry, and legible condition. Record documents shall be subject to periodic review by the Engineer. Record documents shall not be used for construction purposes and shall be available for review by the Engineer during normal working hours at the job site. Prior to final inspection, all record drawings shall be submitted to the Engineer.

All utilities installed under this contract shall be shown on the drawings and located by sequential stations. Record drawings shall commence with the same station as the construction drawings. The following items shall be stationed on all utility record drawings: Piping, Valves, Fittings, Service lateral connection to the main, Manholes, Points of tie-in, Fire hydrants and Post hydrants. Also, the centerline of each paved street of which the utility crosses shall be given a station.

Where sanitary sewers or sanitary sewer services have been stubbed out for future use, the invert elevation of the capped or plugged end shall be given to the nearest 0.1 feet.

The drawings shall be marked to show the relative location of utilities to surface improvements. (i.e. show utilities on correct side of curb, trees, other utilities, etc.)

Marking of the drawings shall be kept current and shall be done at the time the material and equipment are installed. Failure to maintain current record drawings shall be cause for delay of request for payment. Annotations to the record documents shall be made with an erasable colored pencil conforming to the following color code:

Additions - Red  
Deletions - Green  
Comments - Blue  
Dimensions - Graphite\*

\*Legibly mark to record actual depths, horizontal and vertical location of underground utilities, cables, and appurtenances referenced to permanent surface improvements.

Record Drawing Disc(s): In addition to the "record drawings" a DXF Disc(s) (Export File from Auto

Cad) showing all "record drawings" shall be prepared and submitted. The professional Engineer or Licensed Surveyor preparing the disc(s) shall certify to the Owner that "all information contained on the disk(s) is accurate and correct".

#### **55 - Protection of the Public and Property**

The Contractor shall provide and maintain all necessary watchmen, barricades, lights, flagmen and warning signs and take all necessary precautions for the protection of the public.

#### **56 - Protection of the Owner's Property**

The Contractor shall continuously maintain adequate protection of all work from damage and shall take all reasonable precautions to protect the Owner's property from injury or loss arising in connection with this Contract. The Contractor shall adequately protect adjacent private and public property, as provided by Law and Contract Documents.

Before parking any heavy equipment on property of the Owner, the contractor must request and receive permission from the Owner.

#### **57 - Maintenance of Traffic and Sequence of Operation**

- A. General: The following requirements will apply:
  - 1. The work shall be arranged and conducted so that it can be performed with the least interference to all vehicular and pedestrian traffic.

2. No property owner shall be denied vehicular access to his property for any length of time, other than that, as determined, by the Engineer, is absolutely necessary.
3. Two-way traffic must be maintained on all public roads and streets, except that during periods of off-peak use, one-way traffic, properly controlled by flagmen, will be permitted at the discretion of the Engineer. Each time that there is to be a change in the number of lanes open to traffic, this shall be reviewed by the Engineer and approved by the Owner.
4. The Owner may approve detours around construction when one lane traffic open is impossible.
5. Trenches shall be opened for only the amount of pipe that can be laid in one (1) day. Trenches shall be backfilled and compacted as soon as the pipe is laid. Where access to parking lots is to be denied, the Contractor shall advise each property owner one (1) day in advance of the time the parking lots will be inaccessible.

**B.** As a minimum, all signage, lane or street closings, and detours shall be accomplished in accordance with the current revision of the Federal Manual of Uniform Traffic Control Devices latest edition, and Supplements, for design, dimensions, materials, colors, use and placement; state and local laws, rules and regulations apply.

**1. Materials Required.**

Portable Advance Warning Sign - These signs shall conform with the requirements of Manual on Uniform Traffic Control Devices latest edition, and the Supplements, for design, dimensions, materials, colors use and placement.

Fluorescent orange cap, vest and flag for flagmen.  
Fluorescent orange traffic cones, 24" high.

**2. Placement and Erection.**

The Advance warning signs shall be placed ahead of construction in accordance with the Construction Section of Manual on Uniform Traffic Control Devices, current edition.

Flagmen, equipped with fluorescent orange cap, vest and flag will be provided by the Contractor and placed.

Traffic cones shall delineate the full length of the lane closure, including transitions.

In order to provide the greatest possible convenience to the public, the Contractor shall remove all lane closure markings and devices immediately when closure work is completed or temporarily suspended for any length of time.

**C. Safety.**

The Contractor performing the work shall be responsible for the erection and maintenance of all traffic control devices during construction.

At the end of work each day, the Contractor shall remove all equipment, tools, and any other hazards in the traveled portion of the roadway.

When construction necessitates suspension of an existing traffic signal operation, the Contractor shall furnish an off-duty police officer to regulate and maintain traffic control at the site.

**D. Enforcement.**

In the event that compliance with these measures is not achieved, the Engineer or Owner may shut-down all operations being performed. The Engineer or Owner shall also withhold any payments due, until the above requirements have been met. At any time during the course of the work, the Engineer or Owner may at their discretion and by whatever means necessary, correct any situation that they may deem hazardous to the health and welfare of the public. Work, performed by the Engineer or Owner or by any entity enlisted by the Engineer or Owner, to correct situations of public hazard shall be deducted from monies due the Contractor.

**E. Compensation.**

There will be no separate pay item for maintenance of traffic or for coordination of the Sequence of Operations.

**58 - Lot Corners**

In the course of the construction work, it may be necessary to disturb and remove the established lot or property corners of some of the properties. The Contractor shall be required to record all property corners and replace them after the construction is completed.

All lot or property corners removed as described above, or all lot or property corners destroyed by the Contractor's operations shall be replaced at the expense of the Contractor by a Land Surveyor registered in the State of Georgia. The Contractor shall provide certification from the Land Surveyor for all reset property corners.

**59 - Existing Utilities**



All known utility facilities are shown schematically on the plans and are not necessarily accurate in location as to plan or elevation. Utilities such as service lines or unknown facilities not shown on the plans will not relieve the Contractor of his responsibility under this requirement. The Contractor shall be responsible for the cost of repairs to any damaged underground facilities; even when such facilities are not shown on the plans. The Contractor shall contact all utility companies prior to beginning work and request an accurate location of their respective utilities. "Existing Utility Facilities" shall mean any utility that exists on the project in its original, relocated or newly installed position.

The Contractor shall call, by law, the Utility Location and Coordination Council in Atlanta at 811 and shall request that all owners of utilities, including gas companies, electric companies, telephone companies, cable television companies and governmental units, prior to starting any excavation of the project locate and mark their respective facilities.

All Contractors' operations shall be conducted as to interfere as little as possible with utility service. Any proposed interruption by the Contractor must be approved in advance by the respective utility's owner. The existence and location of underground utilities will be investigated and verified in the field by the Contractor before starting work. The location of all known interferences based on the best information available has been shown on the drawings, but this information may not be complete or accurate.

Water lines and gas lines and appurtenances and sewer lines uncovered by the Contractor shall be protected and kept in service by the Contractor and the Contractor shall notify the respective utility's owner that the line has been or will be uncovered. The Contractor shall use adequate braces and slings or other appropriate methods to keep the lines in service, and any repairs made necessary by his operation shall be made at the Contractor's expense. Extreme caution shall be exercised when equipment is being moved or work is being performed under and around existing utility facilities, especially gas.

The Contractor shall familiarize himself with and comply with the provisions of O.C.G.A. Section 25-9-1 et. seq. If any public or private utility lines, pipes, facilities, or structures are damaged or broken by the operations of the Contractor as a result of being disturbed, exposed or unsupported, the Contractor shall be responsible for the complete and prompt restoration of the same and shall indemnify and hold the Owner, its officers, employees and agents harmless from any claims or causes or action for damage and for any liability which may arise therefrom.

The Contractor is responsible for coordinating with the respective utility's owner any relocation, adjustment, holding or replacement of utility facilities.

Power poles, telephone poles, gas lines, and other utility facilities to be relocated shall be moved by the responsible utility owner. The relocation, holding or replacement of any existing facilities shall be considered consequential to the work and any cost associated therewith shall be borne by the Contract and no expense shall accrue to the Owner.

#### **60 - Equal Employment Opportunity**

There shall be no discrimination against any employee who is employed in the work covered by this Agreement, or against any applicant for such employment because of race, color, religion, sex or national origin. This provision shall include, but is not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates or pay or their forms of compensation, and selection for training, including apprenticeship.

#### **61 - Material Delivery, Handling, and Storage**

The Contractor shall schedule and sequence the delivery of material and equipment such that installation can be accomplished in a timely manner. The Contractor shall thoroughly examine all material and equipment upon delivery and shall not accept delivery of defective or damaged material or equipment.

Nylon slings and chokers shall be used for lifting all material and equipment. Chains, cables, wire rope, or other such items that may cause change to factory applied coatings shall not be used for handling of material or equipment.

Material and equipment shall be stored as compactly and neatly as practicable at points convenient for the Contractor and which do not damage the work or interfere with or are otherwise hazardous to traffic. Material and equipment shall be stored so as to facilitate inspection and to insure preservation of their quality and fitness for use. All material and equipment shall be stored on wooden skids or platforms such as not to be in direct contact with the ground.

All mechanical and electrical equipment shall be stored and covered in a manner such as to completely be protected from dust and moisture. Prior to the delivery of any materials or equipment the Contractor shall submit, for the Engineer's review, a plan showing all designated storage and assembly areas. Should the Contractor choose to store material or equipment or use for assembly property which is not owned by the Owner or the Contractor, a letter of permission signed by the legal owner of the property shall be obtained by the Contractor and submitted to the Engineer a minimum of 24 hours prior to delivery. All material and equipment stored at any facility other than the site shall be tagged with the Owners name and the project number. Payment shall not be made for "Stored Materials" for any material stored at locations or in any manner not

suitable to the Owner.

**62 - Maintenance During Construction**

The Contractor shall maintain the work from the beginning of construction operations until final acceptance of the Project. This maintenance shall constitute continuous and effective work prosecuted day by day with adequate equipment and forces to the end that the roadway or structures are kept in satisfactory condition at all times, including satisfactory signing or marking as appropriate and control of traffic where required by use of traffic control devices as required by the State of Georgia.

Upon completion of the work, the Contractor shall remove all construction signs and barricades before final acceptance of the Project.

**63 - Emergencies**

In an emergency affecting the safety of life or of the work or of adjoining property, the Contractor is, without special instructions or authorization from the Owner, hereby permitted to act at his discretion to prevent such threatening loss, damage or injury. He shall also act, without appeal, if so authorized or instructed by the Owner. The Contractor shall supply the Engineer and the Owner with two (2) emergency phone numbers for contact 24 hours per day in the event of an emergency. After attempting contact with the Contractor via the emergency phone numbers, the Contractor cannot be reached or should he fail to respond, the Owner may remedy the situation by whatever means as may be necessary and deduct the cost for same from any monies due the Contractor.

**64 - Compensation**

Any compensation claimed by the Contractor due to emergency work shall be subject to review by the Engineer and approval of the Owner.

**65 - Safety and Health Regulations**

The Contractor shall comply with the Department of Labor, Safety and Health Regulations for Construction promulgated under the Occupational Safety and Health Act of 1970, as amended. The Contractor also shall comply with the provisions of the High-Voltage Safety Act of the State of Georgia, O.C.G.A. Section 46-3-30 et. seq., and all federal, state, and local codes, regulations, and standards.

**66 - Accidents**

The Contractor shall provide at the site such equipment and medical facilities as are necessary to supply first-aid service to anyone who may be injured in connection with the work. The Contractor shall report in writing to the Owner all

accidents whatsoever arising out of, or in connection with, the performance of the work, whether on or adjacent to the site, which causes death, personal injury, or property damages, giving full details and statement of witnesses. In addition, if death or serious damages are caused, the accident shall be reported immediately by telephone or messenger to both the Contractor or any sub-contractor an account of any accident, the Contractor shall promptly report the facts to the Owner, giving full details in writing of the claim.

The Contractor shall provide his Superintendent and Foreman who are on the site of the work, the name of hospital and phone number and the name and phone number of the doctor he proposes to use in case of accident.

**67 - Load Limits**

The Contractor shall be governed by the local load limit requirements of the Georgia Standard Specifications on State, City or County maintained roadways. The Contractor shall be responsible for his damage to existing streets and roads.

**68 - Sanitary Provisions**

The Contractor shall provide temporary sanitary facilities for the use of the workmen during the progress of the work. The sanitary facilities shall conform to the requirements of the Federal Occupational Safety and Health Administration. All facilities shall be removed at the completion of the Contract.

**69 - Construction Buildings**

Should the Contractor desire, he may erect structures for housing tools, machinery and supplies; structures will be permitted only at places approved by the Owner. Their surroundings shall be maintained at all times in a sanitary and satisfactory manner. On or before the completion of the work, all such structures shall be removed, together with all rubbish and trash, and the site shall be restored to its original condition at the expense of the Contractor. Structures will not be permitted for the housing of men.

**70 - Cleaning Up**

The Contractor shall, as directed by the Owner, remove at his own expense from the Owner's property and from all public and private property all temporary structures, rubbish and waste materials resulting from his operations. Clean-up shall be concurrent with the work. Where complete restoration is not reasonable until testing or inspection is complete, the Contractor shall, at minimum, remove all debris and trash and perform grading such that the area is left neat and without depressions that may hold water. The sufficiency of temporary clean-up shall be at the

discretion of the Engineer and the Owner.

#### **71 - Electrical Energy**

The Contractor shall make all necessary applications and arrangements and pay all fees and charges for electrical energy for power and light required for the proper completion of this contract during its entire progress. The Contractor shall provide all temporary wiring, switches, connections and meters.

There shall be sufficient artificial light, by means of electricity, so that all work may be done in a workmanlike manner when there is not sufficient daylight.

The Contractor shall remove all temporary electrical service and appurtenances prior to final acceptance by the Owner. Where permanent electrical service is required, the Contractor shall request, in writing, an inspection of the electrical components of the work. Such request for inspection shall be given a minimum of 48 hours in advance. At such time as the electrical components of the work have been inspected and approved, the Contractor shall request from the Owner, in writing, an electrical service. Such request for electrical service shall be given a minimum of ten (10) days in advance.

#### **72 - Water Supply**

The Contractor shall provide all water required to successfully perform the work. All water provided by the Contractor which is not potable shall be clearly marked as such.

All water from fire hydrants, post hydrants, or otherwise from the existing distribution system under local control, shall be metered with a meter supplied by any local public body or authority responsible for the system and shall be obtained only with written authorization of the Owner. The Contractor shall remove all temporary water service and appurtenances prior to final acceptance by the Owner.

#### **73 - Environmental Impact**

The Contractor shall conduct his operations so as to minimize, to the greatest extent possible, adverse environmental impact.

##### **A. Noise.**

All equipment and machinery shall be provided with exhaust mufflers maintained in good working order so as to reduce operating noise to minimum levels. In addition, operation of equipment and machinery shall be limited to daylight hours, except with the permission of the Owner, based on critical need for the operation.

##### **B. Dust/Smoke.**

All equipment movements shall be accompanied by a minimum of dust. Traveled surfaces and earthwork shall be maintained in a moist condition to avoid the generation of dust or the airborne movement of particulate matter under all prevailing atmospheric conditions.

Burning operations shall be conducted only with the Owner's written permission. The Contractor shall be responsible for obtaining all permits and complying with all codes, ordinances and regulations pertaining to the burning.

##### **C. Traffic.**

Trucks carrying spoil, fill, concrete or other materials shall be routed over roads which will result in the least effect on traffic and nuisance to the public. All material shall be loaded in a manner which will preclude the loss of any portion of the load in transit, including covering, if necessary.

##### **D. Siltation and Erosion.**

The Contractor shall perform his work to minimize siltation and erosion during construction. All points of concentrated runoff from rainfall shall be visually monitored to determine that no eroded material leaves the construction site. Measures shall be taken promptly to eliminate siltation and erosion, including the installation of dams, detention basins, silt fencing, and other retaining devices. The Contractor shall conduct operations and maintain the work in such condition that adequate drainage shall be in effect at all times.

##### **E. Use of Chemicals.**

All chemicals used during construction or furnished for project operation whether herbicide, pesticide, disinfectant, polymer, reactant or other classification, must show approval of either EPA or USDA. Use of all such chemicals and disposal of residues shall be in strict conformance with instructions.

#### **74 - Progress Payments**

The parties hereto expressly agree that the provisions of the Georgia Prompt Pay Act, O.C.G.A. Section 13-11-1 et. seq. shall not apply to this Contract and is superseded by the terms and conditions of the Contract.

Not later than the fifth day of every month the Contractor shall prepare and submit a Request for Periodic Payment, along with an Affidavit of payment of claims, covering the total quantities under each item of work that has been

completed from the start of the job up to and including the last day of the preceding month, and the value of the work so completed determined in accordance with the schedule of values for such items together with such supporting evidence as may be required by the Engineer; however, the Owner reserves the right to request additional information from the Contractor.

This estimate may also include an allowance for the cost of such materials and equipment required in the permanent work as has been delivered to the site or stored in an approved location and suitably protected but not as yet incorporated in the work. Under no circumstances shall any material or equipment, for which payment has been made by the owner to the Contractor, be sold, returned to the supplier or otherwise moved from storage except for incorporation into the work as covered in this contract without written authorization from the Owner. Payments shall be made for materials stored off-site only if said materials are stored in an independent bonded warehouse and if all costs of storage, insurance, loading and transfer for such materials is paid for by the Contractor. The Contractor shall submit to the Owner bills of lading and bonds with any request for such payment.

Not later than the 30th day after submitting an accepted, approved and correct estimate along with all required documentation (as per these contract documents) as detailed in the above paragraph, the Owner shall, after deducting previous payments made, pay to the Contractor 90% of the amount of the estimate as approved by the Owner, as long as the gross value of completed work is less than 50% of the total Contract amount, or if the Contractor is not maintaining his construction schedule to the satisfaction of the Owner, the Owner shall retain 10% of the gross value of the completed work as indicated by the current approved estimate.

After the gross value of completed work becomes equal to 50% of the total Contract amount within a time period satisfactory to the Owner, then the Owner will continue to retain the 10% of the first 50% of the work but will not require any additional retainage; provided, however, that if work is unsatisfactory or falls behind schedule, retention may be resumed at the previous level after notification to the Contractor. Amounts unpaid at the end of the 30 days after the billing date shown on each invoice shall bear interest at the rate of one percent (1%) per month not to exceed three months (3%).

The Contractor shall also submit with each Request for Periodic Payment a progress report on a form approved by the Engineer at or before the pre-construction conference. Failure to submit a progress report shall be grounds for the Owner to withhold payment. To expedite the approval of requests for partial payment, the Contractor shall submit with his request the following information:

- A. A copy of the Progress Schedule marked to indicate the work actually accomplished.
- B. An itemized list of materials stored for which payment is being claimed. This list shall be accompanied by the suppliers' invoices indicating the materials costs. Payment for materials stored shall be subject to the same retainage provisions as for work completed.
- C. An outline of time lost because of any event giving rise to a request for an extension of contract time.

The Owner has a right to hold a payment to a contractor who has not included an updated progress report with his pay request.

Retention of contractual payments and the creation of escrow accounts for contracts for the installation, improvement, maintenance or repair of water or sewer facilities shall be in accordance with the Georgia Retainage Law, Section 13-10-20, Article 2, as found in O.C.G.A.

Before final payment is due, the Contractor shall submit evidence satisfactory to the Engineer and Owner that all payrolls, material bills, and other indebtedness connected with the work have been paid, except that in case of disputed indebtedness or liens, the Contractor may submit in lieu of evidence of payment an additional Surety Bond satisfactory to the Owner guaranteeing payment of all such disputed amounts when adjudicated.

Special Payment Provision: For contractor where payment bonds have been waived, all Requests for Periodic payment forms submitted by the Contractor shall be accompanied by payment affidavits from each subcontractor/supplier for the services/materials claimed before payment will be released by the owner. Application for final payment shall also be accompanied by a lien waiver from each (sub)contractor/supplier who furnished labor or materials for the job.

Under this paragraph, failure to supply said documentation, any additional requested information, partial releases, waiver of liens, and evidence of payment of all current accounts will be considered grounds for withholding partial payments, and failure to supply a release and unconditional lien waivers for said Surety Bond for the entire job, on completion, will be grounds for withholding final payment.

#### **75 - Measurement and Payment**

Measurement and payment shall be made for the units or lump sum contract prices shown on the Bid Schedule. Direct payment shall only be made for those items of work

specifically listed in the proposal and the cost of other work must be included in the contract price for the applicable item to which it relates.

Within ten (10) days of issuance of the Notice of Award, on lump sum contracts, the Contractor shall provide, for review and approval, a schedule of values for the various subdivisions of the work.

#### **76 - Use of Completed Portions**

The Owner may, at any time during progress of the work, after written notice to the Contractor, take over and place in service any completed portions of the work which are ready for service, although the entire work of the Contract is not fully completed, and notwithstanding the time for completion of the entire work or such portions which may not be expired. In such case, the Engineer with the Owner's occurrence may issue documents of Substantial Completion for such portions of the work; but such taking possession thereof shall not be deemed an acceptance of any other portions of the work, nor of any uncompleted portions, nor of any work not completed in accordance with the Contract Documents.

#### **77 - Beneficial Use**

During the execution of the work certain portions of the work may be directly or indirectly placed in service. However, "beneficial use" shall not be claimed by the Contractor as a means to force acceptance or completion. It shall be the responsibility of the Contractor to request, in writing to the Owner, an inspection to determine acceptance on all or any portion of the work.

It shall be the responsibility of the Contractor to consider the amount of time any particular portion of this job may be used prior to Final Acceptance and bid the job accordingly.

#### **78 - Payments Withheld Prior to Final Acceptance**

The Owner may withhold or, an account of subsequently discovered evidence, nullify the whole or part of any certificate of payments to such extent as may be necessary to protect himself from loss on account of:

- A. Defective work not remedied.
- B. Claims filed or reasonable evidence indicating proposed public filing of claims by other parties against the Contractor.
- C. Failure of the Contractor to make payments properly to Subcontractors or for material or labor.
- D. Damage to another Contractor.

When the above grounds are removed or the Contractor provides a Surety Bond, satisfactory to the Owner, which will protect the Owner in the amount withheld, payment shall be made for amounts withheld because of them.

Nothing in this paragraph shall negate, abridge, or alter other grounds for withholding or delaying payment to the Contractor as stated in the Contract.

#### **79 - Contract Time**

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

Time shall be of the essence of the contract. The Contractor shall promptly start the work after the date of the notice to proceed and shall prosecute the work so that portions of the project shall be complete within the times specified in Paragraph 46. During periods when weather or other conditions are unfavorable for construction, the Contractor shall pursue only such portions of the work as shall not be damaged thereby. No portions of the work, where acceptable quality or efficiency will be affected by unfavorable conditions, shall be constructed while those conditions exist. It is expressly understood and agreed by and between the Contractor and the Owner that the contract time for completion of the work described herein is a reasonable time taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the work.

##### **B. Construction Schedule.**

The Contractor shall provide a construction schedule and reports as specified in Paragraph 46 for scheduling and coordinating the work within the contract time. Contract time extensions shall be incorporated into updated schedules, reflecting their effect at the time of occurrence. Failure of the Contractor to comply with these requirements for submittal of the construction schedule and reports shall be cause for delay in review of progress payments by the Owner.

##### **C. Construction Progress.**

The Contractor shall furnish such manpower, materials, facilities and equipment as may be necessary to insure the prosecution and completion of the work in accordance with the accepted schedule. If work falls fourteen (14) days or more behind the accepted construction schedule, the Contractor agrees that he will take some or all of the following actions to return the project to the accepted schedule. These actions may include the following:

1. Increase manpower in quantities and crafts.

2. Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of equipment, or any combination of the foregoing.
3. Reschedule activities.

If requested by the Engineer, the Contractor shall prepare a proposed schedule revision demonstrating a plan to make up the lag in progress and insure completion of the work within the contract time. The proposed revision shall be submitted to the Engineer in accordance with Paragraph 46. Upon receipt of an acceptable proposed schedule, the revision to the construction schedule shall be made in accordance with Paragraph 22. All actions to return the project to the acceptable schedule are at the Contractor's expense.

The Contractor shall pay all costs incurred by the Owner which result from the Contractor's action to return the project to its accepted schedule. The Contractor agrees that the Owner shall deduct such charges from payments due the Contractor. It is further understood and agreed that none of the services performed by the Engineer in monitoring, reviewing and reporting project status and progress shall relieve the Contractor of responsibility for planning and managing construction work in conformance with the construction schedule.

#### D. Delays.

1. Notice of Delays: When the Contractor foresees a delay in the prosecution of the work and, in any event, immediately upon the occurrence of a delay which the Contractor regards as unavoidable, he shall notify the Engineer in writing of the probability of the occurrence of such delay, the extent of the delay, and its possible cause. The Contractor shall take immediate steps to prevent, if possible, the occurrence or continuance of the delay.

If this cannot be done, the Engineer shall determine how long the delay shall continue and to what extent the prosecution and completion of the work are being delayed thereby. He shall also determine whether the delay is to be considered avoidable or unavoidable and shall notify the Contractor of his determination. The Contractor agrees that no claim shall be made for delays which are not called to the attention of the Engineer at the time of their occurrence.

2. Avoidable Delays: Avoidable delays in the

prosecution of the work shall include delays which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or his subcontractors. Avoidable delays include:

- (a) Delays which may in themselves be unavoidable but which affect only a portion of the work and do not necessarily prevent or delay the prosecution of other parts of the work nor the completion of the whole work within the contract time.
- (b) Time associated with the reasonable interference of other contractors employed by the Owner which do not necessarily prevent the completion of the whole work within the contract time.

3. Unavoidable Delays: Unavoidable delays in the prosecution or completion of the work shall include delays which result from causes beyond the control of the Contractor and which could not have been avoided by the exercise of care, prudence, foresight and diligence on the part of the Contractor or his subcontractors. Delays in completion of the work of other contractors employed by the Owner will be considered unavoidable delays insofar as they interfere with the Contractor's completion of the work. Delays due to normal weather conditions shall not be regarded as unavoidable as the Contractor agrees to plan his work with prudent allowances for interference by normal weather conditions.

Delays caused by acts of God, fire, unusual storms, floods, tidal waves, earthquakes, strikes, labor disputes and freight embargoes shall be considered as unavoidable delays insofar as they prevent the Contractor from proceeding with at least 75 percent of the normal labor and equipment force for at least 5 hours per day toward completion current controlling items on the accepted construction schedule.

Should abnormal conditions prevent the work from beginning at the usual starting time, or prevent the Contractor from proceeding with 75 percent of the normal labor and equipment force for a period of at least 5 hours per day, and the crew is dismissed as a result thereof, he will not be charged for the working day whether or not conditions change so that the major portion of the day could be considered suitable for work on the controlling item.

#### E. Extension of Time.

1. **Avoidable Delays:** In case the work is not completed in the time specified, including extensions of time as may have been granted for unavoidable delays, the Contractor will be assessed liquidated damages, as specified in Paragraph 86.

The Owner may grant an extension of time for avoidable delay if he deems it in his best interest. If the Owner grants an extension of time for avoidable delay, the Contractor agrees to pay the liquidated damages.

2. **Unavoidable Delays:** For delays which the Contractor considers to be unavoidable, he shall submit to the Engineer complete information demonstrating the effect of the delay on the controlling operation in his construction schedule. The submission shall be made within thirty (30) calendar days of the occurrence which is claimed to be responsible for the unavoidable delay.
3. The Engineer shall review the Contractor's submission and determine the number of days of unavoidable delay and the effect of such unavoidable delay on controlling operations of the work.

Upon concurrence with the Engineer, the Owner agrees to grant an extension of time to the extent that unavoidable delay affect controlling operations in the construction schedule. During such extension of time, neither extra compensation or engineering inspection and administration nor damages for delay will be charged by the Contractor to the Owner.

It is understood and agreed by the Contractor and Owner that time extensions due to unavoidable delays will be granted only if such unavoidable delay involve controlling operations which would prevent completion of the whole work within the specified contract time. It is understood and agreed by the Contractor and Owner that during such extension of time, no extra compensation shall be paid to the Contractor.

4. **Damage for Delays:** For the period of time that any portion of the work remains unfinished after the time fixed for completion in the contract documents, as modified by extensions of time granted by the Owner, it is understood and agreed by the Contractor and the Owner that the Contractor shall pay the Owner the liquidated damages, specified in Paragraph 86.

#### **80 - Omissions**

The drawings and specifications shall both be considered as a part of the contract. Any work and material shown in the one and omitted in the other, or described in the one and not in the other, or which may fairly be implied by both or either, shall be furnished and performed as through shown in both, in order to give a complete and first class job.

The Contractor shall be fully responsible to the Owner and to the Engineer for all acts and omissions of the Subcontractors, Suppliers and other persons and organization performing or furnishing any of the work under a direct or indirect contract with the Contractor just as Contractor is responsible for Contractor's own acts and omissions.

#### **81 - Differing Site Conditions**

- A. The Contractor shall promptly, and before such conditions are disturbed, notify the Engineer in writing of: (1) subsurface or latent physical conditions differing materially from those indicated in this contract, or (2) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The Engineer shall promptly investigate the conditions, determine the necessity of obtaining additional exploration or tests with respect thereto and advise the Owner in writing (with a copy to the Contractor) of the Engineer's findings and conclusions. If the Engineer finds and concludes and the Owner concurs with the Engineer that such conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performances of any part of the work under this Contract, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the contract modified in writing accordingly.

- B. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the required notice.
- C. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.

#### **82 - Changes in Work**

The Owner, without invalidating the Contract, may order additions to or deductions from the work. The Contractor shall proceed with the work, as changed and the value of any such extra work or change shall be determined as provided in the Agreement, and the contract sum adjusted

accordingly. Any claim for extension of time caused thereby shall be adjusted at the time of ordering such change. In giving instructions, the Engineer shall have authority to make minor changes in the work which does not involve extra cost and is consistent with the purpose of the work. Except in an emergency endangering life and property, no extra work or change shall be made unless in pursuance of a written order, and no claim for an addition to the Contract Sum shall be valid unless the additional work was so ordered.

- A. Modification of Quantities: The itemized quantities shall be considered by the Contractor as the quantities required to complete the work for the purpose of bidding. Should actual quantities required in the construction of the work be greater or lesser than the quantities shown on the items, an amount equal to the difference in quantities at the unit price bid for the items will be added to or deducted from the Contract Sum.
- B. When itemized quantities are not given in the Proposal, the work shown on the plans or specifications shall be considered by the Contractor to be included in his contract for the lump sum prices bid.
- C. If the prices submitted by the Contractor pursuant to a Change Order can not be agreed to mutually by the Owner, then the Contractor shall perform the Work, maintain accurate records reviewable by the Engineer and Owner, and the Engineer shall recommend to the Owner a reasonable cost plus overhead and profit pursuant to the Contract Documents. The combined reasonable overhead and profit shall not exceed fifteen percent (15%) in any case.

#### **83 - Force Account and Extra Work**

If the Engineer orders, in writing, the performance of any work not covered by the plans or included in the specifications, and for which no unit price or lump sum basis can be agreed upon, then such extra work shall be done on a Cost-Plus-Percentage basis of payment as follows:

- A. Reasonable allowance for overhead and profit combined to be included in the total cost to the Owner shall be based on the following schedule:
  - 1. For the Contractor, for any work performed by the Contractor's own forces, an amount not to exceed fifteen percent (15%) of the cost.
  - 2. For the Contractor, for any work performed by the Contractor's Subcontractor, seven and one-half percent (7-1/2%) of the amount due the Subcontractor.  
The Owner will not recognize subcontractors of subcontractors. To facilitate checking of

quotations for extras or credits, however, all proposals shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. The burden of proof of cost rests upon the Contractor. Where major cost items are subcontracts, they shall be itemized also. All changes require written approval prior to commencing work.

- B. The term "Cost" shall cover all payroll charges for persons employed and supervision required under the specific Order, together with all workmen's compensation, Social Security, pension and retirement allowances and social insurance, or other regular payroll charges on same; the cost of all material and supplies required of either temporary or permanent character; rental of all power-driven equipment at the current Associated Equipment Distributors (AED) rate; and any other costs incurred by the Contractor as a direct result of executing the Order, if approved by the Engineer and the Owner.
- C. Except in an emergency endangering life and property, no extra work or change shall be made unless in pursuance of a written order, and no claim for an addition to the Contract Sum shall be valid unless the additional work was so ordered. The cost of the work shall be submitted to the Engineer along with the monthly pay request.

#### **84 - Claims for Extra Cost**

- A. If the Contractor claims that any instructions by drawings or otherwise issued after the date of the Contract involved extra cost under the Contract, he shall give the Engineer written notice thereof within seven (7) days after the receipt of such instructions, and in any event before proceeding to execute the work, except in an emergency endangering life or property, and the procedure shall then be as provided for changes in the work. No such claim shall be valid unless so made.
- B. Extra work not included in Article (a) but authorized after the date of the Contract that cannot be classified as coming under any of the Contract units may be done at mutually agreed upon unit price, or on a lump sum basis, or under the provision of Paragraph 83.
- C. Extra costs that result from delays, which cause an interruption in the orderly progress of the work, as described in Paragraph 79 hereinbefore, will be considered under the following conditions.
  - 1. No claim will be considered for delays less than 5 hours in duration.



2. No claim will be considered in cases where the Contractor is able, without undue hardship, to shift his work crew to other productive work on the same project in the same general work area.
3. The claim for extra cost due to delay shall be computed on a cost-plus percentage basis as hereinafter specified under Paragraph 83.
4. Unavoidable delays caused by weather as defined in Paragraph 79 (D)(3) shall be cause for extensions of time. However, damage to the Contractor caused by weather or an Act of God shall not be cause for additional compensation or monetary adjustment.

#### **85 - Correction of Work Before Final Payment**

The Contractor shall promptly remove from the premises all material condemned by the Engineer, or as determined by the Engineer as failing to meet Contract requirements, whether incorporated in the work or not, and the Contractor shall promptly replace and re-execute his own work in accordance with the Contract and without expense to the Owner and shall bear the expense of making all work of other Contractors destroyed or damaged by such removal or replacement.

If the Contractor does not remove such condemned work and materials as promptly as possible, after written notice, the Owner may remove them and store the material at the expense of the Contractor.

#### **86 - Liquidated Damages**

The Owner will suffer financial loss if the work is not complete on the date set forth in the Contract Documents, including extension granted thereto. Failure to complete the work within the number of days stipulated in the Contract shall entitle the Owner to retain from compensation otherwise due to be paid to the Contractor, or for the Owner to be paid directly by the Contractor the sum of **Five Hundred Dollars (\$500)** as fixed and agreed to as liquidated damages for each calendar day of delay until the work is complete. The Contractor, and his Surety, shall be liable for and shall pay to the Owner any sum due and owing to the Owner as liquidated damages.

It is agreed by and between the parties hereto that the aforesaid sum has been established, not as a penalty but as liquidated damages and that it is reasonable and acceptable, as the Owner provides services necessary for the health and welfare of the public and due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages sustained in such an event.

#### **87 - Suspension or Abandonment of Work**

#### **A. Suspension of Work.**

The Owner may at any time, for any reason, suspend the work, or any part thereof by giving three (3) days written notice to the Contractor. The work shall be resumed by the Contractor within ten (10) days after the date fixed in the written notice from the Owner to the Contractor.

If the project is suspended by the Owner during any given phase for more than 60 consecutive days, the Contractor shall be compensated for services performed prior to notice of such suspension. When the project is resumed, the Contractor's compensation shall be equitably adjusted to provide for actual expenses incurred in the interruption and resumption of the Contractor's services, excluding overhead and profit.

Said expenses must be documented and submitted to the Engineer for review and upon approval by the Owner for reasonable expenses will be reimbursed to the Contractor. The Contractor shall mitigate any expenses incurred during the suspension period.

Nothing in this Subparagraph "A", above, shall prevent the Owner from immediate suspension of the Contractor's work when the health or welfare of the public are at risk in the opinion of the Engineer or the Owner.

#### **B. Abandonment of Work.**

This Contract may be terminated by the Owner upon seven (7) days written notice to the Contractor in the event that the project is permanently abandoned. If the project is abandoned by the Owner for more than 90 consecutive days, the Contractor may terminate this Contract upon not less than seven (7) days written notice to the Owner.

#### **88 - Termination of Contract**

#### **A. Termination for Convenience of Owner.**

The Owner may, at will, upon written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work for the convenience of the Owner.

The Contractor in calculating his termination application for payment, shall develop his outstanding costs in accordance with Section 83, including those materials in transit and uncancellable with the appropriate percentage markups; subcontractors shall follow same procedures. All costs must be substantiated by adequate back-up documentation. The termination will not affect any rights or remedies

of the Owner against the Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due to the Contractor by the Owner will not release the Contractor from liability.

**B. Default Termination.**

The Owner may, if in the Owner's sole judgment and upon written notice to the Contractor, terminate (without prejudice to any right or remedy of Owner) the whole or any portion of the Work required by the contract Documents in any one of the following circumstances:

1. If the Contractor refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the Substantial Completion of the Work within the Contract time;
2. The Contractor is in material default in carrying out any provisions of this Contract for a cause within its control;
3. If the Contractor files a voluntary petition in bankruptcy or a petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors;
4. If a trustee, receiver or liquidator, is appointed for the Contractor or for all or any substantial part of the property of the Contractor; or if the Contractor makes a general assignment for the benefit of creditors or admits in writing its inability to pay its debts generally as they become due;
5. If the Contractor has filed against it a petition in bankruptcy under any present or future federal or state statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors and the same is not discharged on or before forty-five (45) days after the date of the filing thereof; or if the Contractor is adjudged a bankrupt;
6. If the Contractor is adjudged a bankrupt, makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
7. If the Contractor fails to supply a sufficient number of properly skilled workmen or suitable materials or equipment;
8. If the Contractor fails to make prompt payment to

Subcontractors for materials or labor, unless Contractor otherwise provides Owner satisfactory evidence that payment is not legally due;

9. If the Contractor persistently disregards laws, ordinances, rules, or regulations or order of any public authority having jurisdiction;
10. If the Contractor substantially violates any provision of the Contract Documents; or  
If, after Contractor has been terminated for default pursuant to Paragraph "B", it is determined that none of the circumstances set forth in Paragraph "B" exist, then such termination shall be considered a termination of convenience pursuant to Paragraph "A". If Owner terminates this agreement for any of the reasons enumerated in Paragraph "B", then the Owner may take possession of the site and of all documents, materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the work by whatever method the Owner may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the work is finished.

**C. Allowable Termination Costs.**

If the Owner terminates the whole or any portion of the Work pursuant to Paragraph "A" then the Owner shall only be liable to Contractor for those costs reimbursable to Contractor in accordance with Paragraph "D", plus the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders, pursuant to Paragraph "D", which are properly chargeable to the terminated portion of the Contract (exclusive of amounts paid or payable on account of completed items of equipment delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination), which amounts shall be included in the costs payable under Subparagraph "B.1", above, and the reasonable costs of settlement, including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract, together with reasonable storage, transportation and other costs incurred in connection with the protection or disposition of property allocable to this contract.

Provided, however, that if there is evidence that the Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of the

settlement to reflect the indicated rate of loss.

The total sum to be paid to the Contractor under this Paragraph "C" shall not exceed the Contract sum as reduced by the amount of payments otherwise paid, by the Contract price of Work not terminated and as otherwise permitted by this Contract.

Except for normal spoilage, and except to the extent that the Owner shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor, as provided in this Paragraph "C", the fair value, as reviewed by the Engineer, determined by the Owner, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner.

**D. General Termination Provisions.**

After receipt of a Notice of Termination from the Owner, pursuant to Paragraph "A" or "B", and except as otherwise directed by the Owner, the Contractor shall:

1. Stop Work under the Contract on the date and to the extent specified in the Notice of Termination;
2. Place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of such portion of the Work under the Contract as is not terminated;
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the Notice of Termination;
4. Assign to the Owner in the manner, at the times and to the extent directed by the Owner, all of the right, title and interest of the Contractor under the orders and subcontracts so terminated, in which case the Owner shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification shall be final for all the purposes of this clause;
6. Transfer title and deliver to the entity or entities designed by the Owner, in the manner, at the times and to the extent, if any, directed by the Engineer, and to the extent specifically produced or specifically acquired by the Contractor for the performance of such portion of the work as had been terminated;

- (a) The fabricated or unfabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated by the Notice of Termination, and
  - (b) The completed or partially completed plans, drawings, information, and other property related to the Work;
7. Use his best efforts to sell, in the manner, at the times, to the extent and at the price or prices directed or authorized by the Engineer, and property of the types referred to in Paragraph "D"; provided, however, that the Contractor:
    - (a) Shall not be required to extend credit to any buyer, and
    - (b) May acquire any such property under the conditions prescribed by and at a price or prices approved by the Engineer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Owner to the Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the Engineer may direct;
  8. Complete performance of such part of the Work as shall not have been terminated by the Notice of Termination; and
  9. Take such action as may be necessary, or as the Engineer or Owner may direct, for the protection and preservation of the property related to this Contract, which is in the possession of the Contractor, and in which the Owner has or may acquire an interest.

The Contractor shall, from the effective Date of Termination until the expiration of three years after Final Settlement under this contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, but without direct charge to the Owner, all its books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the Work terminated hereunder, or, to the extent approved by the Engineer, photographs, microphotographs or other authentic reproductions thereof. In arriving at any amount

due the Contractor pursuant to Paragraph "C", there shall be deducted:

- (a) All unliquidated advance or other payments on account theretofore made to the Contractor applicable to the terminated portion of this Contract;
- (b) Any claim which the Owner may have against the Contractor;
- (c) Such claim as the Engineer may advise and the Owner determines to be necessary to protect the Owner against loss because of outstanding or potential liens or claims; and
- (d) The agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of Paragraph "D", and not otherwise recovered by or credited to the Owner.

Contractor shall refund to the Owner any amounts paid by the Owner to Contractor in excess of costs reimbursable under Paragraph "C".

The Owner, at its option and Contractor's expense, may have costs reimbursable under Paragraph C audited and certified by independent certified public accountants selected by the Owner.

#### **89 - Contractor's Right to Stop Work or Terminate Contract**

If the work should be stopped under an order of any court for a period of three (3) months, through no fault of the Contractor or of anyone employed by him, then the Contractor may, upon seven (7) days written notice to the Owner and the Engineer, stop work or terminate this Contract and recover from the Owner payment for all work executed, plus any loss sustained upon any plant or materials excluding overhead, profit and damages.

#### **90 - Disputes Resolution**

- A. All claims, disputes and other matters in question between the Contractor and the Owner arising out of, or relating to, this Contract or the breach, therefore, shall be tried before and to a jury trial, unless otherwise stipulated between the parties. Any legal proceeding arising out of, or relating to, this agreement shall include, by consolidation, joinder, or joint filing, any additional person or entity to the final resolution of the matter in controversy. The Contractor hereby further agrees that, should any subcontractor or supplier to the Contractor file a claim

concerning any dispute or controversy, which involves the allegations of any acts, errors or omissions of the Contractor, then the Contractor shall indemnify and hold harmless the Owner, its employees, agents, and representatives, the Engineer, its employees, agents, and representatives from any and all costs incurred to include legal costs and attorney's fees and payment of any judgment against the Owner.

- B. Should the Owner utilize an attorney to enforce any of the provisions hereof, to protect its interest in any matter arising under this Contract, or to collect damages for breach of this Contract, the Contractor agrees to pay the Owner all reasonable costs, charges, expenses and attorneys' fees expended or incurred therein.
- C. Any disputes arising under the terms and conditions of this Contract shall not be subject to mediation or arbitration.
- D. The Contractor irrevocably consents that any legal action or proceeding against it under, arising out of or in a manner relating to the contract, shall be brought in any court in the City of Darien, Georgia. Contractor designates the Secretary of the State of Georgia as its agent for service of process, provided no such agent located in Georgia is on file with the said Secretary. Contractor, by the execution and delivery of this Contract, expressly and irrevocably assents to and submits to the personal jurisdiction of any court in the City of Darien, and irrevocably waives any claim or defense in any said action or proceeding based on any alleged lack of jurisdiction, improper venue or forum non conveniens or any similar basis.

#### **91 - Removal of Equipment**

In the case of termination of this Contract before completion for any cause whatever the Contractor, if notified to do so by the Owner, shall promptly remove any part or all of his equipment from the property of the Owner, failing which the Owner shall have the right to remove such equipment at the expense of the Contractor.

#### **92 - Laws of Georgia**

This contract shall be governed by the Laws of the State of Georgia.

If any provision hereof shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the remaining provision of this Contract invalid, inoperative or

unenforceable.

**93 - Quantity Variance Reserve**

This line item shall be strictly reserved for work as required by the Owner under Paragraph 82 and Paragraph 83 without the adjustment of the contract sum, and shall not otherwise be interpreted for any other use and shall not contain any of the Contractor's work, or cost, known or unknown, at the time of bidding.

Prior to final acceptance of the work, a summary change order shall be developed, and the contract sum shall be reduced by the total amount of the quantity variance reserve not used by the Owner.

**94 - Discrepancy Between General Conditions and Technical Specifications**

Should there be a discrepancy between the General Conditions and Technical Specifications, the Technical Specifications shall govern.

**95 – Georgia Security and Immigration Compliance Act**

Pursuant to O.C.G.A. § 13-10-91 (Georgia Security and Immigration Compliance Act), every public employer, every contractor of a public employer, and every subcontractor of a public employer's contractor must register and participate in a federal work authorization program. No public employer shall enter into a contract for the physical performance of services within this state unless the contractor registers and participates in a federal work authorization program to verify the work eligibility information of all new employees.

No contractor or subcontractor shall enter into a contract or subcontract with a public employer in connection with the physical performance of services within this state unless such contractor or subcontractor registers and participates in a federal work authorization program to verify the work eligibility information of all new employees.

- Contractor acknowledges that the awarding of this contract is conditioned upon initial and ongoing compliance by the contractor and any subcontractor with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 of the Georgia Department of Labor;
- Contractor agrees that in the event it employs or contracts with any subcontractor(s) in connection with this contract, Contractor shall secure from the subcontractor(s) an indication of the employee-number category applicable to the subcontractor.