



Department of Purchasing

INVITATION TO BID

05ITB43132K

**MORGAN FALLS PARK DRIVEWAY AND PARKING LOT
RENOVATION AND IMPROVEMENTS**

The Department of Parks and Recreation

PRE-BID CONFERENCE: Friday, April 8, 2005 @ 11:00 AM, Local Time
Morgan Falls Park - 450 Morgan Falls Road, Atlanta, Ga. 30350

LAST DAY FOR INQUIRIES: Thursday, April 14, 2005 @ 5:00 PM

BID SUBMISSION DATE : Monday, April 25, 2005 @ 11:00 AM, Local Time

***LOCATION: FULTON COUNTY DEPARTMENT OF PURCHASING
130 PEACHTREE STREET, S.W., SUITE 1168
ATLANTA, GEORGIA 30303***

DOCUMENT DOWNLOAD REGISTRATION

This document and supporting documents can be downloaded at the Fulton County Website, <http://www.co.fulton.ga.us> under "Bid Opportunities." Any firm or person who downloads this Bid Document from the website or obtains this document from sources other than Fulton County Purchasing Department and desires to participate in the Bid opportunity shall fill out and return the "Download Registration Form" in this section to:

Department of Purchasing
Fulton County Government
130 Peachtree Street, S.W., Suite 1168
Atlanta, Georgia 30303

Invitation to Bid #05ITB43132K – Morgan Falls Park Driveway and Parking Lot Renovation and Improvements

This is to certify that on this day, Bidder acknowledges that he/she obtained this Bid document from the Fulton County Government Purchasing Department's website ; www.co.fulton.ga.us.

To ensure that interested parties receive any and all addendums that may be issued pertaining to this Bid document, it is necessary that this form be completed and returned to the Purchasing Department prior to the Bid opening date when the Bid document has been downloaded from the County's website. It is the responsibility of the Bidding firm to verify that they have received all addendums. If this form is completed and submitted to the Purchasing Department and, after submission the firm or company decides not to submit a Bid for this procurement, the firm must submit a statement to the Fulton County Purchasing Department that they are not submitting a Bid.

BID DOWNLOAD REGISTRATION FORM

Company _____

Person Downloading Bid _____

Address _____

City _____ State _____

Telephone Number: _____ Email Address _____

Date Bid Downloaded _____

Note: All addenda issued for Bids are posted on the County's website under the Bid solicitation number.

NOTE TO VENDOR:

Please respond to the attached Bid, even if your company's response is a "No-Bid". Completion of this form is not required, it is optional. We are very interested in ensuring that our Bids are non-restrictive and that no Bidder is eliminated arbitrarily. It is the County's intent to abolish any, and all barriers to its' procurement process which prevents interested and qualified Bidders from participating.

Should you respond with a "**No-Bid**", please explain why by responding to the statements below:

EXAMPLES ARE:

- (1) Our company cannot meet these specifications because you require:

- 2) Our company cannot competitively Bid on this product or service because:

- (3) Our other concerns:

Your response will be given careful consideration and included in the Bid file with other vendor comments. If it appears from the feedback received, that the specifications are restrictive your input will help the County make the necessary changes so that a greater number of interested Bidders are included for future Bids. Your input is needed, it will make a difference.

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FULTON COUNTY PURCHASING DEPARTMENT

BID GENERAL REQUIREMENTS

Bid #05ITB43132K, Morgan Falls Park Driveway and Parking Lot Renovation and Improvements

The following information pertains to the submission of a Bid to Fulton County, and contains instructions on how Bids must be presented in order to be considered. Listed below are the requirements for all Bidders interested in doing business with Fulton County.

1. The Bid sheets included in this Invitation to Bid (“Bid”) must be fully completed and returned with the Bid unless otherwise specified in writing by the Purchasing Department. Type or neatly print the date, company name, and the full legal name and title of the person(s) signing the Bid in the place provided at the bottom of each Bid sheet. Any additional sheets submitted must contain the same signature and Bidder information.
2. Original signature(s) must appear on each page of the Bid document. All signatures must be executed by person(s) having contracting authority for the Bidder.
3. Absolutely no fax Bids or reproduction Bids will be accepted, except that photocopies may be submitted in addition to the original when multiple copies of the Bid are specifically requested in the solicitation.
4. The envelope in which the Bid response is submitted must be sealed and clearly labeled with the Bid number, project title, due date and time, and the name of the company or individual submitting the bid. Bids must be received by the opening date and time shown on this Bid in order to be considered. The Purchasing Agent has no obligation to consider Bids which are not in properly marked envelopes. Contract Compliance submittals shall be submitted in a separate sealed envelope or package.
5. The original and the required number of copies of the Bid must be returned to:

Fulton County Purchasing Agent
Fulton County Purchasing Department
130 Peachtree Street, S.W., Suite 1168
Atlanta, Georgia 30303

Any inquiries, questions, clarifications or suggestions regarding this solicitation should be submitted in writing to the Purchasing Contact Person. Contact with any other County personnel in regard to a current solicitation is strictly prohibited in accordance with Fulton County “No Contact” policy outlined in Section 35.

6. Show information and prices in the format requested. Prices are to be quoted F.O.B. Destination, and must include all costs chargeable to the Contractor executing the Contract, including taxes. Unless otherwise provided in the Contract, Fulton County shall have no liability for any cost not included in the price. The Contractor shall provide Fulton County the benefit through a reduction in price of any decrease in the Contractor’s costs by reason of any tax exemption based upon Fulton County’s status as a tax-exempt entity.

7. All prices Bid must be audited by the Bidder to ensure correctness before the Bid is submitted. The Bidder is solely responsible for the accuracy of information placed on a Bid sheet, including prices. Clerical or mathematical error is insufficient to void a successful Bid but a Bidder may withdraw a sealed Bid prior to opening without a penalty.
8. All prices must be submitted in the format requested and less all trade discounts. When multiple items are being Bid, Bidder must show both the unit price and the total extended price for each item. When applicable, the Bidder must include an additional lump sum Bid for groups or items. In the event a Bidder is offering an additional discount on groups of items, Bidder must indicate the total lump sum Bid for the particular group of items before any extra discount, the amount of extra discount, and the net total for the particular group. In the event of an extension error, unit pricing shall prevail.
9. By submitting a signed Bid, Bidder agrees to accept an award made as a result of that Bid under the terms and conditions spelled out in the Bid documents. In the event of a conflict between the different Bid documents, the County's cover contract (if used) shall have precedence, followed in order by the Invitation to Bid, Purchase Order, Bid, Contractor's Warranty Agreement, Maintenance Agreement, and/or other Contractor provided agreements.
10. A Bidder may submit only one (1) Bid response for each specific Bid solicitation unless otherwise authorized in the specifications.
11. All prices submitted by the Bidder to Fulton County must be guaranteed by the authorized person(s) against any price increase for the time period designated in the Bid specifications, and Fulton County must be given the benefit of any price decrease occurring during such designated time period.
12. All items Bid must be new. Used, rebuilt or refurbished items will not be considered unless specifically authorized by Fulton County in the written specifications.
13. All Bidders must specify in the Bid response the earliest actual delivery date for each item unless otherwise specified in writing by Fulton County. The delivery date may be a factor in deciding the Bidder's capability to perform.
14. A successful Bidder's delivery ticket(s) and invoice(s) must list each item separately and must show Fulton County's purchase order number as well as the proper department and address to which delivery was made, as listed on the purchase order or in the Bidder's contract with Fulton County.
15. Unless clearly shown as "no substitute" or words to that effect, any items in this Invitation to Bid which have been identified, described or referenced by a brand name or trade name are for reference only. Such identification is intended to be descriptive but not restrictive, and is to indicate the general quality and characteristics of products that may be offered. Each item Bid must be individually identified as to whether it is a specified item or an equivalent item by typing or printing after the item(s). The brand name; model or manufacturer's number, or identification regularly used in the trade. Deviations from the specifications must be clearly and fully listed on the Bid sheet, including photographs or cuts, specifications, and dimensions of the proposed "alternate". Fulton County is the sole judge of "exact equivalent" or "alternate". The factors to be considered are: function, design, materials, construction, workmanship, finishes, operating features, overall quality, local service facilities, warranty terms and service, and other relevant features of item(s) Bid.

16. For all Bids, Fulton County reserves the right to request representative samples. If requested, samples must be delivered at the Bidder's cost within three (3) business days. Samples are submitted at the risk of the Bidder and may be subjected to destructive tests by Fulton County. Samples of expendable items will not be returned to the Bidders. Samples must be plainly tagged with Fulton County's Bid number, item name, manufacturer, and the name of the Bidder.
17. Item(s) Bid must be complete and ready to operate. No obvious omissions of components or necessary parts shall be made even though the specifications may not detail or mention them. Unit(s) must be furnished with factory installed equipment and must be comparable with the basic form, fit, and functional requirements which are all to be included in the base price as well as any other equipment included as standard by the manufacturer or generally provided to the buying public.
18. All successful Bidders must assume full responsibility for all item(s) damaged prior to F.O.B. Destination delivery and agree to hold harmless Fulton County of all responsibility for prosecuting damage claims.
19. All successful Bidders must assume full responsibility for replacement of all defective or damaged goods within thirty (30) days of notice by Fulton County of such defect or damage.
20. All successful Bidders must assume full responsibility for providing or ensuring warranty service on any and all items including goods, materials, or equipment provided to the County with warranty coverage. If a successful Bidder is not the manufacturer, all manufacturers' warranties must be passed through to Fulton County. The Bidder and not Fulton County is responsible for contacting the manufacturer or the warranty service provider during the warranty period and supervising the completion of the warranty service to the satisfaction of Fulton County.
21. A successful Bidder providing any equipment which requires fitting and assembly, the Bidder shall be solely responsible for such installation being performed by a manufacturer's authorized or approved servicer or an experienced worker, utilizing workmanship of the highest caliber. The Bidder must verify all dimensions at the site, shall be responsible for their correctness, and shall be responsible for the availability of replacement parts when specified in writing by Fulton County in the specifications, purchase order, or other contract.
22. A successful Bidder is solely responsible for disposing of all wrappings, crating, and other disposable material upon delivery of item(s).
23. All Bidders are required to be authorized distributors or regularly engaged in the sale or distribution of the type of goods, materials, equipment or services for which the Bidder is submitting a Bid response in addition, all Bidders are required to provide Fulton County with three (3) written references documenting the successful completion of Bids or contracts for the types of items including goods, materials, equipment, or services for which the Bidder is submitting a Bid response. In instances where a Bidder has never supplied such goods, material, equipment, or services before, the Bidder must submit with the Bid response a statement and supporting documentation demonstrating such expertise, knowledge, or experience to establish the Bidder as a responsible Bidder, capable of meeting the Bid requirements should an award be made. No exceptions to this provision will be made unless authorized in the Bid specifications.
24. Bidders may be required to furnish evidence that they maintain permanent places of business of a type and nature compatible with their Bid , and are in all respects competent and eligible vendors to

fulfill the terms of the specifications. Fulton County may make such investigations as it deems necessary to determine the ability of the Bidder to perform such work, and reserves the right to reject any Bidder if evidence fails to indicate that the Bidder is qualified to carry out the obligation of the contract and to complete the work satisfactorily.

25. All Bidders must comply with all Fulton County purchasing laws, policies, and procedures, and non-discrimination in contracting and procurement ordinance, and relevant state and federal laws including but not limited to compliance with EEOC hiring guidelines and requirements under the Americans with Disabilities Act. Successful Bidder must obtain all permits, licenses, and inspections as required and furnish all labor, materials, insurance, equipment, tools, supervision, and incidentals necessary to accomplish the work in these specifications.
26. If a successful Bidder is unable or unwilling to enter into a contract with Fulton County subsequent to being granted an award, or who fails to perform in accordance with the Bid specifications the Bidder will be subject to damages and all other relief allowed by law.
27. Successful Bidders contract directly with Fulton County and are the party or parties obligated to perform. Contracts may not be assigned and any failure to perform the Contract in accordance with the specifications will constitute a breach of contract and may result in a Bidder being found to be "non-responsive" in the future.
28. In case of default by the successful Bidder, Fulton County may procure the articles for services from another source and hold the successful Bidder responsible for any resulting excess cost.
29. The County may award any Bid in whole or in part to one or more vendors or reject all Bids and/or waive any technicalities if it is in the best interests of the County to do so. In the event that all Bids are not rejected, Bids for items including goods, materials, equipment, and services will be awarded to the lowest "responsible" Bidder(s) as determined by Fulton County. Submitting the lowest Bid, as published at the Bid opening, does not constitute an or the mutual expectation of an award of a Contract and purchase order. For purposes of this notice and the attached Bid sheets, a purchase order is a Contract to provide items including goods, materials, equipment, and services and is intended to have the full force and effect of a Contract. A breach of the terms and conditions of a purchase order constitutes a breach of Contract.
30. Bids for projects that are solicited pursuant to the Georgia Local Government Public Works Construction Law (O.C.G.A. §36-91.1 et seq.) may be withdrawn as follows:

Competitive sealed Bids ("Bid") may not be revoked or withdrawn until 60 days after the time set by the governmental entity for opening of Bids. At the end of this time period, the Bid will cease to be valid, unless the Bidder provides written notice to the County prior to the scheduled expiration date that the Bid will be extended for at time period specified by the County.
31. In the evaluation of Bids, any award will be subject to the Bid being:
 - A. Compliant to the specification - meets form, fit, and function requirements stated or implied in the specification.
 - B. Lowest cost to the County over projected useful life.
 - C. Administratively Compliant - Including all required bonds, insurance, established quality of work and general reputation, financial responsibility, relevant experience, and related criteria.

32. All Proposals and Bids submitted to Fulton County are subject to the Georgia "open Records Act", Official Code of Georgia, Annotated (O.C.G.A.) § 50-18-70 et seq.
33. All Proposals and Bids submitted to Fulton County involving utility contracting are subject to the Georgia law governing licensing of Utility Contractors, O.C.G.A. §§43-14-8.2(h). The Utility Contractor License number of the person who will perform the utility work shall be written on the face of the Bid envelope.
34. The apparent silence of this specification, and any supplement thereto, as to details, of the omission from it of a detailed description concerning any point, will be regarded as meaning only the best commercial practices are to prevail. Only materials of the highest quality, correct size, and design are to be used. All interpretations of this specification will be made upon the basis of this statement, with Fulton County interpretation to prevail.
35. It is the policy of Fulton County that the evaluation and award process for County contracts shall be free from both actual and perceived impropriety, and that contacts between potential vendors and County officials, elected officials and staff regarding pending awards of County contracts shall be prohibited.
 - A. No person, firm, or business entity, however situated or composed, obtaining copy of or responding to this solicitation, shall initiate or continue any verbal or written communication regarding this solicitation with any County officer, elected official, employee, or designated County representative, between the date of the issuance of this solicitation and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, except as may otherwise be specifically authorized and permitted by the terms and conditions of this solicitation.
 - B. All verbal and written communications initiated by such person, firm, or entity regarding this solicitation, if same are authorized and permitted by the terms and conditions of this solicitation, shall be directed to the Purchasing Agent.
 - C. Any violation of this prohibition of the initiation or continuation of verbal or written communications with County officers, elected officials, employees, or designated County representatives shall result in a written finding by the Purchasing Agent that the submitted Bid or proposal of the person, firm, or entity in violation is "non-responsive", and same shall not be considered for award.
36. Any Bidder intending to respond to this solicitation as a Joint Venture must submit an executed Joint Venture Agreement with this Bid. This agreement must designate those persons or entities authorized to execute documents or otherwise bind the Joint Venture in all transactions with Fulton County, or are accompanied by a document, binding upon the Joint Venture and its constituent members, making such designation. Bids from Joint Ventures that do not include these documents will be rejected as being "non-responsive".
37. Any Bidder intending to respond to this solicitation must complete all of the Procurement Affidavit Forms provided in this solicitation. Bids that do not include these completed documents will be rejected as being 'non-responsive'.

SECTION I:

GENERAL BID REQUIREMENTS

1.0 PURPOSE

Fulton County Purchasing Department is soliciting Bids from qualified vendors to provide all labor, materials, equipment, storage, facilities, services and supervision necessary for the satisfactory renovation and improvement of asphalt parking lots and drive areas at a Fulton County Parks and Recreation facility.

1.1 DESCRIPTION OF PROJECT

Project as specified in the Bid description is Morgan Falls Park - 450 Morgan Falls Road, Atlanta, Ga. 30350. Bids shall be inclusive of all work depicted on, and inferred from Construction Documents titled 'Construction of the Morgan Falls Park Driveway and Parking Lot Renovation and Improvement' dated December 31, 2004, the attached scope of work and specifications documents. Within the drawing set is a current horizontal survey of the subject area. The survey shall be referenced as a definition of the limits of work and current conditions as well as specific related work to be included in the project. Bid plans maybe picked up at 141 Pryor Street, Suite 8054, Atlanta, Georgia 30303, telephone 404 730-6360.

1.2 TERM OF CONTRACT

The term of the contract will be from date of award by the Fulton County Board of Commissioners through sixty days after the Notice to Proceed has been issued.

1.3 NO CONTACT PROVISION

In accordance with Fulton County Policy & Procedure 800-9, no person, firm, or business entity, however situated or composed, obtaining a copy of or responding to this solicitation, shall initiate or continue any verbal or written communication regarding this solicitation with any County officer, elected official, employee, or designated County representative, between the date of the issuance of this solicitation and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, except as may otherwise be specifically authorized and permitted by the terms and conditions of this solicitation.

All verbal and written communications initiated by such person, firm, or entity regarding this solicitation, if same are authorized and permitted by the terms and conditions of this solicitation, shall be directed to the Purchasing Agent.

Any violation of this prohibition of the initiation or continuation of verbal or written communications with County officers, elected officials, employees, or designated County representatives shall result in a written finding by the Purchasing Agent that the submitted Bid or Bid of the person, firm, or entity in violation is not responsive, and same shall not be considered for award.

Between the date of the issuance of any solicitation of Bids or Bids for County contracts and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, no County officer, elected official, employee, or designated County representative, except in the course of carrying out obligations as a member of or a designated advisor to a vendor selection committee acting in accordance with the terms and conditions of the solicitation, shall initiate or

continue any verbal or written communications regarding the solicitation with any person, firm, or business entity, however situated or composed, or any such representative of same, who the officer, elected official, employee, or representative knows or should have known has obtained a copy of the solicitation and either has submitted or may submit a Bid or Bid; provided, further, except for members of or designated advisors to a vendor selection committee, no County officer, elected official, employee, or designated County representative shall contact any member of such a vendor selection committee regarding a pending solicitation between the date of the issuance of the solicitation and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, and all inquiries during this period regarding the solicitation shall be directed to the Purchasing Agent.

1.4 BID CONTACT

Information regarding the Bid, either procedural or technical, may be obtained by contacting William Long at (404) 730-7660, Fulton County Department of Purchasing. Information regarding the Bid requirements may be obtained by using the following procedure. Inquiries must be submitted in writing to:

Fulton County Purchasing Department
Attn: William Long, Chief Assistant Purchasing Agent
130 Peachtree Street S.W., Suite 1168
Atlanta, GA 30303
Phone: (404) 730-7660
William.long@co.fulton.ga.us

1.5 PRE-BID CONFERENCE

Date: Friday, April 8, 2005
Time: 11:00 AM, Local Time
Location: Morgan Falls Park Athletic Association Building
450 Morgan Falls Road
Atlanta, Georgia, 30350

A pre-Bid conference will be held at Morgan Falls Park - 450 Morgan Falls Road, Atlanta, Ga. 30350, in the Athletic Association Building. Inquiries regarding this solicitation, either technical or otherwise must be submitted in writing prior to the pre-Bid conference and will be addressed at the pre-Bid conference. Additional questions asked at the pre-Bid conference must be submitted in written form at the pre-Bid conference and will be responded to in the form of an addendum with the County's official responses. The pre-Bid conference will be conducted for the purpose of explaining the County's Bid process, the specification/technical documents, and to provide an initial verbal, non-binding verbal response to questions concerning these Bid specifications and to discuss issues from the Bidder's perspective. However, no verbal response provided at the pre-Bid conference binds the County. Only those responses to written and responded to by the County in written communications will be official.

1.6 ADDENDA

If any addenda are issued to this Invitation to Bid, the County will attempt to notify all prospective Bidders who have secured same; however, it shall be the responsibility of each Bidder, prior to submitting the Bid, to contact the Fulton County Department of Purchasing at (404) 730-5800 to determine if addenda were issued and to make such addenda a part of the Bid. All addenda to for this Bid will be posted on the County's website at www.co.Fulton.ga.us under "Bid Opportunity."

The last day of inquiries will be **Thursday, April 14, 2005 at 5:00 PM, local prevailing time.** Only communications that are in writing and signed will be recognized by the County. All inquiries must include name of the Bid and the Bid number. The County shall not be responsible for oral interpretations given by any County Employee, representative or others. The issuance of an addendum is the only official method whereby interpretation, clarification or additional information can be given.

1.7 BID SUBMITTAL

Bidders shall clearly indicate the legal name, address, and telephone number of the Bidder (company, firm, partnership, individual). Bidders shall sign above the typed or printed name and title of the signer. The signer shall have the authority to bind the Bidder to the submitted Bid.

BID BOND: All Bids shall include a Bid Bond in the amount of five (5) percent of the Bid amount and be issued by a bonding company licensed in the State of Georgia certifying the Bidder's bonding capability for this project. *The AIA Document A310 is not acceptable.*

GEORGIA UTILITY CONTRACTOR'S LICENSE: No sole proprietorship, partnership, or corporation shall have the right to engage in the business of utility contracting (undertaking to construct, erect, alter, or repair or have constructed, erected, altered, or repaired any utility system in which the cost of the utility system work exceeds \$100,000) unless such business holds a utility contractor license and there is regularly connected with such business a person or persons who holds a valid utility manager certificate. Such utility manager must be actually engaged in the performance of such business on a full-time basis and oversee the utility contracting work of all employees of the business. **See Section II for form to be executed and submitted.**

PERFORMANCE and PAYMENT BOND: Performance and Payment Bonds, each in the full amount of the contract, will be mandatory for the successful Bidder.

One (1) originally signed Bid package and two (3) copies of your Bid shall be submitted in one sealed package, clearly marked on the outside "**Invitation to Bid Number Morgan Falls Park / Driveway and Parking Lot Renovation and Improvement**", and addressed to:

Fulton County Department of Purchasing
Public Safety Building
130 Peachtree Street, S.W., Suite 1168
Atlanta, Georgia 30303

Bid Open Date: 11:00 A.M. local time on April 25, 2005 at 11:00 AM, local time. Bids shall be

publicly opened.

Bids shall clearly indicate the legal name, address, and telephone number of the Bidder (company, firm, partnership, individual). Bids shall be signed above the typed or printed name and title of the signer. The signer shall have the authority to bind the Bidder to the submitted Bid. Bids shall be publicly received, opened and Bid prices read aloud for each responding Bidder.

1.8 LATE BID/MODIFICATIONS

Late Bids/Late Modifications: Bid modifications received after the Bid due date and time shall be deemed as late and will not be accepted and/or considered. Any Bid received after the above stated time and date will not be considered. It shall be the sole responsibility of the Bidder to have his/her Bid delivered to the Fulton County Department of Purchasing for receipt on or before the above stated time and date. If a Bid is sent by U.S. Mail, the Bidder shall be responsible for its timely delivery to the Department of Purchasing. Bids delayed by mail will not be considered, shall not be opened, and arrangements shall be made for their return at the Bidder's request and expense.

The Bid shall clearly indicate the legal name, address, and telephone number of the Bidder (company, firm, partnership, individual). The Bid shall be signed above the typed or printed name and title of the signer. The signer shall have the authority to bind the Bidder to the submitted Bid. *The Bid number must be clearly visible on all Bid packages submitted.*

1.9 BID DEVELOPMENT EXPENSE

Any and all expenses for making Bids to the County are to be the responsibility of the Bidder.

1.10 IRREVOCABLE OFFER

No Bid may be modified, withdrawn, or cancelled by the Bidder for sixty (60) days following the date and time designated for receipt of Bids, and each Bidder so agrees in submitting its Bid. All adjustment factors shall remain valid during this time period unless noted otherwise.

Prior to the date and time designated for receipt of Bids, a Bid may be withdrawn on written or facsimile (fax) request, provided that written confirmation of any fax withdrawal over the signature of the Bidder must have been mailed and postmarked on or before the date and time set for receipt of Bids. A withdrawn Bid may be resubmitted up to the date and time designated for receipt of Bids, provided that it is then fully in conformance with these Instructions to Bidders.

1.11 RESERVED RIGHTS

Fulton County reserves the right to accept or reject any and/or all Bids, to waive irregularities and technicalities, and to request resubmission. Any sole response that is received may or may not be rejected by the County depending on available competition and timely needs of the County. There is no obligation on the part of the County to award the contract to the Bidder providing the lowest cost Bid and the County reserves the right to award the contract to the responsible Bidders submitting responsive Bids with resulting agreements most advantageous and in the best interest of the County.

The County shall be the sole judge of the Bids and the resulting agreements that are in its best interest and its decision shall be final.

1.12 APPLICABLE LAWS

All applicable laws and regulations of the State of Georgia and ordinances and regulations of Fulton County shall apply. Protestors shall seek resolution of their complaints in the manner provided in the Fulton County Code of Laws §2-324, which is incorporated by reference herein.

1.13 CONTRACT DOCUMENT

The agreement or contract resulting from the acceptance of a Bid shall be the contract agreement document in the format form and content contained herein, except the County Attorney has the unilateral right to modify this agreement, as may be necessary. **See SECTION VI.**

1.14 AVAILABILITY OF DOCUMENTS

Availability of Documents: Copies of the Invitation to Bid documents will be available on hard copy at the Pre-Bid Conference and at the Purchasing Department address specified above. However, this document may be downloaded from the County Purchasing website at www.co.Fulton.ga.us, by opening “**Bid Opportunity.**”

1.15 EXAMINATION OF CONTRACT DOCUMENTS

Prospective Bidders shall examine the Contract Documents and, before submitting a Bid, shall make a written request to the County or its designee for an interpretation or correction of any ambiguity, inconsistency or error therein which could be discovered by a Bidder.

At the time of the opening of Bids, each Bidder shall be presumed to have read and to be familiar with the Contract Documents.

1.16 ADDITIONAL INFORMATION

In the event additional information is required please assume the following procedure: Procedural and Technical information regarding the Bid process may be obtained by by writing to William Long, Assistant Purchasing Agent, 130 Peachtree Street, Suite 1167, Atlanta, Georgia 30303 or by calling William Long at (404) 730-7879.

Only communications from firms which are in writing and signed will be recognized by the County. The County shall not be responsible for oral interpretations given by any County employee, representative or others. The issuance of an addendum is the only official method whereby interpretation, clarification or additional information can be given.

1.17 TERMINATION

The County may terminate the contract resulting from this solicitation at any time the vendor fails to carry out the contract provisions, if in the opinion of the County, the performance of the contract is unreasonably delayed, or the vendor is in direct violation of the contract conditions. The County shall provide the vendor with notice of any conditions which violate or endanger the performance of the contract and, if after such notice the contractor fails to remedy such conditions within thirty (30) days, to the satisfaction of the County, the County may exercise their option in writing, to terminate the contract without further notice to the contractor and order the contractor to stop work immediately and vacate the premises. Vendor Agrees by its Bid submission than the County’s

decision is final and valid.

1.18 INSURANCE REQUIREMENTS

PLEASE REFER TO SEE SECTION VI, ARTICLE 11 OF THE SAMPLE CONTRACT AGREEMENT FOR THE INSURANCE REQUIRED LIMITS.

1.19 INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

The successful contractor will agree to indemnify, save harmless and defend the County, its agents, servants, and employees from all lawsuits, claims, demands, liabilities, losses and expenses for or on account of any injury or loss in connection with the work performed under this contractor: Provided, however the contractor shall not be liable for any damages resulting from the sole negligent or intentional acts or omission of the County and its employees, agents or representatives.

1.20 AWARD

The award shall be made by the Board of Commissioners of Fulton County to the lowest responsible and responsive Bidder(s) whose Bids are determined, upon written recommendation by the County Manager, the Purchasing Agent, and the user department, to be in the best interest of the County, taking into consideration, any evaluation factors set forth in the Invitation to Bid. Fulton County reserves the right to award in whole or in part to one or more vendors. The award will be made as soon as possible after receipt of Bids. Should the Owner require additional time to award a contract, the time may be extended by mutual agreement between the Owner and the successful respondent.

1.21 SPECIAL PROVISIONS

Prior to commencement of the project, the Bidder shall recommend and secure the County's written approval of project work activities and the methods to be used in accomplishing the work for the Project. Any changes deviating from the approved shall require re-approval by the County.

The Bidder shall submit transmittals of all correspondence, telephone conversations, and minutes of all meetings relative to the Project.

The Bidder will notify all property owners or occupants each and every time of the intent to enter properties for the purpose of accomplishing work or other field investigations in accordance with the practices of the County. The Bidder shall discuss with and receive approval from the Fulton County Department of Environment and Community Development prior to sending said notices of intent to enter private property. Upon request by the Bidder, the County will provide the necessary documents identifying the Bidder for the purpose described in the Invitation to Bid. If the property owner or occupant denies the Bidder permission to enter, such incident will be reported to the County and the County will initiate such action as is dictated by current policy and procedure.

The Bidder shall perform the services required to accomplish the work plan as stated. The Bidder shall meet with the County for review of the work on a regular monthly basis as determined by the County.

All professional personnel, including subcontractors, engaged in performing services for the Bidder under the Bid are indicated in a personnel listing attached thereto, and incorporated therein by

reference. No changes or substitutions shall be permitted in the Bidder's key personnel as set forth herein without the prior written approval of the Director of Environment and Community Development or his designee. The Bidder shall employ only qualified persons in those positions involving supervision and/or design of the work.

1.22 NON-DISCRIMINATION IN CONTRACTING and PROCUREMENT

Policy Statement: It is the policy of Fulton County Government that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the Board of Commissioners that Fulton County Government and all vendors and contractors doing business with Fulton County shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the Board without regard to the race, color, gender or national origin of the ownership of any such business. Similarly, it is the policy of Fulton County Government that the contracting and procurement practices of Fulton County Government should not implicate Fulton County as either an active or passive participant in the discriminatory practices engaged in by private contractors or vendors who seek to obtain contracts with Fulton County.

1.23 PROMPT PAYMENT

The prime contractor **must** certify in writing and **must** document on the Department of Contract Compliance's Exhibit G Form (Prime Contractor's Subcontractor Utilization Report) that all subcontractors, sub-consultants and suppliers have been promptly paid for work and materials and previous progress payments received (less any retainage by the prime contractor prior to receipt of any further progress payments). In the event the prime contractor is unable to pay subcontractors, sub-consultants or suppliers funds due from said progress payments within forty-eight (48) hours of receipt of payment from Fulton County, the prime contractor shall pay no more than then fifteen (15) days from date of payment as provided for by state law.

1.24 AUTHORITY TO INVESTIGATE

The Director of the Fulton County Department of Contract Compliance shall be authorized to investigate discriminatory practices of any vendor who contracts with or seeks to contract with Fulton County. Such investigation may be initiated by the Director of the Department of Contract Compliance on the Director's own initiative, or by a complaint from another, when information available to the Director provides a reasonable basis to believe that such vendor may be engaged in private discriminatory conduct.

SECTION II: REQUIRED FORMS SUBMITTALS

THESE FORMS MUST BE PROPERLY EXECUTED and SUBMITTED WITH THE BID SUBMITTAL

- Georgia Utility Contractor's License Form
- Bid Bond
- Performance Bond (Required upon contract award)
- Payment Bond (Required upon contract award)
- Non-Collusion Affidavit of Bidder
- Non-Collusion Affidavit of Subcontractor
- Certificate of Acceptance of Invitation to Bid Requirements
- Certificate Regarding Debarment
- Promise of Non-Discrimination
- Employment Record
- Schedule of Intended Subcontractor Utilization
- Letter of Intent to Perform as a Subcontractor or Provided Materials or Services
- Declaration Regarding Subcontractor Practices
- Joint Venture Disclosure Affidavit
- Prime/Subcontractor Utilization Report (Post Award Only)

CONTRACTOR'S LICENSE CERTIFICATION

Contractor's Name: _____

Utility Contractor's Name: _____

Expiration Date of License: _____

(ATTACHED COPY OF LICENSE)

I certify that the above information is true and correct and that the classification noted is applicable to the Bid for this Project.

Signed: _____

Company Name: _____

Date: _____

BID BOND

PROJECT NUMBER:

PROJECT TITLE:

FULTON COUNTY GOVERNMENT

KNOW ALL MEN BY THESE PRESENTS, THAT WE _____

hereinafter called the PRINCIPAL, and _____

_____ hereinafter call the SURETY, a corporation chartered and existing under the laws of the State of _____ and duly authorized to transact Surety business in the State of Georgia, are held and firmly bound unto the Fulton County Government, in the penal sum of _____ Dollars and Cents (\$ _____)

good and lawful money of the United States of America, to be paid upon demand of the Fulton County Government, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators and assigns, jointly and severally and firmly by these presents.

WHEREAS the PRINCIPAL has submitted to the Fulton County Government, for **PROJECT NUMBER AND PROJECT TITLE**, a Bid.

WHEREAS the PRINCIPAL desires to file this Bond in accordance with law:

NOW THEREFORE: The conditions of this obligation are such that if the Bid be accepted, the PRINCIPAL shall within ten (10) calendar days after receipt of written notification from the COUNTY of the award of the Contract execute a Contract in accordance with the Bid and upon the terms, conditions and prices set forth therein, in the form and manner required by the Fulton County Government, and execute sufficient and satisfactory Performance and Payments Bonds payable t the Fulton County Government, each in the amount of one hundred (100%) percent of the total contract price in form and with security satisfactory to said Fulton County Government, then this obligation to be void; 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 the Fulton County Government, upon demand the amount hereof in good and lawful money of the United States of America, not as a penalty but as liquidated damages.

In the event suit is brought upon this Bond by the COUNTY and judgment is recovered, the SURETY shall pay all costs incurred by the COUNTY in such suit, including attorney's fees to be fixed by the Court.

Enclosed is a Bid Bond in the approved form, in the amount of

_____ Dollars

(\$ _____) being in the amount of five (5%) percent of the CONTRACT Sum. The money payable on this bond shall be paid to the Fulton County Government, for the failure of the Bidder to execute a CONTRACT within ten (10) days after receipt of the Contract form and at the same time furnish a Payment Bond and Performance Bond.

IN TESTIMONY THEROF, the PRINCIPAL and SURETY have caused these presents to be duly signed and sealed this _____ day of _____ 2004

ATTEST:

PRINCIPAL

BY _____ (SEAL)

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the Secretary of the Corporation named as principal in the within bond; that _____, Who signed the said bond of said corporation; that I know this signature, and his/her signature thereto is genuine; and that said bond was duly signed, sealed and attested for in behalf of said Corporation by authority of its governing body.

SECRETARY

(CORPORATE SEAL)

SURETY

(SEAL) BY _____

PERFORMANCE BOND
PROJECT NUMBER:
PROJECT TITLE:

KNOW ALL MEN BY THESE PRESENTS _____ [name of CONTRACTOR] (hereinafter called the “Principal”) and _____ [name of SURETY] (hereinafter called the “Surety”), are held and firmly bound unto **FULTON COUNTY**, a political subdivision of the State of Georgia (hereinafter called the “Owner”) and their successors and assigns, the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which the principal and the Surety bind themselves, their administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written contract (Contract) with the Owner, dated _____, which is incorporated herein by reference in its entirety, for the [name of project], more particularly described in the Contract (herein called the “Project”); and

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

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

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

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

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

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

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

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

This Bond is intended to comply with O.C.G.A. Section 13-10-1, and shall be interpreted so; as to comply with; the minimum requirements thereof. However, in the event the express language of this Bond extends protection to; the Owner beyond that contemplated by O.C.G.A. Section 13-10-1 or any other statutory law applicable to this Project, then the additional protection shall be enforced in favor of the Owner, whether or not such protection is found in the applicable statutes.

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

_____(SEAL)
(Principal)

By:

Signatures Continued

Attest:

Secretary

_____(SEAL)
(Surety)

By:

Attest:

Secretary

(Address of Surety's Home Office)

(Resident Agent of Surety)

PAYMENT BOND
PROJECT NUMBER:
PROJECT TITLE:

KNOW ALL MEN BY THESE PRESENTS that [insert name of contractor] (hereinafter called the “Principal”) and [insert name of surety] (hereinafter called the “Surety”), are held and firmly bound unto **FULTON COUNTY**, a political subdivision of the State of Georgia (hereinafter called the “Owner”), its successors and assigns as obligee, in the penal sum of [100% of contract amount], lawful money of the United States of America, for the payment of which the Principal and the Surety bind themselves, their administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written contract with the Owner, dated [insert date of contract], which is incorporated herein by reference in its entirety (hereinafter called the “Contract”), for construction-type services of a project known as [insert name of project], as more particularly described in the Contract (hereinafter called the “Project”);

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

1. A “Claimant” shall be defined herein as any subcontractor, person, party, partnership, corporation or the entity furnishing labor, services or materials used, or reasonably required for use, in the performance of the Contract, without regard to whether such labor, services or materials were sold, leased or rented, and without regard to whether such Claimant is or is not in privity of contract with the Principal or any subcontractor performing work on the Project, including, but not limited to, the following labor, services, or materials: water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. In the event a Claimant files a lien against the property of the Owner, and the Principal fails or refuses to satisfy or remove it promptly, the Surety shall satisfy or remove the lien promptly upon written notice from the Owner, either by bond or as otherwise provided in the Contract.

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

4. The Surety hereby agrees that this Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto, upon any amendment or modifications to the Contract, so as to bind the Principal and Surety, jointly and severally, to the full payment of any Claimant under the Contract, as amended or modified, provided only that the Surety shall not be liable for more than the penal sum of the Bond, as specified in the first paragraph hereof.

5. This Bond is made for the use and benefit of all persons, firms, and corporations who or which may furnish any materials or perform any labor for or on account of the construction-type services to be performed or supplied under the Contract, and any amendments thereto, and they and each of them may sue hereon.

6. No action may be maintained on this Bond after one (1) year from the date the last services, labor, or materials were provided under the Contract by the Claimant prosecuting said action.

7. This Bond is intended to comply with O.C.G.A. Section 13-10-1, and shall be interpreted so as to comply with the minimum requirements thereof. However, in the event the express language of this Bond extends protection to the Owner beyond that contemplated by O.C.G.A. Section 13-10-1, or any other statutory law applicable to this Project, then the additional protection shall be enforced in favor of the Owner, whether or not such protection is found in the applicable statutes.

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

_____(SEAL)
(Principal)

By:

Attest:

Secretary

_____(SEAL)
(Surety)

Attest:

Secretary

Signatures Continued

(Address of Surety's Home Office)

(Resident Agent of Surety)

NON-COLLUSION AFFIDAVIT OF BIDDER

(FC Sec 2-320, (11))

The information in this form shall be completed and submitted with Bids.

State of _____)

)ss.

County of _____)

_____, being first duly sworn, deposes and says that:

(1) He is _____ (owner, partner officer, representative, or agent) of _____ the Bidder that has submitted the Bid;

(2) He is fully informed respecting the preparation and contents of the Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive of sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly with any other Bidder, firm or person to submit a collusive or sham Bid in connection with the Contract for which the Bid has been submitted or refrain from submitting a Bid in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other Bidder, firm or person to fix the price or prices in the Bid or of any other Bidder, or to fix any overhead, profit or cost element of the Bid price or the Bid price of any other Bidder, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against Fulton County or any person interested in the proposed Contract; and

The price or prices in the Bid are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Bidder or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____

Title

Subscribed and Sworn to before me this ____ day of _____, 200__.

Title

My commission expires _____

(Date)

CERTIFICATE OF ACCEPTANCE OF INVITATION TO BID REQUIREMENTS

The information in this form shall be completed and submitted with Bids.

This is to certify that on this day, Bidder acknowledges that he/she has read this Bid document, pages # _____ to # _____ inclusive, including any addenda # _____ to # _____ exhibit(s) # _____ to # _____, attachment(s) # _____ to

_____, and/or appendices # _____ to # _____, in its entirety, and agrees that no pages or parts of the document have

been omitted, that he/she understands, accepts and agrees to fully comply with the requirements therein, and that the

undersigned is authorized by the proposing company to submit the Bid herein and to legally obligate the Bidder thereto.

Company: _____

Signature: _____

Name: _____

Title: _____

Date: _____

(CORPORATE SEAL)

CERTIFICATE REGARDING DEBARMENT

1. The Offeror certifies that neither it or its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from doing business with any government agency. Any such exclusion may cause prohibition of your firm from participating in any procurement by the Fulton County Government.
2. If the Offeror is unable to certify to any of the statements in this certification, such Offeror or subcontractor shall attach an explanation to this bid or proposal.

INSTRUCTION FOR CERTIFICATION

By signing and submitting this certification, the Offeror is providing the certification set out below.

- (1) The certification in this clause is a material representation of fact upon which reliance will be placed. If it is later determined that the prospective vendor knowingly rendered a false certification, the Purchasing Agent may pursue all available remedies, including suspension and/or debarment, for withdrawal of award or termination of a contract.
 - (2) The prospective Offeror shall provide immediate written notice to the Purchasing Agent if at anytime the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
2. Offeror shall be under a continuing duty to immediately inform the Purchasing Agent in writing of any changes, if as a result of such changes, the Offeror certification regarding debarment is affected.

DEBARMENT ORDINANCE

The following Section 2-322 of Fulton County Code of Laws establishes the procedure for the debarment of contractors.

- (a) *Authority to suspend.*

After reasonable notice to the entity involved and reasonable opportunity for that entity to be heard, the Purchasing Agent, after consultation with user department, the County Manager and the County Attorney shall have the authority to suspend an entity for cause from consideration for award of county contracts. As used in this section, the term entity means any business entity, individual, firm, contractor, subcontractor or business corporation, partnership, limited liability corporation, firm, contractor, subcontractor or business structured; provided, further, that any such entity shall also be subject to suspension under this section if an of its constituents, members, subcontractors at any tier of such entity's and the entity, or any constituent or member, knew or should have known of the commission of the act. The suspension shall be for a period not to exceed three (3) years unless cause is based on a felony conviction for an offense related or associated with fraudulent contracting or misappropriation of funds wherein the suspension shall not exceed seven (7) years.

(b) *Causes for Suspension.* The causes for suspension include:

- (1) Conviction for commission of a criminal offense as an incident to obtain or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract;
- (2) Conviction of state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a county contractor.
- (3) Conviction of state or federal anti-trust statutes arising out of the solicitation and submission of bids and proposals.
- (4) Violation of contract provisions as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension action;
 - a. Failure to perform in accordance with the specifications within a time limit provided in a county contract;
 - b. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension;
 - c. Material representation of the composition of the ownership or workforce or business entity certified to the county as a minority business enterprise; or
 - d. Falsification of any documents.
- (5) For violation of the ethical standards set forth in Fulton County Code Chapter 9, Code of Ethics.
- (6) Knowing misrepresentation to the county, of the use which a majority owned contractor intends to make a minority business enterprise (a business entity at least 41 percent of which is owned and controlled by minority persons, as defined in Fulton County Code Chapter 6, Article B, Minority Business Enterprise Affirmative Action Program and certified as such by the county), as a subcontractor or a joint venture partner, in performing work under contract with the county.

Failure to fully and truthfully provide the information required, may result in the disqualification of your Bid/Proposal from consideration or termination of the Contract, once awarded. This document must be completed and included as a part of the Bid/Proposal package along with other required documents.

Under penalty of perjury, I declare that I have examined this certification and all attachments hereto. If applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this _____ day of _____, 2005

(Legal Name of Offeror) (Date)

(Signature of Authorized Representative) (Date)

(Title)

COMPLIANCE PROCEDURES:

In order to be compliant with the intent and provisions of the Non-Discrimination Ordinance providing for non-discrimination in purchasing and contracting in Fulton County, **Bidders must submit the following completed documents.** **Failure to provide this information shall result in the Bid being deemed non-responsive:**

- < Promise of Non-Discrimination (Exhibit A)
- < Employment Report (Exhibit B)
- < Schedule of Intended Subcontractor Utilization (Exhibit C)
- < Letter of Intent to Perform As a Subcontractor or Provide Materials or Services (Exhibit D)
- < Declaration Regarding Subcontractor Practices (Exhibit E), if applicable
- < Joint Venture Disclosure Affidavit (Exhibit F), if applicable
- < **Equal Business Opportunity Plan (EBO Plan)**

The following document **must** be completed as instructed if awarded the Bid:

Department of Contract Compliance
EXHIBIT A – PROMISE OF NON-DISCRIMINATION

“Know all persons by these presents, that I/WE (_____),
Name
(_____),
Title Firm Name

Hereinafter (“Company”), in consideration of the privilege to Bid on or obtain contracts funded, in whole or in part, by Fulton County, hereby consent, covenant and agree as follows:

- 1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, national origin or gender in connection with any Bid submitted to Fulton County for the performance of any resulting therefrom,
- 2) That it is and shall be the policy of this Company to provide equal opportunity to all businesses seeking to contract or otherwise interested in contracting with this Company without regard to the race, color, gender or national origin of the ownership of this business,
- 3) That the promises of non-discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption,
- 4) That the promise of non-discrimination as made and set forth herein shall be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain,
- 5) That the failure of this Company to satisfactorily discharge any of the promises of non-discrimination as made and set forth herein shall constitute a material breach of contract entitling the Board to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract; and
- 6) That the Bidder shall provide such information as may be required by the Director of Contract Compliance pursuant to Section 4.4 of the Fulton County Non-Discrimination in Purchasing and Contracting Ordinance.

SIGNATURE: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

**DEPARTMENT OF CONTRACT COMPLIANCE
EXHIBIT B – EMPLOYMENT REPORT**

The demographic employment make-up for the Bidder **must** be identified and submitted with this Bid. In addition, if subcontractors will be utilized by the Bidder to complete this project, then the demographic employment make-up of the subcontractor(s) must be identified and submitted with this Bid.

EMPLOYEES

CATEGORY	NATIVE INDIAN		AFRICAN AMERICAN		ASIAN AMERICAN		HISPANIC AMERICAN		CACUASIAN AMERICAN		OTHER	
	M	F	M	F	M	F	M	F	M	F	M	F
Male/Female												
Mgmt/Official												
Professional (Arch., P.E., etc.)												
Supervisors												
Office/Sales Clerical												
Craftsmen												
Laborers												
Others (Specify)												
TOTALS												

FIRM'S NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

This completed form is for (Check one) _____ Bidder _____ Subcontractor

Date Completed: _____

**DEPARTMENT OF CONTRACT COMPLIANCE
EXHIBIT C – SCHEDULE OF INTENDED SUBCONTRACTOR UTILIZATION**

If the Bidder intends to subcontract any portion of this scope of work/service(s), this form **must be** completed and **submitted with the Bid**. All prime Bidders **must** include Letter(s) of Intent (Exhibit D) in the Bid document for all subcontractors who will be utilized under the scope of work/services.

PRIME BIDDER: _____

ITB/RFP NUMBER: _____

Project Name or Description of Work/Service(s) _____

1. My firm, as Prime Bidder on this scope of work/service(s) is ___ is not ___ a minority or female owned and controlled business. (Please indicate below the portion of work, including, percentage of Bid amount, that your firm will carry out directly):

Show total dollar value and percentage of work to be performed by the Prime:

Total Dollar Value of work: _____

Total percentage of work: _____

2. If the Prime Bidder is a Joint Venture, please complete Exhibit F: Joint Venture Disclosure Affidavit.
3. Sub-Contractors (Including suppliers) to be utilized in the performance of t his scope of work/service(s), if awarded, are:

SUBCONTRACTOR NAME: _____

ADDRESS: _____

PHONE: _____

CONTACT PERSON: _____

ETHNIC GROUP*: _____ **COUNTY CERTIFIED**** _____

WORK TO BE PERFORMED: _____

DOLLAR VALUE OF WORK: \$ _____ **PERCENTAGE VALUE:** _____ %

***Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); **If yes, attach copy of recent certification letter.**

SUBCONTRACTOR NAME: _____
ADDRESS: _____

PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ **COUNTY CERTIFIED**** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ **PERCENTAGE VALUE:** _____ %

SUBCONTRACTOR NAME: _____
ADDRESS: _____

PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ **COUNTY CERTIFIED**** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ **PERCENTAGE VALUE:** _____ %

SUBCONTRACTOR NAME: _____
ADDRESS: _____

PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ **COUNTY CERTIFIED**** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ **PERCENTAGE VALUE:** _____ %

SUBCONTRACTOR NAME: _____
ADDRESS: _____

PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ **COUNTY CERTIFIED**** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ **PERCENTAGE VALUE:** _____ %

SUBCONTRACTOR NAME: _____
ADDRESS: _____

PHONE: _____
CONTACT PERSON: _____
ETHNIC GROUP*: _____ **COUNTY CERTIFIED**** _____
WORK TO BE PERFORMED: _____
DOLLAR VALUE OF WORK: \$ _____ **PERCENTAGE VALUE:** _____ %

***Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); **If yes, attach copy of recent certification letter.**

Total Dollar Value of Subcontracting Agreements: (\$)

Total Percentage Value: (%)

CERTIFICATION: The undersigned certifies that he/she has read, understands and agrees to be bound by the Bid provisions, including the accompanying Exhibits and other terms and conditions regarding sub-contractor utilization. The undersigned further certifies that he/she is legally authorized by the Bidder to make the statement and representation in this Exhibit and that said statements and representations are true and correct to the best of his/her knowledge and belief. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder knowing them to be false, or if there is a failure of the intentions, objectives and commitments set forth herein without prior approval of the Owner, then in any such event the Contractor's acts or failure to act, as the case may be, shall constitute a material breach of the contract, entitling the Owner to terminate the Contract for default. The right to so terminate shall be in addition to, and in lieu of, any other rights and remedies the Owner may have for other defaults under the contract.

Signature/Title: _____

Firm or Corporate Name: _____

Address: _____

Telephone: () _____

Fax Number: () _____

Email Address: _____

**DEPARTMENT OF CONTRACT COMPLIANCE
EXHIBIT D**

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

This form **must** be completed by **ALL** known subcontractor and submitted with the Bid. The Prime Contractor **must** submit Letters of Intent for ALL known subcontractors at time of Bid submission.

To: _____
(Name of Prime Contractor Firm)

From: _____
(Name of Subcontractor Firm)

ITB/RFP Number _____
Project Name _____

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

Description of Work	Project Commence Date	Completion Date	Estimated Dollar Amount

(Prime Bidder)

(Subcontractor)

Signature _____

Signature _____

Title _____

Title _____

Date _____

Date _____

DEPARTMENT OF CONTRACT COMPLIANCE
EXHIBIT E – DECLARATION REGARDING SUBCONTRACTING PRACTICES

If the Bidder **does not intend to subcontract** any portion of the scope of work services(s), this form **must be** completed and submitted with the Bid.

_____ Hereby declares that it is my/our intent to
(Bidder)
perform 100% of the work required for _____
(ITB/RFP Number)

(Description of Work)

In making this declaration, the Bidder states the following:

1. That the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform **all elements** of the work on this project with his/her own current work forces;
2. If it should become necessary to subcontract some portion of the work at a later date, the Bidder will comply with all requirements of the County’s Non-Discrimination Ordinance in providing equal opportunities to all firms to subcontract the work. The determination to subcontract some portion of the work at a later date shall be made in good faith and the County reserves the right to require additional information to substantiate a Bidder’s decision to subcontract work following the award of the contract. Nothing contained in this provision shall be employed to circumvent the spirit and intent of the County’s Non-Discrimination Ordinances;
3. The Bidder will provide, upon request, information sufficient for the County to verify Item Number one.

AUTHORIZED COMPANY REPRESENTATIVE

Name: _____ Title: _____ Date: _____

Signature: _____

Firm: _____

Address: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

**DEPARTMENT OF CONTRACT COMPLIANCE
EXHIBIT F
JOINT VENTURE DISCLOSURE AFFIDAVIT**

ITB/RFP No. _____

Project Name _____

This form must be completed and submitted with the Bid if a joint venture approach is to be undertaken.

In order to evaluate the extent of small, minority and female business involvement being proposed by a Bidder, certain relevant information must be provided prior to contract award. The information requested below is to clearly identify and explain the extent of small business participation in the proposed joint venture. All items must be properly addressed before the business entity can be evaluated.

1. Firms:

Name of Business: _____
Street Address: _____
Telephone No.: _____
Nature of Business: _____

Name of Business: _____
Street Address: _____
Telephone No.: _____
Nature of Business: _____

Name of Business: _____
Street Address: _____
Telephone No.: _____
Nature of Business: _____

NAME OF JONT VENTURE (If applicable): _____

ADDRESS: _____

PRINCIPAL OFFICE: _____

OFFICE PHONE: _____

Note: Attach additional sheets as required

1. Describe the capital contributions by each joint venturer and accounting thereof. Indicate the percentage make-up for each joint venture partner.
2. Describe the financial controls of the joint venture, e.g., will a separate cost center be established? Which venturer will be responsible for keeping the books? How will the expense therefore be reimbursed? What is the authority of each joint venture to commit or obligate the order?
3. Describe any ownership, options for ownership, or loans between the joint ventures. Identify terms thereof.
4. Describe the estimate contract cash flow for each joint venturer.
5. To what extent and by whom will the on-site work be supervised?
6. To what extent and by whom will the administrative office be supervised?
7. Which joint venturer will be responsible for material purchases including the estimated cost thereof? How will the purchase be financed?
8. Which joint venturer will provide equipment? What is the estimated cost thereof? How will the equipment be financed?
9. Describe the experience and business qualifications of each joint venturer.
10. Submit a copy of all joint venture agreements and evidence of authority to do business in the State of Georgia as well as locally, to include all necessary business licenses.

Percent of ownership by each joint venture in terms of profit and loss sharing: _____

12. The authority of each joint venturer to commit or obligate the other: _____

13. Number of personnel to be involved in project, their crafts and positions and whether they are employees of a small business enterprise, the majority firm or the joint venture: _____

14. Identification of control and participation in venture; list those individuals who are responsible for day-to-day management and policy decision-maker, including, but not limited to, those with prime responsibility for areas designated below; (use additional sheets if necessary)

<u>Name</u> <u>Operation</u>	<u>Race</u>	<u>Sex</u>	<u>Financial</u> <u>Supervision</u> <u>Decisions</u>	<u>Field</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

In connection with any work that these firms, as a joint venture, might be authorized to perform in connection with above captioned contract, we each do hereby authorize representatives of the Fulton County Department of Contract Compliance, Departments of Purchasing and Finance, under the direction of the County Manger's Office, to examine, from time to time, the books, records and files to the extent that such relate to this County project.

WE DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT WE ARE AUTHORIZED, ON BEHALF OF THE AVOVE FIRMS, TO MAKE THIS AFFIDAVIT AND GRANT THE ABOVE PRIVILEGE.

FOR _____
(Company)

Date: _____

(Signature of Affiant)

(Printed Name)

(Company)

Date: _____

(Signature of Affiant)

(Printed Name)

State of _____:

County of _____:

On this _____ day of _____, 20_____, before me, appeared _____

_____, the undersigned officer, personally appeared _____, known to me to be the person described in the foregoing Affidavit and acknowledge that he (she) executed the same in the capacity therein stated and for the purpose therein contained.

DEPARTMENT OF CONTRACT COMPLIANCE

EXHIBIT – G PRIME CONTRACTOR/SUB-CONTRACTOR UTILIZATION REPORT

This report is required to be submitted by the tenth day of each month, with a copy of your payment invoice (schedule of values/payment application) to Contract Compliance. Failure to comply may result in the County commencing proceedings to impose sanctions on the successful Bidder, in addition to purchasing any other available legal remedy. Sanctions may include the suspending of any payment or part thereof, termination or cancellation of the contract, and the denial to participate in any future contracts awarded by Fulton County.

REPORTING PERIOD		PROJECT NAME:	
FROM:		PROJECT NUMBER:	
TO:		PROJECT LOCATION:	

PRIME CONTRACTOR		Contract Award Date	Contract Award Amount	Change Order Amount	Contract Period	% Complete to Date
Name:						
Address:						
Telephone #:						

AMOUNT OF REQUISITION THIS PERIOD:\$ _____

TOTAL AMOUNT REQUISITION TO DATE:\$ _____

SUBCONTRACTOR UTILIZATION (add additional rows as necessary)

Name of Sub-contractor	Description of Work	Contract Amount	Amount Paid To Date	Amount Requisition This Period	Contract Period	
					Starting Date	Ending Date
TOTALS						

Executed By: _____
(Signature)

(Printed Name)

SECTION: III

SCOPE OF SERVICES

- A. Scope of work under this section includes all labor, materials, equipment, storage, facilities, services, and supervision necessary for the satisfactory renovation and improvement of two (2) existing asphalt parking lots and the park's main entrance driveway. **Renovation as depicted on construction plans titled 'Morgan Falls Park Driveway and Parking Lot Renovation and Improvement' dated December 31, 2005 may be obtained by Contacting Greta DeMayo at (404) 730-6358.** The associated work to include but not be limited to the following:

1. Installation and maintenance of erosion controls and tree protection.
2. Asphalt reclaiming, stabilizing, and repaving.
3. Project layout and associated survey.
4. Import and/or export of fill material.
5. Asphalt concrete leveling including Hydrated Lime.
6. Compaction and testing.
7. Project supervision, coordination and safety controls.
8. Removal and installation of concrete curb and gutter.
9. Installation of compact asphalt sub-grade, 2" binder course, tack coat and 1.5" top coat.
10. Adjustments to any structures within the pavement to insure they are located at proper grade to conform with final paved surface.
11. Installation of drainage inlets and a concrete spillway.
12. Removal and disposal of concrete wheel stops and installation of new concrete wheel stops.
13. Construction of new landscape islands.
14. Installation of concrete walkways to meet ADA requirements.
15. Parking lot striping, removal and reinstallation of signage.
16. Final grading and seeding.
17. Installation and maintenance of barricades, warning, and detour signs as needed.

1.2 SUBMITTALS

All Bidders must submit proof of experience with projects of similar type and scope, references (5) and a prior project list of at least five (5) past jobs of this nature. Submittals not including this information may be deemed non-responsive.

- A. The contracting company shall submit any proposed alternates or Requests For Information prior to any deviation from plans and specifications.
- B. As-built plans with contractor's red-line notes of any changes from contract documents must be submitted prior to final completion of the contract.
- C. All closeout documents will be required prior to release of final payment. There will be no exceptions.

1.3 DELIVERY, STORAGE, AND HANDLING.

- A. Deliver materials to site and store where existing facilities will not be damaged or obstructed to allow continued public use of the park.
- B. Contractor shall be responsible for materials throughout the project until final completion and acceptance.
- C. Deliver materials and equipment in a manner to ensure that damage to existing facilities will not occur.

1.4 JOB CONDITIONS:

- A. Maintain an organized and clean project environment.
- B. Confine work areas to project limits shown on construction documents.
- C. Provide close supervision and monitoring of all subcontractors on the job.
- D. Comply with all erosion control requirements, directives of permit(s) and County enforcement staff.

1.5 ASPHALT AND GENERAL SPECIFICATIONS:

- A. The work will require Bidder to provide all labor, administrative forces, equipment, materials and all other incidental items to mill, plane and resurface drives and parking areas at Morgan Falls Park as indicated on the plans included in the Bid documents using mill "B", "F", and leveling asphaltic concrete to restore drainage, riding characteristics and skid resistance to the paving surface.
- B. The Plant Mix Materials from which the asphaltic pavement is manufactured and the plant at which it is manufactured shall meet the requirements of the State of Georgia, Department of Transportation, Standard Specifications, Section 828 – Hot Mix Asphaltic Concrete Mixtures.
- C. Samples of all materials provided by the Bidder may be submitted for testing; any material found to be non-compliant with the specifications herein will be rejected. Vendor will be responsible for replacing any work or material performed from rejected sample at no cost to the County.
- D. Contractor must re-stripe all parking stalls, drive lanes, and parking spaces for the disabled according to layout plans provided with the contract drawings.
- E. The Contractor and the County shall jointly check and mark all paving cuts to be trimmed to uniform alignment so as to join the new asphaltic paving.
- F. Contractor must complete all resurfacing within forty-eight hours of roto-milling completion.
- G. Equipment - The Milling Equipment shall be a power driven, self-propelled machine which is specifically designed to mill and remove a specified depth of existing asphalt paving. Conveyors capable of side, rear or front loading shall be provided together with the necessary equipment to transfer the milled material from the paved areas to a truck.

- H. Construction – The construction operation shall produce a pavement surface that is true to line, grade and cross-section, and of uniform texture. Acceptance testing of milled pavement surfaces will be conducted by the Maysmeter method in accordance with GHD-93. Any milled areas on which the Maysmeter indices are exceeded shall be re-milled to meet the standard at no additional cost to the County. In addition, the milled pavement surface will be subject to visual and straightedge inspection.
- I. The cross slope shall be uniform to a degree that no depressions or misalignment of slope greater than ¼” in twelve (12) feet are present when tested with a straightedge placed perpendicular to the centerline.
- J. Stockpiling – recycling – The milled material shall be stockpiled, recycled and utilized by the Contractor as a means to offset the unit cost of resurfacing.
- K. Permits and licenses – the Contractor shall procure all permits and licenses, pay all charges, taxes and fees, and give all notices necessary and incidental to the due and lawful prosecution of the work.
- L. Barricades, danger, warning and detour signs – the Contractor shall furnish, install, and maintain all necessary and required barricades, signs and other traffic control devices in accordance with the manual on uniform traffic control devices and these specifications, and take all necessary precautions for the protection of the work and safety of the public. Unless otherwise specified, all traffic control devices furnished by the Contractor shall remain the property of the Contractor.
- M. Protection and restoration of property and landscape – The Contractor shall be responsible for the preservation of all public and private property, trees, monuments, signs and markers, fences, grassed and sodded areas, miscellaneous structures, etc. along and adjacent to the work areas and shall use every precaution necessary to prevent damage of injury thereto, unless the removal, alteration, or destruction of such property is provided for under the contract.
- N. Warranty: Furnish a one-year warranty on all products and workmanship inclusive of landscape materials. Warranty shall include labor and materials to correct defects without dollar limit. Warranty shall take effect on Date of Final Acceptance.
- O. Execution: Provide signs as reasonably necessary to direct public to other areas of the park and to alert to the construction zones. Work progressively to completion without unnecessary delay. Achieve substantial completion no later than thirty (30) calendar days and final completion no later than forty-five (45) calendar days from issuance of Notice to Proceed. Time is of the essence with regard to completion of this project.

1.6 PORTLAND CEMENT CONCRETE SPECIFICATIONS

- A. This standard covers the furnishing and installation of cast-in-place Portland cement (PCC) sidewalks for Fulton County. Installation procedures shall be in accordance with the product manufacturer’s recommendations. Demolition and removal of materials shall be required to support the work. Sidewalks shall meet Georgia Accessibility Code

and/or ADAAG and all applicable codes.

B. Products:

1. Ready-Mixed Concrete: Ready-mixed concrete shall comply with ASTM C 94, Alternate No. 2. The concrete shall have a slump of not more than three inches. The concrete shall attain a minimum compressive strength of 3,000 PSI at 28 days.
2. Base: The Base (top 3 to 6 inches) shall be common borrow material (free of organic material) and shall be tamped using motorized vibratory plate tamper (sheeps foot) before placement of concrete.
3. Sub-Base: The Sub-Base shall be cleared, grubbed, and compacted using vibratory plate tamper (sheeps foot).
4. Aggregates: ASTM C33.
5. Reinforcement: Welded Wire Mesh (WWM, 6" X 6" X W2.9X W2.9) in compliance with ASTM A185 & A82 shall be used. WWM shall be cut sheets (not rolled).
6. Expansion Joint Fillers: Expansion Joint Fillers shall comply with ASTM D 1751 or shall be resin impregnated fiberboard complying with ASTM D 1752. One expansion joint filler shall be installed perpendicular to the run of the sidewalk at a distance along the run equal to twice the sidewalk's width. (Example: Sidewalk width is 4' then expansion joint shall be at 8' along the run.) Expansion joint fillers shall also be installed at every junction where new concrete is placed next to existing concrete or structures. The top edge of the expansion joint shall be installed so that the top edge is 2" below the finished concrete surface.
7. Joint Sealers: Joint sealers shall meet ASTM D 1191. Joints shall be clean, dry and free of all scale, dirt, dust, curing compound, and other foreign matter prior to installing joint sealers.

C: Execution:

1. Form Work: Forms may be metal or wood. Forms shall be oiled before placing concrete. Forms shall be adequately braced, installed, and maintained so that a straight line of sight is established along all edges when straight runs are being constructed. Forms shall not be removed after concrete pour for 24 hours or longer depending on climatic conditions and structural requirements. Place forms so that adequate drainage of water from the concrete sidewalk surface is obtained (min. 1% slope).
2. Welded Wire Mesh (WWM): Shall be installed so that the WWM is a minimum of 1.5" from any edge of concrete. WWM shall not be in contact with the base or sub-base at any point. Where necessary to lap, the laps shall be a minimum of six (6) inches.
3. Concrete: Conveying: Convey concrete to construction areas by methods that will prevent segregation.

4. Concrete Placing: Moisten the sub-grade just before the concrete is placed. Place concrete in one layer of such thickness that when compacted and finished the sidewalk will be of the required thickness. Fulton County standard is 4" thick. Cold weather placing shall be in compliance with ACI 306. Concrete mixture temperature shall not be less than 50 deg. F. Hot weather placing shall be in compliance with ACI 305 and concrete mixture temperature shall not be less than 80 deg. F.
5. Edge and Joint Finishing: Carefully finish all edges, including those at formed joints, with an edge having a radius of 3 inches. Cut joints are not acceptable.
6. Construction Joints: Construction Joints shall be installed evenly between expansion joints (tooled joints) along the run so that the surface is divided into square areas, equal to the width of the sidewalk. Construction joints shall be tooled with a 3" radius and shall extend from the finished surface to a 2" minimum depth below the finished concrete surface.
7. Joint Sealing: At the end of the curing period, carefully clean and seal expansion joints.
8. Portland Cement Concrete Curing: Cure new concrete by protection against loss of moisture and rapid temperature changes for a period not less than 7 days.
9. Back-filling: After curing, remove forms and all debris adjoining the sidewalk, backfill, grade, and compact to conform to the surrounding area. Final grade shall provide a one (1) foot wide level shoulder starting 1" below finished sidewalk surface before any tapering. Tapering shall not exceed a 1:3 slope. (Example: For every 1' of rise the run shall be 3'.) Fulton County will instruct as to grass seed type and rate of application based on the season and surrounding existing grasses. Seed and fertilizer shall be spread in a manner consistent with landscape industry standards for the variety grass chosen.
10. Dusting: dusting shall not be allowed.
11. Sealing: Sealing shall not be allowed.
12. Finishing: The finished concrete surface shall be as follows:

New sidewalks: Shall be light broom finished. Edges and joints shall be tooled as to have a frame effect on the finished surface. The acceptable finished concrete surface at the junction of the broom finish surface and tooled joint shall have no variances in height exceeding 1/8". The acceptable concrete finish surface shall be void of depressions or rises, uneven surfaces, of 1/8" or greater.

Patching: The concrete finish shall match existing surrounding concrete finishes, unless otherwise directed by Fulton County. Finished surface shall be flush with adjoining concrete surfaces.

Existing Sidewalks/Option: Fulton County reserves the right to specify different

finishes.

13. Erosion Control: Erosion control measures shall be undertaken for all work.

FINAL ACCEPTANCE:

The project manager / parks and recreation department will make a determination that the work of the contractor is complete and acceptable in accordance with the provisions of the contract documents.

In the event that the final inspection reveals deficiencies in meeting the contract requirements, the contractor shall complete all remaining items of work expeditiously, and make adjustments found to be necessary. Upon receipt of written notice from the contractor that the work is complete and ready for re-inspection, the project manager will make a final inspection.

The contractor shall be notified in writing by Fulton County of final acceptance of the work. The date of final acceptance shall be the termination date for the contractor's liability for the physical properties of the project.

INVOICING:

Invoice should be sent to the address below to expedite payment of invoices.

Parks and Recreation Department

Design and Development Division
Attn: Greta deMayo (404) 730-6358
141 Pryor Street, Ste. 8054
Atlanta, GA 30303

Invoice submitted must include the purchase order number, item number(s) and item description(s), and net prices. Invoices sent by facsimile cannot be accepted for processing.

Invoices will be returned unpaid to the vendor when one of the following conditions exists:

- A. Invoice does not contain all the required information.
- B. Price on the invoice does not correspond to the Bid price.

The Bidder agrees to observe Fulton County's goal of paying all valid invoices within thirty (30) days of receipt by the Parks and Recreation Department.

Fulton County shall make payment to Contractor by U.S. Mail approximately thirty (30) days after the receipt of a proper invoice by the Fulton County Parks and Recreation Department. Parties hereto expressly agree that the above contract term shall supercede the rates of interest, payment periods, and contract and sub-contract terms provided for under the Georgia Prompt Pay Act, O.C.G.A. 13-11-1etseq, pursuant 13-11-7(b), and the rates of interest, payment periods, and contract and sub-contract terms provided for under the Prompt Pay Act shall have no application to this contract; parties further agree that Fulton County shall not be liable for any interest or penalty arising from late payments.

The prime contractor must certify in writing that all subcontractors and suppliers have been promptly paid for work and materials and previous progress payments received, less any retainage by the prime contractor prior to receipt of any further progress payments. In the event the prime contractor is unable to pay subcontractors or suppliers until it has received a progress payment from Fulton County, the prime contractor shall pay all subcontractors or suppliers funds due from said progress payments within forty-eight (48) hours of receipt of payment from Fulton County.

The successful vendor will comply with all lawful agreement, if any, which the said successful vendor has made with any association, union, or other entity with respect to wages, salaries and working conditions as not to cause inconvenience, picketing, or work stoppages.

SECTION IV:

BASE BID

The undersigned, as Bidder, declares and represents that it has examined the site of the Work and informed itself fully in regard to all conditions pertaining to the place where the Work is to be done, including those conditions affecting the cost of the Work and the delivery, handling and storage of equipment and materials at the place where the Work is to be executed; it has examined and read the Bidding Document; and has satisfied itself that the Bidding Document are an adequate and acceptable reflection of the Work which is required to be performed, and that it is willing and able to perform all of the necessary Work based upon the information and representations contained within the Bidding Document. The Bidder hereby agrees that no additional information is required to complete the Work encompassed by this Bid, within the cost and schedule constraints established and agreed upon within this Bidding Document.

The Bidder proposes and agrees, if this Bid is accepted, to contract with the Fulton County Board of Commissioners (County), in the form of Contract specified, to provide all construction labor, materials, equipment, products, transportation and other facilities and services as necessary and/or required to execute and complete the Work in full and complete accordance with the shown, noted, and reasonably intended requirements of the Bidding Documents and to the full satisfaction of the County.

THE BASE BID IS THE AMOUNT UPON WHICH THE BIDDER WILL BE FORMALLY EVALUATED AND WHICH WILL BE USED TO DETERMINE THE LOWEST RESPONSIBLE BIDDER.

The Base Bid may not be withdrawn or modified for a period of sixty (60) days following the receipt of Bids.

BASE BID AMOUNT (Including Bid Alternates)

(Dollar Amount in Numbers)
\$ _____
(Dollar Amount in Words)

UNIT PRICES

The County shall have the option of exercising any or all of the below Unit Prices at the proposed prices at any point in the project. All unit price amounts shall be items furnished and installed, based on project-specified materials. Bidders shall also provide a pricing list of prices associated with the following items:

UNIT PRICE AMOUNTS <i>All items furnished and installed, based on project-specified materials</i>			
Item No.	Description	Unit	Unit Price
Site Work			
1	Rock Removal & Off-Site Disposal	Cu. Yd.	\$
2	Unsuitable Soil Removal & Off-Site Disposal	Cu. Yd.	\$
3	Importing soil suitable for structural backfilling	Cu. Yd.	\$
4	Clearing and Grubbing	Acre	\$
5	Expanded Asphalt Base	SY	\$
6	Liquid Asphalt PG 67-22	Gallon	\$
7	Supplementary Aggregate or RAP	Ton	\$
8	Lime	Ton	\$
9	Portland Cement	Ton	\$
10	Test Roll Sub-grade	SY	\$
11	Furnish and Install 90 lb. rip rap	Cu. Yd.	\$
12	Furnish and Install Type 1 rip rap	Cu. Yd.	\$
13	Six Inch Concrete Slab with 6x6 6/6 wwm	SF	\$
14	Furnish and Install Geotextile Fabric	Sq. Yd.	\$

BID ALTERNATES

The Bid Alternates listed and described below have been established and shall include the furnishing of all management, supervision, installation, start-up and service labor, materials, tools, equipment, overhead and profit. The County reserves the right to accept or reject any and/or all of the Bid Alternates. Bid Alternates shall remain valid for a period of ninety (90) days from the date of Bid. Bid Alternates may be awarded after award of the Base Contract, and if so, shall be incorporated into the Contract by change order. The price of each Bid Alternative and any combination thereof shall be considered in the evaluation for award of any and/or all proposed prices for the Bid Alternates.

Description of Bid Alternates:

1. Bid Alternate No. 1: Removal of 1400 LF the old concrete rollback curb along the east side of the park entrance drive as specified on the construction documents, and construction of 1400 LF of new concrete curb and gutter.
2. Bid Alternate No. 2: Construction of 975 LF of new concrete curb and gutter around the north parking lot.
3. Bid Alternate No. 3: Installation of two drainage inlets and one concrete spillway in the north parking lot as depicted in the construction documents.
4. Bid Alternate No. 4: Construction of 150 LF of new concrete sidewalk for ADA access from the north parking lot to an existing concrete walkway. Sidewalk shall be 8’ wide.

BID ALTERNATE AMOUNTS		
Bid Alternate #1	Removal of concrete curb and construction of new concrete curb along park entrance drive.	\$
Bid Alternate #2	Construction of new concrete curb and gutter around the north parking lot.	\$
Bid Alternate #3	Installation of two drainage inlets and one concrete spillway.	\$
Bid Alternate #4	Construction of an ADA sidewalk connection from the north parking lot to an existing walkway.	\$

SECTION VI OWNER – CONTRACTOR AGREEMENT

AGREEMENT:

Made as on the _____ day of _____, in the year of Two Thousand and Five.

Between the Owner (County):

FULTON COUNTY BOARD OF COMMISSIONERS
Fulton County Government Center
141 Pryor Street, S.W.
Atlanta, Georgia 30303

And the Contractor:

The Project: **Morgan Falls Park Parking Repair and Renovation**

The Work: ITB 05ITB43132K -

Contract Name:

Contract Sum: Refer to Article 9, Payments & Completion

The Construction Manager:

Greta deMayo, RLA
Parks and Recreation Department
Fulton County Government Center
141 Pryor Street, S.W., Suite 8054
Atlanta, Georgia 30303

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The Owner and the Contractor agree as set forth below:

ARTICLE 1

CONTRACT DOCUMENTS

1.1 DEFINITIONS - The following is a partial list of terms and their meanings as used in the administration of the project and in the Contract Documents:

1.1.1 Documents:

- A. "Bidding Documents" include (1) the Invitation for Bids, which is comprised of the Bid Manual (including Instructions to Bidders, the Bid Form, and other Bidding information), the Project Manual (including the Owner-Contractor Agreement and other Contract forms, the General Requirements, the Specifications, schedules and other project information) and the Drawings which are bound separately and listed in a List of Drawings included in the Project Manual; and (2) any Addenda to the Invitation for Bids issued prior to receipt of Bids.
- B. "Contract Documents" for the Work consist of the Bidding Documents and all modifications issued after award of the Contract. A modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a written interpretation issued by the Construction Manager pursuant to Subparagraph 2.3.8 of this Agreement, or (4) a written order for a minor change in the Work issued by the Construction Manager pursuant to Article 12 of this Agreement.

The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents may be amended or modified only by a modification as defined in above in this Subparagraph. The Contract Documents shall not be construed to create any contractual relationship of any kind between any persons or entities other than the County, including the Construction Manager, and the Contractor. Nothing contained in the Contract Documents shall create any contractual relationship between the County, Construction Manager, or any other consultant employed by the County, and any of the Contractor's subcontractors or sub-subcontractors.

1.1.2 The Work:

The Work comprises the completed construction required of the Contractor as described in the Contract Documents, and includes all labor, materials, equipment, and services necessary to produce the constructed facility in a complete, finished and operating manner.

1.1.3 The Project:

The Project is the total construction of which the Work performed under this Contract, as described in the Contract Documents or as required by any law, ordinance, code or standard, may be a part.

1.1.4 Approve:

Where used in conjunction with the County's response to submittals, requests, applications, inquiries, reports and claims by Contractor, the meaning of the term "approved" shall be held to limitations of the County's responsibilities and duties as described herein. In no case shall "approval" be interpreted as a release of Contractor from responsibilities to fulfill the requirements of the Contract Documents.

1.1.5 Bidder:

Any individual, company, corporation, partnership, or joint venture who submits a Bid for the Work required as distinct from a sub-Bidder who submits a Bid to a prime Bidder.

1.1.6 Directed, Required, Acceptable:

When these words refer to work or its performance, "directed", "required", "requested", "authorized", "selected", "permitted", "ordered", "designated", "prescribed", and words of like implication, mean "by direction of", the County. Likewise, "acceptable", "satisfactory", "in the judgment of", and words of like import, mean "recommended by", "acceptable to", "satisfactory to", or "in the judgment of" the County.

1.1.7 As Shown, As Indicated, As Detailed:

These words, and words of like implication, refer to information contained by drawings and/or specifications describing the Work, unless explicitly stated otherwise in other Contract Documents.

1.1.8 Manufacturer:

An individual, company, or corporation who manufactures, fabricates or assembles a standard product. A standard product is one that is not made to special design, and is furnished either directly to the Contractor or through a material supplier or vendor to the Contractor.

1.1.9 Material Supplier or Vendor:

An individual, company, or corporation who supplies, but who is not responsible for the installation of, materials, products and equipment for this particular contract.

1.1.10 Notice of Award:

This notice is provided by the County to the apparent successful Bidder, and indicates that it is the County's intent to award the Contract to that Bidder, contingent upon the Bidder's execution of the Owner-Contractor Agreement and submission of other necessary documents as specified in the Bidding Documents, and contingent upon the County's subsequent acceptance of same and formal approval of the Contract by the Fulton County Board of Commissioners.

1.1.11 Notice to Proceed:

This notice is provided by the County to the successful Bidder after the County has accepted and approved the Bidder's executed Owner-Contractor Agreement and other documents as required by and specified in the Bidding Documents. The actual date for commencement of the Work shall be extracted from the Notice to Proceed and inserted into the Agreement in the appropriate location, when the County executes the Agreement.

1.1.12 Plans or Drawings:

All drawings, sketches or reproduction of drawings pertaining to required Work.

1.1.13 Product:

The term "product" includes materials, systems and equipment.

1.1.14 Project Manual:

The Project Manual includes the Owner-Contractor Agreement and other Contract forms, the General Requirements, the Specifications, schedules and other project information, all contained in one or more volumes.

1.1.15 Bid:

A complete and properly signed document whereby a Bidder proposes to perform the Work or designated portion thereof for the sums stipulated therein, supported by all data called for by the Bidding requirements and documents.

1.1.16 Provide:

As a directive to the Contractor, "provide" means "furnish and install completely."

1.1.17 Specifications:

Descriptions, provisions and requirements, pertaining to method and manner of performing work, or the quantities and qualities of materials to be furnished under the terms of the Contract.

1.2 EXECUTION, CORRELATION AND INTENT

- 1.2.1 Execution of this Owner-Contractor Agreement is a representation that the Contractor has visited the site, has become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents.
- 1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. Work not covered in the Contract Documents shall not be required unless it is consistent therewith and is reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.
- 1.2.3 The organization of the Bid Manual and Project Manual and the Specifications provided to the Contractor into divisions, sections and articles, and the arrangement of the Drawings provided to the Contractor, shall not control the Contractor in dividing the Work among subcontractors and trades, or in establishing the extent of work to be performed by any such entity; nor shall any responsibility be assumed by the County, or Construction Manager for the manner in which the Contractor utilizes such documentation provided to divide the Work among such entities.
- 1.2.4 If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: the Owner-Contractor Agreement; the General Requirements; the Technical Specifications; the Drawings. As between figures given on Drawings and the scaled measurements, the figures shall govern; as between large-scale Drawings and small-scale Drawings, the larger scale shall govern. All such discrepancies and/or conflicts shall be submitted in writing to the Construction Manager for clarification before the Contractor's Bid is submitted, so that an addendum may be issued if necessary.

1.3 OWNERSHIP AND USE OF DOCUMENTS

- 1.3.1 All Drawings and Specifications furnished by the Engineer are and shall remain the property of the County. They are to be used by the Contractor only with respect to this Project and are not to be used on any other project. Submission or distribution of same to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the rights of the County or other reserved rights.

ARTICLE 2

ADMINISTRATION

2.1 CONSTRUCTION MANAGER

2.1.1 MANAGEMENT APPROACH

2.1.1.1 The County has established a process for the design and construction of infrastructure and facilities projects in its Capital Improvements Program which utilizes a team concept involving the use of a Construction Manager. It is the County's intent that the Construction Manager, Engineer, Engineers and Contractor work as a unified team with the County in the delivery of this project.

2.1.2 THE CONSTRUCTION MANAGER

2.1.2.1 The Construction Manager is the person or entity identified as such herein. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative.

2.2 THE ENGINEER

2.2.1 The Engineer is the person or entity identified as such herein. The term "Engineer" means the Engineer or the Engineer's authorized representative.

2.3 ADMINISTRATION OF THE CONTRACT

2.3.1 The Construction Manager and the Engineer shall provide administration services as hereinafter described.

2.3.2 For the administration and management of this Contract, the Construction Manager shall serve as the County's agent and representative. The Construction Manager shall exercise full authority on behalf of the County for all matters pertinent to enforcement of the Contract, unless otherwise specifically accepted in this Agreement. The primary point of contact for the Contractor shall be the Construction Manager. All correspondence from the Contractor to the County related to contract administration and performance of the Work shall be forwarded through the Construction Manager, unless directed otherwise by the Construction Manager. Likewise, all correspondence and instructions to the Contractor on behalf of the County shall be forwarded through the Construction Manager.

2.3.3 The Construction Manager, with the assistance of the Engineer, will determine in general that the construction is being performed in accordance with design and engineering requirements, and will endeavor to guard the County against defects and deficiencies in the Work.

2.3.4 The Engineer will visit the site at intervals appropriate to the state of construction to become generally familiar with the progress and quality of the Work, and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of on-site observations as the Engineer, the Engineer will keep the County informed of the progress of the Work, and will endeavor to guard the County against defects and deficiencies in the Work.

2.3.5 The Construction Manager and the Engineer will not be responsible for or have control or charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, nor will they be responsible for the

- Contractor's failure to carry out the Work in accordance with the Contract Documents. The Construction Manager and the Engineer will not be responsible for or have control or charge over the acts or omissions of the Contractor, its subcontractors, or any of their agents or employees, or any other persons performing the Work.
- 2.3.6 The County, the Construction Manager, the Engineer and any other consultants employed by the County shall at all times have access to the Work. The Contractor shall provide safe facilities for such access so that they may perform their functions.
- 2.3.7 Based on the Construction Manager's observations and the Engineer's recommendations regarding the Contractor's Applications for Payment, the Construction Manager shall determine the amounts owing to the Contractor, in accordance with the payment terms of the Contract, and shall issue Certificates for Payment in such amount to the County.
- 2.3.8 The Engineer shall render interpretations of the Contract Drawings and Specifications necessary for the proper execution or progress of the Work. Either party to the Contract may make written requests through the Construction Manager to the Engineer for such interpretations.
- 2.3.9 All interpretations of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in graphic form.
- 2.3.10 In matters relating to artistic effect, the interpretation of the Engineer shall be final, if the County determines that it is consistent with the intent of the Contract Documents.
- 2.3.11 Except as otherwise provided in this Agreement, the resolution of any dispute or disagreement concerning a question of fact arising under this Agreement shall be decided by the Construction Manager. The Construction Manager shall reduce its decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Construction Manager shall be final and conclusive unless, within thirty (30) calendar days from the Contractor's receipt of such decision, the Construction Manager receives in its office a written appeal from the Contractor. The Construction Manager shall render a decision, which shall be final and conclusive. No decision of the Construction Manager shall be pleaded in any suit involving a question of fact arising under this Agreement, provided such decision is supported by substantial evidence and is not fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily implying bad faith. In connection with any appeal proceeding under this Subparagraph, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending any final decision of a dispute or disagreement hereunder, the Contractor shall proceed diligently with the Work.
- 2.3.12 The Engineer shall have authority to reject Work which does not conform to the Contract Documents, and to require special inspection and testing, but will take such action only after consultation with the Construction Manager. Subject to review by the Engineer, the Construction Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever, in the Construction Manager's opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the Construction Manager shall have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.3, whether or not such Work be then fabricated, installed

or completed. Neither the Engineer's nor the Construction Manager's authority to act under this Subparagraph, nor any decision made by them in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Engineer or the Construction Manager to the Contractor, any subcontractor, any of their agents or employees, or any other person performing any of the Work.

- 2.3.13 The Construction Manager will receive from the Contractor all shop drawings, product data, and samples and transmit same to the Engineer for review.
- 2.3.14 The Engineer will review for contract compliance or take other appropriate action upon the Contractor's submittals such as shop drawings, product data and samples, but only for conformance with the design concept of the Work and the information given in the Contract Documents. Such action shall be taken with reasonable promptness. The Engineer's review of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.3.15 The Construction Manager and the Engineer shall take appropriate action on Change Orders in accordance with Article 12 of this Agreement, and shall have authority to order minor changes in the Work as provided in Subparagraph 12.4.1 of this Agreement.
- 2.3.16 The Construction Manager, jointly with the Engineer, shall conduct inspections to determine the dates of Substantial Completion and Final Completion, and shall receive and forward to the County for review written warranties and related documents required by the Contract Documents and assembled by the Contractor. The Construction Manager shall approve and issue Certificates for Payment upon compliance with Substantial and Final Completion requirements indicated in Article 9 of this Agreement.

ARTICLE 3

COUNTY

3.1 DEFINITION

- 3.1.1 The County (Owner) is the person or entity identified as such herein. The term "County" means the County or the County's authorized representative. The term "County" also means any agent of the County. The terms "County" and "Owner" may be used interchangeably in the Contract Documents.

3.2 INFORMATION AND SERVICES REQUIRED OF THE COUNTY

- 3.2.1 The County shall furnish all reasonably available site information describing the physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.
- 3.2.2 Except as indicated otherwise, the County shall secure and pay for necessary easements required for the construction of permanent structures.
- 3.2.3 Information or services under the County's control shall be furnished by the County with reasonable promptness.

- 3.2.4 The County shall forward all instructions to the Contractor through the Construction Manager.
- 3.2.5 Upon Notice to Proceed, the County will furnish to the Contractor, free of charge, three (3) copies of the Contract Documents, including modifications thereto, and will be furnished, at actual cost of reproduction and delivery, as many additional copies as may be required. Subcontractors and vendors must obtain their copies of the Contract Documents from the Contractor from its allotment.
- 3.3 COUNTY'S RIGHT TO STOP THE WORK
 - 3.3.1 If the Contractor fails to correct defective Work as required by Paragraph 13.2, or persistently fails to carry out the Work in accordance with the Contract Documents, the County, by a written order signed personally or by an agent specifically so empowered by the County in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the County to stop the Work shall not give rise to any duty on the part of the County to exercise this right for the benefit of the Contractor or any other person or entity. The Contractor shall bear all direct and indirect costs attributable to a work stoppage by the County in accordance with this Subparagraph 3.3.1.
- 3.4 COUNTY'S RIGHT TO CARRY OUT THE WORK
 - 3.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within **seven (7) days** after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may, after **four (4) days** following receipt by Contractor of an additional written notice and without prejudice to any other remedy the County may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the Contractor for the cost of correcting such deficiencies, including compensation for the County's Agents or Professional Consultants for additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the County are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

ARTICLE 4

CONTRACTOR

- 4.1 DEFINITION
 - 4.1.1 The Contractor is the person or entity identified as such herein. The term "Contractor" means the Contractor or the Contractor's designated representative.
 - 4.1.2 The Contractor is the prime entity that provides construction services including labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, furnishings, equipment and other facilities and services for execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work. The term "Contractor" shall be taken to include the Contractor's subcontractors, sub-subcontractors, and other entities providing materials, labor and construction for execution of the Work.
 - 4.2 *(not used)*
- 4.3 **REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR**
 - 4.3.1 Starting upon the Contractor's receipt of the Notice to Proceed, the Contractor shall again carefully study and compare the Contract Documents and field conditions of the jobsite and shall immediately report to the Construction Manager any error, inconsistency, ambiguity or omission that may be discovered; or, if no such errors, inconsistencies, ambiguities or

omissions are found, the Contractor shall so state in writing to the Construction Manager. The Contractor shall perform no portion of the Work at any time without Contract Documents or, where required, without reviewed shop drawings, product data or samples for such portion of the Work and where such review allows fabrication or installation in accordance with the Section 01 340 of the General Requirements.

- 4.3.2 If the Contractor has not performed a complete review of the Contract Documents within thirty (30) days since the Contractor's receipt of the Notice to Proceed, and should dimensional discrepancies, conflicts, or problems of inadequate detail be discovered after that time period has elapsed, the Contractor must report same to the Construction Manager immediately, and then proceed to rectify such dimensional discrepancies, conflicts, or problems of inadequate detail. However, if the dimensional discrepancies, conflicts, or problems of inadequate detail which are discovered after that time period has elapsed are due to the Contractor's failure to properly research and review the Contract Documents, the Contractor will be completely responsible for all additional direct and indirect costs associated with the resolution of the dimensional discrepancies, conflicts, or problems of inadequate detail, if any costs should occur. Additional costs are those direct and indirect costs which are above and beyond the costs which would have been incurred by the County, had there been no occurrence of dimensional discrepancy, conflict, or problem of inadequate detail.
- 4.3.3 In the event that dimensional discrepancies, conflicts, or problems of inadequate detail are discovered after the expiration of the 30-day period, which could not reasonably have been discovered by the Contractor's thorough review of the Contract Documents as required by this Paragraph 4.3, the County will accept a proposal from the Contractor for the direct costs associated with these problems, provided that the Contractor can fully substantiate its direct costs according to the requirements of Article 12 of this Agreement.

4.4 SUPERVISION AND CONSTRUCTION PROCEDURES

- 4.4.1 The Contractor shall provide qualified personnel to supervise and direct the Work. The Contractor shall be solely responsible for all construction, fabrication, delivery, erection, installation, means, methods, techniques, sequences and procedures, and shall coordinate all portions of the Work.
- 4.4.2 The Contractor shall be responsible to the County for the acts and omissions of the Contractor's officers, directors, employees, subcontractors, suppliers, and their agents and employees, and any other persons performing any of the Work.
- 4.4.3 The Contractor shall not be relieved from obligations to perform the Work in accordance with the Contract Documents, either by the activities or duties of the Engineer, the Construction Manager in the administration of the Contract, or by inspections, tests or reviews required or performed by persons other than the Contractor.

4.5 LABOR AND MATERIALS

- 4.5.1 The Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 4.5.2 The Contractor shall at all times enforce strict discipline and good order among the Contractor's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned them.
- 4.5.3 After the Owner-Contractor Agreement has been executed, the Construction Manager and the Engineer will consider a request for the substitution of materials or equipment in place of those specified only if the Contractor can demonstrate that the material or equipment specified is no longer available, or that the delivery date of specified product is such that the scheduled date of Substantial Completion of the Work will be delayed if the specified product remains a requirement. Refer to Section 01 630 of the General Requirements for additional details and

instructions regarding substitutions after contract execution.

4.6 WARRANTY

4.6.1 The Contractor warrants to the County that all materials and equipment furnished under this Contract shall be new unless otherwise specified, and that all Work shall be of good, first quality, free from faults and defects. All Work not conforming to these requirements, including substitutions not properly approved and authorized by the County, may be considered defective. If required by the County, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions under Paragraph 13.2 of this Agreement.

4.7 TAXES

4.7.1 The Contractor shall pay all sales, consumer, use and other similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted at the time proposals or Bids are received, whether or not yet effective at time of Bid.

4.8 PERMITS, FEES AND NOTICES

4.8.1 The Owner will pay for and secure all permits required for the proper execution of the Work, including all required land disturbance, demolition, and building permits issued by Fulton County and/or any other authority having jurisdiction. The Contractor shall secure all inspections necessary for the proper execution and completion of the Work, and for the occupancy of the Work upon Substantial Completion and which are legally required at the time Bids are received.

4.8.2 The Contractor shall give all notices and comply with all laws, codes, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction which bear on the performance of the Work. The Construction Manager shall be notified within two (2) days in writing of any jurisdiction observations or inspections that require changes to the design and engineering requirements in the Contract Documents.

4.8.3 It is not the responsibility of the Contractor to make certain that the Contract Documents are in accordance with applicable laws, statutes, building codes and regulations. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, the Contractor shall promptly notify the Construction Manager in writing, and any necessary changes shall be accomplished by appropriate modification. All necessary modifications shall be issued to the Contractor in writing by the Construction Manager.

4.8.4 If the Contractor performs any Work knowing it to be contrary to applicable laws, statutes, building codes, and regulations, and such Work is performed without notice of such having been made to the Construction Manager, the Contractor shall assume full responsibility therefor and shall bear all direct and indirect costs and liabilities attributable thereto.

4.9 ALLOWANCES

4.9.1 The Contractor shall include in the contract sum all allowances stated in the Contract Documents. Descriptions of allowances, if any, are found in Section 01 020 of the General Requirements.

4.9.2 The total amount of each allowance is exclusively for County use. The Contractor shall not include any mark-up within the allowance amount, although applicable mark-up may be included in the total Contract Sum.

4.10 SUPERINTENDENT

4.10.1 The Contractor shall employ a competent, full time, experienced superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The superintendent shall have project experience comparable to the Contract scope, type, size and cost and shall have full authorization by the Contractor to fully represent the Contractor. All

communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.

- 4.10.2 The superintendent shall remain on the Project not less than eight (8) hours per day, five days per week minimum, unless the job is closed down due to a general strike or conditions beyond the control of the Contractor, or until Termination of the Contract in accordance with the Contract Documents. The superintendent shall not be employed on any other Project during the course of this Work.
- 4.10.3 The superintendent or project supervisor shall be satisfactory to the Construction Manager and shall not be changed except with the consent of the Construction Manager, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. At any time during the execution of the Work, should the superintendent become unsatisfactory to the Construction Manager, the Contractor shall **within 15 (fifteen) days** upon receiving written notice from the Construction Manager, remove and replace the superintendent. Any such replacement superintendent shall be satisfactory to the Construction Manager.
- 4.10.4 In the event that any of the following conditions shall exist, the Contractor shall require that its superintendent be at the job site not less than ten (10) hours per day, six (6) days per week. This shall be done at no additional cost to the County.
 - 4.10.4.1 should Substantial Completion not be accomplished on schedule;
 - 4.10.4.2 should Final Completion not be accomplished on schedule;
 - 4.10.4.3 should a schedule review show the Contractor to be fourteen (14) or more days behind schedule at any time during construction up until 30 days prior to a scheduled Substantial Completion;
 - 4.10.4.4 should the schedule review show the Contractor to be seven (7) or more days behind schedule at any time during the last thirty (30) days prior to scheduled Substantial Completion.
- 4.10.5 The Contractor's superintendent shall document work activities and conditions on a daily basis. Reference Section 01 320 of the General Requirements for procedural details.

4.11 CONTRACTOR'S CONSTRUCTION SCHEDULE

- 4.11.1 The Contractor shall prepare and submit for the Construction Manager's review a detailed Contractor's Construction Schedule for the Work, which shall provide for expeditious and practicable execution of the Work. The schedule shall not exceed time limits indicated under this Agreement and shall be revised at intervals as required by conditions of the Work and the Project. Schedules shall be kept current and updated and submitted monthly with a written report of changes. The Contractor shall also submit to accompany the construction schedule, a schedule showing percentage amount of work completed and dollar value for each month of construction. Reference Section 01 310 of the General Requirements for procedural details.
- 4.11.2 The Contractor shall prepare and keep current, for the Construction Manager's review, a schedule of submittals which is coordinated with the Contractor's construction schedule. Schedule shall show submittal date, date sent to Construction Manager, date received from Construction Manager, dates of receipt from and return to subcontractors and suppliers, and action taken.

4.12 *(not used)*

4.13 DOCUMENTS AND SAMPLES AT THE SITE

- 4.13.1 The Contractor shall maintain at the Project site, on a current basis, one record copy of all Drawings, Specifications, Shop Drawings, Samples, Product Data, Addenda, Change Orders, Modifications and other documents related to the Work in good order and marked currently to record all changes made during construction. These shall be available to the Engineer and the

Construction Manager for review at any time and shall be delivered to the Construction Manager for submittal to the County upon completion of the Work. The Contractor shall advise the Construction Manager on a current basis of all changes in the Work made during construction.

4.14 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

4.14.1 The Contractor shall prepare and submit to the Construction Manager, per the procedures contained in Section 01 340 of the General Requirements, a comprehensive Submittal Register for review and approval by the Construction Manager.

4.14.2 The Contractor shall prepare, review, approve and submit to the Construction Manager, with reasonable promptness and in such sequence as to cause no delay in the Work or to any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents for review. The Contractor shall coordinate its Shop Drawings, Product Data and Samples with those of other separate contractors, if any. Reference Section 01 340 of the General Requirements for definitions and procedural details.

4.14.3 By approving and submitting Shop Drawings, Product Data, and Samples, the Contractor represents that it has determined and verified all materials, field measurements and field construction criteria related thereto, or shall do so with reasonable promptness, and has checked and coordinated the information contained within such submittals between all trades and with the requirements of the Work, the Project and the Contract Documents.

4.14.4 The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Engineer's review of Shop Drawings, Product Data or Samples, unless the Contractor has clearly and specifically informed the Construction Manager in writing of such deviation at the time of submission and the Engineer has taken no exception to the specific deviation. The Contractor shall not be relieved of responsibility for errors and omissions in the Shop Drawings, Product Data or Samples by the Engineer's review.

4.14.5 The Contractor shall make any corrections required by the Engineer and shall resubmit the required number of corrected copies of Shop Drawings/Product Data or new Samples. Resubmittal of Shop Drawings, Product Data, or Samples necessitated by required corrections shall not be cause for an extension of time. The Contractor shall direct specific attention in writing on resubmitted Shop Drawings, Product Data or Samples to revisions other than the corrections requested on previous submittals.

4.14.6 Resubmitted Shop Drawings, Product Data, or Samples necessitated by required corrections due to nonconformance with the Contract Documents which contain the same nonconformity as the first submittal shall be reviewed with the Contractor's understanding that all associated labor costs of said review will be back-charged to the Contractor, and drawn against the next sequential payment application.

4.15 USE OF SITE

4.15.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment. The Contractor shall control accessibility to the site and not unreasonably impede the normal flow of traffic in the vicinity, including truck and equipment entrances, allowable use of contiguous sidewalks and streets, and parking facilities. Reference Section 01 500 of the General Requirements for details.

4.16 CUTTING AND PATCHING / EXISTING STRUCTURES AND UTILITIES

4.16.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work.

4.16.2 The Contractor shall not damage or endanger any portion of the Work or the work of the County or any separate contractors by cutting, patching or otherwise altering any Work, or by excavation. The Contractor shall not cut or otherwise alter the work of the County or any

separate contractor except with the written consent of the County and of such separate contractor. The Contractor shall not unreasonably withhold from the County or any separate contractor consent to cutting or otherwise altering the Work. Reference Section 01 045 of the General Requirements for details regarding cutting and patching.

4.16.3 The Contractor shall coordinate and be responsible for any modifications to existing structures which may be required to complete the Work.

4.17 CLEANING UP

4.17.1 The Contractor shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the Contractor's operations, and shall adhere to all of the terms of the General Requirements. At the completion of the Work, the Contractor shall remove all the waste materials and rubbish from and about the Project as well as all the tools, construction equipment, machinery and surplus materials.

4.17.2 If the Contractor fails to clean up adequately, the County may do so as provided in Paragraph 3.4 of this Agreement, and the cost thereof shall be charged directly as a deduct to the Contract Sum.

4.18 COMMUNICATIONS

4.18.1 The Contractor shall forward all communications to the County and the Engineer through the Construction Manager.

4.19 COPYRIGHT, ROYALTIES AND PATENTS

4.19.1 The Contractor shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights, and shall hold the County, the Engineer, the Construction Manager, and other consultants of the County for the Project, and their agents and employees, harmless from loss on account thereof. If the Contractor has reason to believe that the design, process or product selected is an infringement of a patent, it shall be responsible for such loss unless such information is promptly given to the County.

4.20 INDEMNIFICATION

4.20.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the County, the Engineer, the Construction Manager, and other consultants of the County for the Project, and their agents and employees from and against any and all claims, damages, losses and expenses, including, but not limited to, attorneys' fees arising out of, resulting from or related to the performance of the Work, provided that any and all such claims, damages, losses or expenses are caused in whole or in part by any act, error, omission, or negligence of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 4.20.

4.20.2 In any and all claims against any person or entity indemnified under this Paragraph 4.20 by any officer, director, or employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 4.20 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

- 5.1.1 A subcontractor is a person or entity who has a direct contract with the Contractor to perform any portion of the Work. The term “subcontractor” means a subcontractor or an authorized representative thereof. The term “subcontractor” does not include any separate contractor who may be hired by the County or the Construction Manager or any separate contractor’s subcontractors.
- 5.1.2 A sub-subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform any portion of the Work. The term “sub-subcontractor” means a sub-subcontractor or an authorized representative thereof.

5.2 SUBCONTRACTUAL RELATIONS

- 5.2.1 By an appropriate written agreement, the Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the County, the Engineer, and the Construction Manager. Said agreement shall preserve and protect the rights of the County, the Engineer and the Construction Manager under the Contract Documents with respect to the Work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights, and shall allow to the subcontractor, unless specifically provided otherwise in the Contractor-Subcontractor agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by these Documents, has against the County. Wherever appropriate, the Contractor shall require each subcontractor to enter into similar agreements with their sub-subcontractors.
- 5.2.2 The Contractor shall make available to each proposed subcontractor, prior to the execution of such entities’ agreement with the Contractor, copies of the Contract Documents to which the subcontractor will be bound by this Paragraph 5.2, and identify to the subcontractor any terms and conditions of the proposed agreement which may be at variance with the Contract Documents. Each subcontractor shall similarly make copies of such Documents available to their sub-subcontractors, who shall also be bound therein.
- 5.2.3 In the event that a subcontractor or sub-subcontractor fails to perform as required according to the Contract Documents, the Contractor, at the written direction of the County or the Construction Manager and after such notice as is proper according to the Contract Documents, shall direct and guarantee the removal or replacement of said subcontractor or sub-subcontractor at no cost to the County. If desired by the County, the work which was to be performed by the subcontractor or sub-subcontractor shall then be removed from the Contractor's Work and shall be performed by contractors working directly for either the County or the Construction Manager.

5.3 AWARDS OF SUBCONTRACTS

- 5.3.1 Unless otherwise required by the Contract Documents or the Bidding Documents, the Contractor, within ten (10) days after the receipt of the Notice of Award of the Contract, shall

furnish to the Construction Manager in writing for review by the County, the Engineer, and the Construction Manager, the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each of the principal portions of the Work and executed Contract Compliance Exhibits C, D and E. This requirement shall be coordinated with the requirement for a similar submittal described in Subparagraph 4.5.3 above.

- 5.3.2 The Construction Manager will promptly reply to the Contractor in writing stating whether or not the County, the Engineer or the Construction Manager, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Construction Manager to reply within ten (10) days shall constitute notice of no reasonable objection.
- 5.3.3 The Contractor shall not contract with any such proposed person or entity to whom the County, the Engineer, or the Construction Manager has made reasonable objection under the provisions of this Paragraph 5.3.
- 5.3.4 If the County, the Engineer, or the Construction Manager has reasonable objection to any such proposed person or entity, the Contractor shall submit a substitute to whom the County, the Engineer, and the Construction Manager have no reasonable objection, and the Contract Sum shall be increased or decreased by the difference in costs occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Sum shall be allowed for any such substitution unless the Contractor has acted responsively within ten (10) days by submitting name as required by Subparagraph 5.3.1.
- 5.3.5 The Contractor shall make no substitution for any subcontractor, person, or entity previously selected if the County, the Engineer, or the Construction Manager make reasonable objection to such substitution.

ARTICLE 6

WORK BY COUNTY OR BY SEPARATE CONTRACTORS

- 6.1 COUNTY'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS
 - 6.1.1 The County reserves the right to perform work related to the Project with the County's own forces, and to award separate contracts in connection with other portions of the Project, other work on the site under these or similar conditions of the Contract, or work which has been extracted from the Contractor's work by the County.
 - 6.1.2 When separate contracts are awarded for different portions of the Project or other work on the site, the term "separate contractor" in the Contract Documents in each case shall mean the contractor who executes each separate County Agreement.
 - 6.1.3 Prior to any separate contractor starting work, the County shall require that such separate contractor submit an executed insurance certificate indicating all coverages required by the separate contractor's Contract Documents are in effect, or otherwise be covered under the County's Owner-Controlled Insurance Program.
- 6.2 MUTUAL RESPONSIBILITY
 - 6.2.1 The Contractor shall afford the County and separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate the Work with theirs as required by the Contract Documents.

- 6.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of the County or any separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report **within fourteen (14) days** to the Construction Manager any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to so report in writing shall constitute an acceptance of the County's or separate contractor's work as fit and proper to receive the Work, except as to any defects which may subsequently become apparent in such work by others.
- 6.2.3 Any costs caused by defective or untimely work shall be borne by the party responsible therefor.
- 6.2.4 Should the Contractor wrongfully cause damage to the work or property of the County, or to other work or property on the site, the Contractor shall promptly remedy such damage.
- 6.2.5 Should the Contractor be caused damage by any other contractor on the Project, by reason of such other contractor's failure to perform properly his contract with the County, no action shall lie against the County or the Construction Manager, and neither the County nor the Construction Manager shall have liabilities therefore, but the Contractor may assert his claim for damages against such other contractor as the third party beneficiary under the contract between such other contractor and the County or the Construction Manager.

If, after reasonable attempts at resolution, the Contractor and any separate contractor involved in such a third party damages claim are unable to resolve such dispute, the Construction Manager shall intervene to assist the parties in the settlement of such claims. The Construction Manager may make monetary determinations as necessary in order to resolve the issue. Such determinations shall be final. Such action shall in no way prejudice the County's position as stated in the preceding paragraph or elsewhere in the Contract Documents.

- 6.2.6 Where the Work of this Contract shall be performed concurrently in the same areas as other construction work, the Contractor shall, with the supervision of the Construction Manager, establish a mutually acceptable schedule and procedures that shall permit all jobs to proceed with minimum interference.
- 6.3 COUNTY'S RIGHT TO CLEAN UP
 - 6.3.1 If a dispute arises between the Contractor and separate contractors as to their responsibility for cleaning up, the County may clean up and charge the cost thereof to the Contractor or contractors responsible therefore as the Construction Manager shall determine to be just.

ARTICLE 7

MISCELLANEOUS PROVISIONS

- 7.1 GOVERNING LAW & FORUM SELECTION
 - 7.1.1 The Contract shall be governed by the laws of the State of Georgia and all other applicable local laws and statutes unless indicated otherwise.
 - 7.1.2 The Contract shall be deemed to have been made and performed in Fulton County, Georgia. All suits or causes of action that may arise out of the Contract shall be brought in the courts of the State of Georgia in Fulton County.
- 7.2 SUCCESSORS AND ASSIGNS
 - 7.2.1 The County and the Contractor respectively bind themselves, their partners and successors, to the other party hereto and to the partners and successors of such other party with respect to all covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract, or the proceeds therefrom, or sublet it as a whole

without the written consent of the other.

7.3 WRITTEN NOTICE

7.3.1 All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid, to the person and address provided herein. Any notice transmitted according to this Paragraph 7.3 shall be deemed to have been delivered as required by the contract. If delivered in person, the notice shall be effective as of the date of such delivery. If transmitted by mail, the notice shall be effective as of the date it is placed in the mail by the sender.

7.3.2 Written notices to the County, relative to the project, shall be made through the Construction Manager:

Fulton County Parks and Recreation Department
Fulton County Government Center
141 Pryor Street SW, Suite 8054
Atlanta, GA 30303
Attn: Greta deMayo

7.3.3 Written notices to the Contractor relative to this contract shall be sent to:

7.4 CLAIMS FOR DAMAGES

7.4.1 Should the Contractor suffer injury or damage to person or property because of any act or omission of the County or any of the County's employees, agents, or others for whose acts the County is legally liable, notice of claim shall be made by the Contractor in writing **within twenty (20) days** after the first observance of such injury or damage.

7.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

7.5.1 The Contractor is required to furnish a Labor and Materials Payment Bond and a Performance Bond in penal sums of at least the full amount of the Contract, issued by a surety registered to do business in the State of Georgia and acceptable to the County. These bonds shall secure the faithful performance of the Contract, and the payment of all persons, firms or corporations to whom the Contractor may become legally indebted for professional services, construction labor, materials or equipment of any nature employed or used by it in performing the Work.

7.5.2 The bonds shall be written on forms acceptable to the County. Refer to Section 00 610 of the Project Manual for required terms and conditions.

7.5.3 Bonds shall be made out to Fulton County, Georgia.

7.6 RIGHTS AND REMEDIES

7.6.1 The duties and obligations imposed by the Owner-Contractor Agreement and the rights and remedies available thereunder shall be in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

7.6.2 No action or failure to act by the County, the Engineer, the Construction Manager, or the Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

7.7 TESTS AND INSPECTIONS

7.7.1 All testing and inspection, whether required by the specification sections or by laws, ordinances, rules, regulations, codes or orders of any public authority having jurisdiction, or whether performed by the Contractor for quality control, shall be at the Contractor's expense

unless otherwise indicated in the Contract Documents. The Contractor shall procure and pay for the services of an independent testing and inspection agency registered in Georgia, and acceptable to and for the County. The Contractor shall submit testing and inspection agency qualifications and a comprehensive work plan specific to project to the Construction Manager, with a listing of testing and inspection work required by the Contract Documents, all of which shall be reviewed and accepted by the Construction Manager prior to commencement of any testing or inspection services. Services shall include but not be exclusive of the following:

- 7.7.1.1 Soils (below pavement, foundations and slabs)
- 7.7.1.2 Foundations (subgrade preparation, reinforcement and concrete)
- 7.7.1.3 Concrete work (subgrade preparation, reinforcement and concrete)
- 7.7.1.4 Structural steel connections
- 7.7.1.5 Masonry/Reinforced Masonry
- 7.7.1.6 Welding
- 7.7.2 If the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any portion of the Work to be inspected, tested or approved, the Contractor shall give the Construction Manager **forty-eight (48) hours advance notice** of its readiness so the Construction Manager and/or other representative of the County may observe such inspection, testing or approval. The Contractor shall bear all costs of such inspections, tests or approvals conducted by public authorities.
- 7.7.3 If the County, the Engineer, the Construction Manager, or public authority having jurisdiction determines that any Work requires special inspection, testing or approval which this Paragraph 7.7 does not include, the Construction Manager shall, upon written authorization from the County, instruct the Contractor to make arrangements for such special inspection, testing or approval, by an entity acceptable to the County, and the Contractor shall give notice as provided in Subparagraph 7.7.2 above. If such special inspection or testing reveals a failure of the Work to comply with the requirements of the Contract Documents, the Contractor shall bear all costs thereof, including compensation for the Engineer's, the Construction Manager's and/or other consultant's additional services made necessary by such failure, if any; otherwise the County shall bear such costs, and an appropriate Change Order shall be issued.
- 7.7.4 Required certificates of inspection, testing or approval shall be secured by the Contractor and the Contractor shall promptly deliver them to the Construction Manager.
- 7.7.5 If the County, the Engineer, the Construction Manager, or other consultant wishes to observe the inspections, tests or approvals required by the Contract Documents, they shall do so promptly and, where practicable, at the source of supply.
- 7.7.6 In the event notice of readiness pursuant to Subparagraph 7.7.2 above, shall have been issued prematurely by the Contractor, his action shall be deemed to be a "false start," and the Contractor shall be liable for the damage resulting from the aforesaid false start, including but not limited to, the salary, professional fees and travel and living expenses of the persons or parties inconvenienced by the false start.
- 7.7.7 Neither the observations of the County, the Engineer, or the Construction Manager, in their administration of the Contract, nor inspections, tests or approvals by persons other than the Contractor, shall relieve the Contractor from his obligations to perform the work in accordance with the Contract Documents.
- 7.7.8 Re-inspections and re-tests to confirm compliance after corrections have been made shall be paid for by the Contractor.
- 7.7.9 All references to standard specifications, American National Standards Institute (ANSI)

Standards, American Society for Testing and Materials (ASTM) Standards, or standard methods, trade association standards, or other material of like character in the Contract, shall mean the latest revision or edition of the pertinent standard or specification in effect as of the date of Bid submission unless a specific date is established in the Contract Documents.

- 7.7.10 Where these methods (ASTM designations; other test standards) or criteria have not been stipulated in the Contract Documents, the Contractor may contest the applicability of methods or criteria to be used or which have been used.
- 7.7.11 If any test indicates a failure to comply with Contract requirements, the Contractor, at its own expense and subject to the following conditions, may promptly undertake counter-testing for the purpose of demonstrating compliance with Contract requirements.
- 7.7.12 Counter-tests shall be undertaken and concluded within fourteen (14) days after notice to Contractor of failure of previously conducted tests. The testing agency shall be selected by the Contractor, but shall be subject to approval by the County, the Engineer, and/or the Construction Manager. Quantity and nature of counter-tests shall be determined by the County after consultation with the Contractor and others. The tests may be observed by the County's representatives and timely advance notice of date, hour and place shall be provided by the Contractor per Subparagraph 7.7.2 above. Application of Paragraph 13.2 of this Agreement is stayed pending reports on the counter-tests, provided that such reports are delivered within seven (7) days of completion of test.
- 7.7.13 If counter-tests demonstrate compliance with Contract requirements, and the Contractor has met the time requirements of Subparagraph 7.7.12 above, the County shall reimburse the Contractor for all definable costs of the counter-tests, as determined by the Construction Manager; and a Change Order shall be issued covering such costs and, if warranted, a reasonable extension of the Contract Time as determined by the Construction Manager. Otherwise, all responsibility for the costs and delays occasioned by the counter-tests shall remain with the Contractor.
- 7.7.14 If the counter-tests indicate defective work or failure to conform to the Contract Documents, the Engineer or the Construction Manager may reject the work, after which Paragraph 13.2 of this Agreement applies.
- 7.7.15 If the Contractor objects to the use of a test method or criterion which has not been stipulated in the Contract Documents, it shall so notify the Construction Manager at least seven (7) days prior to the start of the testing.
- 7.7.16 The Contractor shall provide the Construction Manager with a copy of all inspection and test reports. Reports indicating compliant results shall be distributed on white bond paper and reports indicating non-compliance for a specific test shall be distributed on yellow bond paper.

7.8 INTEREST

- 7.8.1 In no event shall interest be due and payable by the County to the Contractor, any subcontractor of any tier, or any other party on any of the sums the Contractor, any subcontractor of any tier, or any other party has submitted an Application for Payment for and receipt of payment by the Contractor from the County has not transpired, nor for funds retained by the County pursuant to any of the terms or provisions of any of the Contract Documents.

7.9 WORK PERFORMANCE & CONDUCT

- 7.9.1 In accordance with O.C.G.A. 36-10-2.1, the Contractor's performance under this Agreement shall be documented with the Fulton County Purchasing Department and may be used by the County in consideration for future contracts.
- 7.9.2 The Contractor shall be responsible for maintaining satisfactory standards of employees' competency, conduct, courtesy, appearance, honesty, and integrity, and shall be responsible for taking such disciplinary action with respect to any employee, as may be necessary.

7.9.3 The County may request the Contractor to immediately remove from this assignment and/or dismiss any employee found unfit to perform duties due to one or more of the following reasons:

7.9.3.1 Neglect of duty.

7.9.3.2 Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions or fighting.

7.9.3.3 Theft, vandalism, immoral conduct or any other criminal action.

7.9.3.4 Selling, consuming, possessing, or being under the influence of intoxicants, including alcohol, or illegal substances while on assignment for the County.

7.9.3.5 Other reasons that adversely affect the performance of the work.

7.10 SEVERABILITY

7.10.1 If any provision of this Agreement is held to be unenforceable by for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

7.11 FORCE MAJEURE

7.11.1 Neither the County nor the Contractor shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including, but not limited to, acts of God, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation, provided however, that nothing herein shall relieve or be construed to relieve the Contractor from performing its obligations hereunder in the event of riots, rebellions, or legal strikes.

ARTICLE 8

TIME

8.1 DEFINITIONS

- 8.1.1 Unless otherwise provided, the Contact Time is the period of time allotted in the Contract Documents from issuance of a Notice to Proceed to the Contractor's Substantial Completion of the Work as defined below, including authorized adjustments thereto.
- 8.1.2 The date of award of the Contract is the date specified in the Notice of Award. This is the date which should be used on the certificate of insurance, performance and payment bonds, and any other information required prior to the issuance of a Notice to Proceed by the County. This date shall also be the date entered in the Contract Documents on page 1 of this Agreement. In the event of a conflict between these dates, the date indicated in this Agreement shall prevail.
- 8.1.3 The date of commencement of the Work is the date established in the Notice to Proceed.
- 8.1.4 The Date of Substantial Completion of the Work or designated portion thereof is the date certified by the Engineer and the Construction Manager when construction is sufficiently complete, in accordance with the Contract Documents, so that the County or the County's separate contractors can occupy or utilize the Work or a designated portion thereof for the use for which it is intended. A Certificate of Occupancy is required to achieve Substantial Completion, as well as submission of complete and final project record documents to the Construction Manager for review, including record drawings, operation and maintenance manuals, warranties and other submittal requirements detailed in the General Requirements.
- 8.1.5 The Date of Final Completion of the Work is the date certified by the Engineer and the Construction Manager when all construction is fully complete, including rectification of all punch list items, and when all record documentation and other closeout items required by the Contract Documents have been reviewed and found acceptable by the Construction Manager.
- 8.1.6 The term "day" as used in the Contract Documents shall mean "calendar day" unless specifically designated otherwise.
- 8.1.7 The term "milestone" shall mean a date at which an intermediate portion of the Work must be completed, as indicated in the Contract Documents.

8.2 CONTRACT TIME LIMITS

- 8.2.1 **Milestones**: The Contractor shall begin the Work on the date specified in the Notice to Proceed. The Contractor shall carry the Work forward expeditiously with adequate forces and achieve the following interim milestones:
- 8.2.2 Substantial Completion of the Work: The Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion of the Work within **sixty (60) calendar days** after receipt of the Notice to Proceed, or this Contract shall be subject to termination by the County in addition to the imposition of damages as set forth herein.
- 8.2.3 Final Completion of the Work: The Work shall be fully completed sixty (60) calendar days thereafter receipt of the Notice to Proceed.

8.3 (not used)

8.4 DELAYS AND EXTENSIONS OF TIME

8.4.1 It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning and the time for completion of the Work, including any activities to be done hereunder are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Contract Time specified in this Contract shall commence on the date specified in the Notice to Proceed. The County and separate contractors are entitled to rely upon such dates which by its acceptance of this Contract, have been agreed upon by the Contractor.

8.4.2 The Contractor agrees that said Work shall be executed regularly, diligently and uninterruptedly at such rate of progress as shall insure full completion thereof within the time specified. It is expressly understood and agreed that the Contractor has considered all contingencies and factors affecting its ability to perform all the Work within the time specified, including among others, delays caused by bad weather and other possible delays caused by the industrial conditions prevailing in this locality, and after consideration of these factors, it has made an allowance for such factors before agreeing to the completion date specified in the Contract

Documents, and does, further, agree that all things considered, such completion date is a reasonable time for completion of all Work to be performed hereunder, without the need for any extension of time or any other reasons than those specified below.

8.4.3 Completion time shall be extended for normal bad weather. The following bad weather days per month shall be anticipated and included in the contractual time period given for project completion. The Contractor's request for additional time shall only be granted for days beyond those listed below for which work was actually significantly impeded or precluded by bad weather. The burden of proof and documentation for such request for additional time beyond the days shown below shall rest solely with the Contractor. Documentation must clearly show the additional weather days are historically unique to the area. No change in Contract Sum will be granted by the County for adjustments to the Contract Time due to weather.

January	10 days
February	10 days
March	7 days
April	6 days
May	4 days
June	3 days

July	4 days
August	2 days
September	2 days
October	2 days
November	5 days
December	9 days

8.4.3.1 (not used)

8.4.3.2 Only those days lost in excess of the cumulative allowable number of bad weather calendar days, according to the schedule above, will be considered.

8.4.3.3 Time extensions for time losses due to severe weather conditions will not be considered in fractions of less than one-half (1/2) day.

8.4.4 It is further agreed that time is of the essence of each and every portion of this Contract wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time is allowed for the completion of any of the Work, the new time limit fixed by such extension shall be of the essence of this Contract.

8.4.5 The County, Engineer, and Construction Manager shall not be responsible or liable to the Contractor for compensation, damages, expenses or any other costs as a result of, or due to any delays, impact and/or acceleration.

8.4.6 In no event shall delay damages be due resulting from the Contractor's submittal of a schedule

indicating early completion of the Work, regardless of whether such schedule is acknowledged or approved by the Construction Manager, which is then followed by the Contractor's subsequent completion of the Work on a later date but still within the Contract Time, regardless of cause.

- 8.4.7 If the Contractor is delayed at any time in the progress of the Work by any of the following causes, or by any other cause which the Construction Manager determines may cause the delay, then the Contract Time may be extended, without cost as a no cost change order, for such time as the Construction Manager may determine when the delay in completion of work is due:
- 8.4.7.1 to any preference, priority or allocation order duly issued by Government or the County.
 - 8.4.7.2 to unforeseeable cause beyond the control and without the fault or negligence of the Contractor, restricted to acts of God, or of the public enemy, acts of a separate contractor in the performance of the Contract with the County, fire, floods, epidemics, quarantine restrictions, strikes or labor disputes, freight embargoes or other unusual delays in transportation, and unusually severe weather in excess of normal weather losses allowed in Subparagraph 8.4.3 above.
 - 8.4.7.3 to any delays of subcontractors or suppliers occasioned by any of the causes specified except that delays occasioned by the failure of the Contractor, subcontractors, or suppliers to issue purchase orders with sufficient lead time to assure delivery by the date needed, and production line schedule delays of the product manufacturer, shall not be considered grounds for a time extension.
- 8.4.8 Provided further, that the Contractor shall, **within ten (10) days** from the beginning of such delay notify the County through the Construction Manager as agent for the County, in writing, of the causes of the delay for each delay caused by reasons other than the weather, and provide whatever supporting or substantiating information required by the Construction Manager. The Construction Manager shall, where possible, ascertain the facts and extent of the delay or delays for time extension, other than those caused by weather, filed by the Contractor and report his findings and recommendations to the County no less frequently than monthly. If the Construction Manager recommends a time extension, it shall be documented in a no cost change order. In cases where a time extension is filed, except those that are of a continuing nature and extend beyond the normal monthly reporting period stated herein, the Construction Manager shall ascertain the facts and render its recommendation **within thirty (30) days** of the receipt of the final data relating to the time extension.
- 8.4.9 If no agreement is made stating the dates upon which interpretations as provided in Subparagraph 2.3.8 of this Agreement shall be furnished, then no time extension for delay shall be allowed on account of failure to furnish such interpretations **until fifteen (15) days** after written request is made for them, and not then unless need for such time extension is clearly demonstrated to the Construction Manager, and that such request for interpretation shall have been made **prior to thirty (30) days** having elapsed since the receipt of the Notice to Proceed.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

- 9.1.1 The County shall pay the Contractor for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, a Contract Sum not to exceed the following amount:

\$ _____
(in numbers)

(in words)

The Contract Sum is determined as follows:

<u>Base Bid Amount (including Alternates)</u>	<u>\$</u>
<u>Deduct Alternate #</u>	<u>\$</u>
<u>Deduct Alternate #</u>	<u>\$</u>
<u>Deduct Alternate #</u>	<u>\$</u>
 <u>TOTAL BASE CONTRACT AMOUNT.</u>	 <u>\$</u>

9.1.1.1 UNIT PRICES

The County shall have the option of exercising any or all of the below Unit Prices at the proposed prices at any point in the project. All unit price amounts shall be items furnished and installed, based on project-specified materials. Bidders shall also provide a pricing list of prices associated with the following items:

UNIT PRICE AMOUNTS <i>All items furnished and installed, based on project-specified materials</i>			
Item No.	Description	Unit	Unit Price
Site Work			
1	Rock Removal & Off-Site Disposal	Cu. Yd.	\$
2	Unsuitable Soil Removal & Off-Site Disposal	Cu. Yd.	\$
3	Importing soil suitable for structural backfilling	Cu. Yd.	\$
4	Clearing and Grubbing	Acre	\$
5	Expanded Asphalt Base	SY	\$
6	Liquid Asphalt PG 67-22	Gallon	\$
7	Supplementary Aggregate or RAP	Ton	\$
8	Lime	Ton	\$
9	Portland Cement	Ton	\$
10	Test Roll Sub-grade	SY	\$
11	Furnish and Install 90 lb. rip rap	Cu. Yd.	\$
12	Furnish and Install Type 1 rip rap	Cu. Yd.	\$
13	Six Inch Concrete Slab with 6x6 6/6 wwm	SF	\$

14	Furnish and Install Geotextile Fabric	Sq. Yd.	\$
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9.1.2 The Contract Sum as stated herein, including authorized adjustments thereto by Change Order as provided in the Contract Documents, is the total amount payable by the County to the Contractor for the performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Construction Manager a Schedule of Values allocated to the various portions of the Work (including costs for design and other professional services), prepared in such form and supported by such data to substantiate its accuracy as the Engineer and the Construction Manager may require, and as is further defined in the General Requirements. This schedule, as approved by the Engineer and the Construction Manager, shall be used as the basis for the Contractor's Applications for Payment.

9.3 PAYMENTS

9.3.1 After the Construction Manager has issued a Certificate for Payment as described in Paragraph 9.5 below, the County shall, subject to the provisions of this Article and the General Requirements, pay the Contractor ninety (90) percent of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work, suitably stored at the site or at some other location agreed upon in writing by the parties as of the date the Application for Payment is submitted to the Construction Manager, less the aggregate of previous payments in each case.

9.3.2 No certification of an Application for Payment by the Construction Manager, any payment, or any partial or entire use or occupancy of the Project by the County, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

9.3.3 Neither the County, Engineer, or Construction Manager shall have any obligation to pay or to see to the payment of any monies to any subcontractor except as may otherwise be required by law.

9.3.4 The Contractor hereto expressly agrees that the payment provisions within this Article 9 shall supersede the rates of interest, payment periods, and contract and subcontract terms provide for under the Georgia Prompt Pay Act, O.C.G.A. 13-11-1 et seq., pursuant to 13-11-7(b), and the rates of interest, payment periods, and contract and subcontract terms provided for under the Prompt Pay Act shall have no application to this Contract.

9.3.5 The Contractor shall promptly pay each subcontractor upon receipt of payment from the County, out of the amount paid to the Contractor on account of such subcontractor's Work, the amount to which said subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such subcontractor's Work. The Contractor shall, by an appropriate agreement with each subcontractor, require each subcontractor to make payments to their sub-subcontractors in a similar manner.

9.3.6 The County reserves the right to inquire of the Contractor's subcontractors and suppliers directly or indirectly, to determine the current status of indebtedness. Should undisputed amounts be owed to any such subcontractors or suppliers, and upon seven (7) days written notice to the Contractor, the County may make checks payable jointly to the Contractor and the subcontractor or supplier, or directly to the subcontractor or supplier for the account of the Contractor in such amount. Payment to the Contractor or for its account shall not be deemed to be an admission or approval by the County of the sufficiency of the Work covered by such payment.

9.3.7 The County reserves the right to require the Contractor to designate on each check for payment exceeding four hundred dollars (\$400.00) to material suppliers, subcontractors or others that such payment is on account of the Work covered under this Contract.

9.4 APPLICATIONS FOR PAYMENT

9.4.1 Applications for Payment shall be submitted no more frequently than monthly to the Construction Manager. Each Application for Payment shall be supported by such data substantiating the Contractor's right to payment as the Construction Manager or the County may require, and reflecting retainage, if any, as provided for in the Contract Documents. The Construction Manager will forward a copy to the Engineer for its recommendations. Upon receipt of recommendations from the Engineer, the Construction Manager, after its own review, will determine the amount to be recommended for payment by the County, and shall certify its recommendation and forward a Certificate for Payment to the County for review and processing. Further provisions are contained in the General Requirements. Reference Section 01 025 of the General Requirements for procedural details.

9.4.2 The Contractor warrants that title to all Work, materials and equipment covered by an Application for Payment will pass to the County either by incorporation in the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in the Contract as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor on such other person.

9.4.3 Unless otherwise provided in the Contract Documents, payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Project site, and, if approved in advance by the County, payments may similarly be made for materials or equipment suitably stored at some other location agreed upon in writing. Payments for materials or equipment stored on or off the Project site shall be conditioned upon submission by the Contractor of bills of sale or other such procedures satisfactory to the County to establish the County's title to such materials or equipment or otherwise protect the County's interest, including applicable insurance and transportation to the Project site for those materials and equipment stored off of the Project site. Reference Section 01 025 of the General Requirements for detailed instructions.

9.4.4 The Prime Contractor must certify in writing and shall document on the Department of Contract Compliance Exhibit G Form (Prime Contractor's Subcontractor Utilization Report), that all Subcontractors and Suppliers have been promptly paid for work and materials and previous progress payments received (less any retainage by the Prime Contractor prior to receipt of any further progress payments). In the event the Prime Contractor is unable to pay Subcontractors and Suppliers until the Prime Contractor has received a progress payment from Fulton County, the Prime Contractor shall pay all Subcontractors or Suppliers funds due from said progress payments within 48 hours of receipt of payment from Fulton County.

9.5 CERTIFICATES FOR PAYMENT

9.5.1 The Construction Manager will with reasonable promptness upon receipt of the Contractor's Application for Payment, and with recommendations from the Engineer, review the Application for Payment and either issue a Certificate for Payment to the County with a copy for distribution to the Contractor for such amounts as the Construction Manager determines are properly due, or notify the Contractor in writing of the reasons for withholding a Certificate for Payment as provided in Subparagraph 9.6.1.

9.5.2 By issuing a Certificate for Payment, it shall not thereby be deemed to be represented that either the Engineer or the Construction Manager has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, has reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or

for what purpose the Contractor has used any monies previously paid on account of the Contract Sum.

9.6 PAYMENTS WITHHELD

- 9.6.1 The Construction Manager may decline to certify payment, and may withhold a certification for payment in whole or in part to the extent necessary to reasonably protect the County, if in the Construction Manager's opinion, the Construction Manager is unable to make representations as to the accuracy of the Application for Payment to reflect the current status of the Work. If the Contractor and the Construction Manager cannot agree on a revised amount, the Construction Manager shall promptly issue a Certificate for Payment for the amount for which the Construction Manager is able to make such representations. The Construction Manager may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, the Construction Manager may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary, in the Construction Manager's opinion, to protect the County from loss for several reasons including, but not limited to: 9.6.1.1 defective Work not remedied.
- 9.6.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims.
- 9.6.1.3 failure of the Contractor to make payments properly to subcontractors or subconsultants, or for labor, materials or equipment.
- 9.6.1.4 reasonable belief that the Work cannot be completed for the unpaid balance of the Contract Sum for the line items under discussion.
- 9.6.1.5 damage to the County or another contractor.
- 9.6.1.6 reasonable evidence that the Work will not be completed within the Contract Time; or
- 9.6.1.7 persistent or repeated failure to carry out the Work in accordance with the Contract Documents or written direction provided by the Construction Manager.
- 9.6.2 When the grounds above are removed, payment shall be made for amounts withheld.

9.7 SUBSTANTIAL COMPLETION

- 9.7.1 When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the County, is substantially complete, the Contractor shall prepare for the Construction Manager a list of items to be completed or corrected. The Contractor shall proceed to complete and correct items on the list. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- 9.7.2 Upon receipt of the Contractor's list of items to be completed or corrected, the Engineer, in conjunction with the County and the Construction Manager, shall make an inspection to determine that the Work or designated portion thereof is substantially complete. When the Engineer, on the basis of inspection and consultation with the County, and the Construction Manager determines that the Work or designated portion thereof is substantially complete, the Construction Manager will then prepare a Certificate of Substantial Completion of the Work, on the latest version of *AIA Document G704/CMA, Certificate of Substantial Completion – Construction Manager-Advisor Edition*, which shall establish the Date of Substantial Completion of the Work, shall state the responsibilities of the County and the Contractor for security, maintenance, damage to the Work and insurance, and shall fix the time within which the Contractor shall complete the items listed therein as incomplete or requiring correction. The Certificate of Substantial Completion shall be submitted to the County, the Engineer, the Construction Manager, and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

- 9.7.3 At no time shall a certification of Substantial Completion be considered for issuance unless a Certificate of Occupancy has been approved and received.
- 9.7.4 Prior to and as a condition of the Construction Manager issuing a Certificate of Substantial Completion, all Project Closeout Documents including, but not limited to project record documents (as-builts), operation and maintenance manuals, warranties and other documents, shall have been submitted to the Construction Manager for review and approval.
- 9.7.5 Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion of the Work or designated portion thereof. Warranties for Work that is not accepted by the County shall commence on a date when the Work is finally accepted by the County.
- 9.7.6 Reference Section 01 700 of the General Requirements for additional procedural details regarding Substantial Completion.

9.8 FINAL COMPLETION AND FINAL PAYMENT

- 9.8.1 Following issuance of the approved Certificate of Substantial Completion of the Work or designated portion thereof, and the Contractor's final completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Application for Payment. The Engineer, in conjunction with the County and the Construction Manager shall make such inspections and, when the Engineer finds the Work acceptable and fully performed, the Construction Manager shall certify the final Application for Payment, which will approve the final payment due the Contractor. This approval shall constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the Terms and Conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said certified final Application for Payment, is due and payable.
- 9.8.2 Final payment, including all remaining retainage, shall not become due until the Contractor submits to the Construction Manager,
 - 9.8.2.1 A notarized affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County or the County's property might in any way be responsible, have been paid or otherwise satisfied (*AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims*, latest version),
 - 9.8.2.2 Consent of Surety to Final Payment (*AIA Document G707*, latest version), and
 - 9.8.2.3 Other data establishing payment or satisfaction of all such obligations, including receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by the County (including, but not limited to, *AIA Document G706A, Contractor's Affidavit of Release of Liens*, latest version).

If any subcontractor or subconsultant refuses to furnish a release or waiver required by the County, the Contractor may furnish a bond satisfactory to the County to indemnify the County against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall refund to the County all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.
 - 9.8.2.4 All final Project Closeout Documents including, but not limited to project record documents (as-builts), operation and maintenance manuals, warranty manuals and other documents, shall have been finalized and re-submitted to the County for review and final approval and acceptance.

Reference Section 01 700 of the General Requirements for additional procedural details regarding Final Completion.

- 9.8.3 The making of final payment shall, after the Date of Substantial Completion, constitute a waiver of all claims by the County except those arising from:
- 9.8.3.1 unsettled liens;
 - 9.8.3.2 faulty or defective Work appearing after Substantial Completion of the Work;
 - 9.8.3.3 failure of the Work to comply with the requirements of the Contract Documents;
 - 9.8.3.4 terms of any special warranties required by the Contract Documents.
- 9.8.4 The acceptance of final payment shall, after the Date of Substantial Completion of the Work, constitute a waiver by the Contractor of all claims except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.
- 9.8.5 In the event the Contractor timely disputes the amount of final payment, the amount due the Contractor shall be deemed by the Contractor and the County to be an unliquidated sum, and no interest shall accrue or be payable on the sum finally determined to be due to the Contractor for any period prior to final determination of such sum, whether such determination be by agreement of the Contractor and the County or by final judgment of the proper court in the event of litigation between the parties. The Contractor specifically waives and renounces any and all rights it may have under O.C.G.A. 13-6-13 and agrees that in the event suit is brought by the Contractor against the County for any sum claimed by the Contractor under the Contract or for any extra or additional Work, no interest shall be awarded on any sum found to be due from the County to the Contractor in the final judgment entered in such suit. All final judgments shall draw interest at the legal rate, as specified by law.
- 9.8.6 All provisions of this Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment prior to the Date of Substantial Completion of the Work.

ARTICLE 10

SAFETY

- 10.1 OWNER-CONTRACTOR SAFETY, HEALTH AND LOSS PREVENTION PROGRAM
- 10.1.1 The Contractor shall be responsible for designing and implementing a comprehensive project-specific safety, health and loss prevention process and/or program and employee substance abuse program for this project. All subcontractors must either implement their own program that meets these requirements or follow the Contractor's safety, health and loss prevention process and/or employee substance abuse program.
- 10.1.2 Safety, health and loss prevention process and/or employee substance abuse program must meet or exceed all governmental regulations (OSHA, EPA, DOT, State, local), comply and other specific Fulton County requirements, and with any other safety, health and loss prevention requirements detailed in the contract documents including the requirements of the Contractor Safety and Health Management Process which is attached hereto and incorporated herein.
- 10.1.3 Within ten (10) business days of receipt of the Notice of Award (NOA), the Contractor shall submit in writing to the County's designated Representative, the Contractor's written Safety,

Health and Loss Prevention Process and/or Program and Employee Substance Abuse Program and those of Sub-Contractors that meet or exceed the requirements referenced in the contract documents. Included in this submittal will be the name and qualifications of the site safety representative.

Prior to issuing the Notice to Proceed (NTP), a meeting will be held with the Contractor and all Sub-Contractors to review the safety, health and loss prevention process and/or program requirements, submittals to be provided by the Contractor.

These program submittals must be reviewed and accepted by the County's designated Representative as meeting or exceeding safety, health, and loss prevention process and/or program requirements. A Notice To Proceed (NTP) with the work may not be issued until these submittals have been accepted.

10.2 DESIGNATION OF SAFETY REPRESENTATIVE

10.2.1 The Contractor will designate an employee by (name, phone number, pager number) as Site Safety Representative. This employee will have sufficient training and knowledge of safety and health principles, regulations, and procedures to report to the Contractor's Project Manager and/or Superintendent. Sub-Contractors must also designate a similar employee responsible for safety and health. The Sub-Contractor's safety designee will coordinate safety activities with the general contractor's safety designee.

For projects with significant risk or hazard potential or for any project for which the Contractor and its Sub-Contractors of any tier have 50 total employees or greater on site, Contractor must designate a qualified employee to be the full time Site Safety Representative. This person should address safety, health and loss prevention activities for the complete project including Sub-Contractors.

10.3 FULTON COUNTY'S SAFETY, HEALTH, AND LOSS PREVENTION PROCESS GUIDELINES & REQUIREMENTS

10.3.1 The County and its agents reserve the right, but assume no duty, to establish and enforce safety, health, and loss prevention guidelines and to make the appropriate changes in the guidelines, for the protection of persons and property and to review the efficiency of all protective measures taken by the Contractor. The Contractor shall comply with all safety, health, and loss prevention process guidelines and requirements and changes made by the County or its agent(s). The issuance of any such guidelines or changes by the County or its agent(s) shall not relieve the Contractor of its duties and responsibilities under this Agreement, and the County or its agent(s) shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the Contractor.

10.4 COMPLIANCE OF WORK, EQUIPMENT, AND PROCEDURES WITH ALL APPLICABLE LAWS & REGULATIONS

10.4.1 All Work, whether performed by the Contractor or its Sub-Contractors of any tier, or anyone directly or indirectly employed by any of them, and all equipment, appliances, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with

and conform to:

- (a) all applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other governmental authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act.
- (b) all rules, regulations, and requirements of the County or its agent(s) and its insurance carriers relating there to. In the event of a conflict or differing requirements the more stringent shall govern.

10.5 PROTECTION OF THE WORK

- 10.5.1 The Contractor shall, throughout the performance of the Work, maintain adequate and continuous protection of all Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the County and third parties from loss or damage from whatever cause arising out of the performance of the Work, and shall comply with the requirements of the County or its agent(s) and its insurance carriers, and with all applicable laws, codes, rules and regulations, (as same may be amended) with respect to the prevention of loss or damage to property as a result of fire or other hazards.
- 10.5.2 The County or its agent(s) may, but shall not be required to, make periodic inspections of the Project work area. In such event, however, the Contractor shall not be relieved of its aforesaid responsibilities and the County or its agent(s) shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the assurance of Contractor by this Agreement.

10.6 SAFETY EQUIPMENT

- 10.6.1 The Contractor shall provide to each worker on the Project work area the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Project work area who fails or refuses to use the same. The County or its agent shall have the right, but not the obligation, to order the removal of a worker from the Project work site for his/her failure to comply with safe practices or substance abuse policies, and the Contractor shall promptly comply with the Safety Program or Substance Abuse Program and all such orders.

10.7 EMERGENCIES

- 10.7.1 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the Contractor shall act immediately to prevent threatened damage, injury or loss and to remedy said violation. Failing such action the County or its agent(s) may immediately take whatever steps it deems necessary including, but not limited to, suspending the Work as provided in this Agreement.
- 10.7.2 The County or its agent(s) may offset any and all costs or expenses of whatever nature,

including attorneys' fees, paid or incurred by the County or its agent(s) (whether such fees are for in-house counsel or counsel retained by the County or its agent), in taking the steps authorized by Section 10.7.1 above against any sums then or thereafter due to the Contractor. The Contractor shall defend, indemnify and hold the County, its officers, agents, and employees harmless against any and all costs or expenses pursuant to Section 10.7.1, by whomsoever incurred. If the Contractor shall be entitled to any additional compensation or extension of time change order on account of emergency work not due to the fault or neglect of the Contractor or its Sub-Contractors, such additional compensation or extension of time shall be determined in accordance with Section 8 and Section 12 of this Agreement.

10.8 SUSPENSION OF THE WORK

Should, in the judgment of the County or its agent(s), the Contractor or any Sub-Contractor fail to provide a safe and healthy work place or fail to follow the safety requirements defined in the contract documents and approvals, the County or its agent shall have the right, but not the obligation, to suspend work in the unsafe areas until deficiencies are corrected. All costs of any nature (including, without limitation, overtime pay, liquidated damages or other costs arising out of delays) resulting from the suspension, by whomsoever incurred, shall be borne by the Contractor.

Should the Contractor or any Sub-Contractor fail to provide a safe and healthy work place or fail to follow the safety requirements defined in the contract documents and approvals after being formally notified in writing by the County or its agents of such non-compliance, the contract may be terminated following the termination provision of the contract.

10.9 CONTRACTOR'S INDEMNITY OF THE COUNTY FOR CONTRACTOR'S NON-COMPLIANCE WITH SAFETY PROGRAM

10.9.1 The Contractor recognizes that it has sole responsibility to assure its Safety Program is implemented and to assure its construction services are safely provided. The Contractor shall indemnify, defend and hold the County and its agents harmless, from and against any and all liability (whether public or private), penalties (contractual or otherwise), losses, damages, costs, attorneys' fees, expenses, causes of action, claims or judgments resulting, either in whole or in part, from any failure of the Contractor, its Sub-Contractors of any tier or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the safety requirements of the contract. The Contractor shall not be relieved of its responsibilities under the safety requirements of the Contract should the County or its agent(s) act or fail to act pursuant to its rights hereunder. The County and its agents shall not assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon the Contractor by this Agreement, by virtue of providing the Safety Program Guidelines.

10.9.2 The Contractor shall not raise as a defense to its obligation to indemnify under this Subparagraph 10.9 any failure of those indemnified hereunder to assure Contractor operates safely, it being understood and agreed that no such failure shall relieve the Contractor from its obligation to assure safe operations or from its obligation to so indemnify. The Contractor also hereby waives any rights it may have to seek contribution, either directly or indirectly, from those indemnified hereunder.

10.9.3 In any and all claims against those indemnified hereunder by any employee of the Contractor, any Sub-Contractor of any tier or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Subparagraph 10.9 shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the Contractor or any Sub-Contractor of any tier under any workers' compensation act, disability benefit or other employee benefit acts.

ARTICLE 11

INSURANCE

11.1 Owner- Controlled Insurance Program

11.2 CONTRACTOR'S LIABILITY INSURANCE

11.2.1 Contractor shall purchase and maintain during the life of this Agreement, from a company or companies licensed to do business in its agents and acceptable to the County, such insurance as shall fully protect him, the County, any other Professional Consultant or Engineer or Engineer hired by the County, and any parties, consultants, or Sub-Contractors performing work covered by this Agreement from any and all claims, including those resulting from bodily injury (including accidental death), professional liability of the property damage (other than to the work itself) or personal injury which may arise or result from the Contractor's operations under this Agreement, whether such operations be by himself or by any Sub-Contractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

(a) Said insurance shall specifically provide coverage during the life of this Agreement to the County, its agents, any Professional Consultant or Engineer or Engineer hired by the County, and any Sub-Contractor performing work covered by this Agreement for claims made by any persons, including the employees and parties in privity of the contract with the Contractor, claiming injury as a result of the performance of the Project.

(b) At a minimum, such insurance must include but not necessarily be limited to:

(i) Worker's Compensation and Employer's Liability insurance (**for all operations both at and away from the Project site**);

(ii) Motor Vehicle Liability insurance, covering all motor vehicles, whether owned, non-owned, or hired (**for all operations both at and away from the Project site**);

(iii) Comprehensive (or Commercial) General Liability insurance, with Broad Form Liability endorsement. Comprehensive (or Commercial) General Liability policy with Broad Form Liability endorsement shall be further endorsed naming County, the Construction Manager, and County's Professional Consultants as additional insured (**for all operations at and away from the Project site**).

(iv) Professional Liability insurance, specifying that the Contractor shall be responsible to the County for acts, errors and omissions of the Contractor's directors, officers, employees and parties in privity of the contract with the Contractor to perform a portion of the work, including their agents and employees (**for all operations both at and away from the Project site**). The Contractor shall require the engineers and the engineers that are responsible for the design and engineering to purchase and maintain liability insurance with no less coverage than \$1,000,000.00 or 10% of the construction value of the Work, whichever is greater, throughout the duration of the project and for two years following the Date of Substantial Completion.

11.2.2 The insurance required by Subparagraph 11.2.1 above shall be written for not less than the

following liability limits, or greater if required by law. Evidence of such insurance shall be provided PRIOR to the day of actual work being performed.

WORKERS COMPENSATION – STATUTORY (In compliance with the Georgia Workers Compensation Act)

EMPLOYER’S LIABILITY	BY ACCIDENT - EACH ACCIDENT	-	\$500,000.
INSURANCE	BY DISEASE - POLICY LIMIT	-	\$500,000.
(Aggregate)	BY DISEASE - EACH EMPLOYEE	-	\$500,000.

1. COMMERCIAL GENERAL LIABILITY INSURANCE (Including contractual Liability Insurance)

Bodily Injury and Property Damage Liability -Each Occurrence	-	\$1,000,000.
(Other than Products/Completed Operations) -General Aggregate	-	\$2,000,000.
Products\Completed Operation	Aggregate Limit	- \$1,000,000.
Personal and Advertising Injury	Limits	- \$1,000,000.
Fire Damage	Limits	- \$ 100,000.

2. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Combined Single Limits	Each Occurrence	-	\$1,000,000
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(Including operation of non-owned, owned, and hired automobiles).

3. ELECTRONIC DATA PROCESSING LIABILITY

(Required if computer contractor)	Limits	-	\$1,000,000
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4. UMBRELLA LIABILITY

(In excess of above noted coverage’s)	Each Occurrence	-	\$2,000,000
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5. PROFESSIONAL LIABILITY

	Each Occurrence	-	\$1,000,000
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(Required if respondent providing quotation for professional services).

6. FIDELITY BOND

(Employee Dishonesty)	Each Occurrence	-	\$ 100,000
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Note: The Contractor shall provide and shall require all Sub-Contractors performing work under this Agreement to obtain an insurance certificate showing proof of insurance coverage conforming to the above limits, and showing FULTON COUNTY GOVERNMENT as the “Certificate Holder” and “Additional Insured” without such certificate, the Contractor and any Sub-contractor cannot commence work.

ARTICLE 12

CHANGES IN THE WORK

12.1 CHANGE ORDERS

- 12.1.1 A Change Order is a written order to the Contractor signed to show the approval and the authorization of the County, issued after execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum or the Contract Time. Change Orders shall be written using the Fulton County Change Order format and processed per Fulton County Change Order Policy 800-6. The Contract Sum and the Contract Time may be changed only by Change Order presented to and approved by the Fulton County Board of Commissioners. A Change Order signed by the Contractor indicates the Contractor's agreement therewith, including the adjustment in either or both of the Contract Sum or the Contract Time.
- 12.1.2 The cost or credit to the County resulting from a change in the Work shall be determined in one or more of the following ways:
- 12.1.2.1 by mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - 12.1.2.2 by unit prices stated in the Contract Documents or subsequently agreed upon;
 - 12.1.2.3 by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
 - 12.1.2.4 by the method provided in Subparagraph 12.1.3 below.
- 12.1.3 If none of the methods set forth in Subparagraphs 12.1.2.1, 12.1.2.2 or 12.1.2.3 above is agreed upon, the Contractor, provided a written order signed by the Construction Manager is received, shall promptly proceed with the Work involved. The cost of such Work shall then be determined by the Construction Manager on basis of the reasonable expenditures and savings of those performing the Work attributable to the change. The cost of the change shall include only the items listed in Subparagraph 12.1.4.1 below, and in the case of either a decrease or an increase in the Contract Sum, an allowance for overhead and profit in accordance with Subparagraphs 12.1.4.2 and 12.1.5 below shall be applied to the cost or credit.
- 12.1.3.2 In such case, and also under Subparagraph 12.1.3.3 above, the Contractor shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting of all actual costs expended, together with appropriate supporting data for inclusion in a Change Order.
 - 12.1.3.2 All hourly rate charges shall be submitted to the Construction Manager for prior review and approval. All hourly rate charges shall be properly supported as required by the Construction Manager with certified payrolls, or their acceptable equivalent. When authorized to proceed for a given change and actual expenditures have been made prior to execution of a Change Order for the entire change, such actual expenditures may be summarized monthly, and if approved, incorporated into a Change Order. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.
- 12.1.4 In Subparagraphs 12.1.3 and 12.1.4 above, the items included in "Cost" and "Overhead" shall be based on the following schedule:
- 12.1.4.1 Unless otherwise provided in the Contract Documents, "Cost" shall be limited to the following: cost of materials incorporated into the Work, including sales tax and cost of delivery; cost of direct labor (labor cost may include a pro rata share of foreman's account of the change) including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; rental value of equipment and machinery; costs for preparing Shop Drawings.
 - 12.1.4.2 Unless otherwise provided in the Contract Documents, "Overhead" shall include the following: bond and insurance premiums including increase and decreases from change in the Work, supervision, superintendence, construction parking, wages of

timekeepers, watchmen and clerks, small tools, consumable supplies, expendables, incidentals, general office expense, the cost of additional reproduction for the Contractor's subcontractors beyond that agreed upon in the Contract Documents, construction parking, any additional costs of craft supervision by the Contractor's or subcontractors' superintendents, and overhead charges which would be customary and expended regardless of the change in the Work due to other overlapping activities which are included as part of the original Contract, and all other expenses not included in "Cost" above.

12.1.4.3 In the event that a change is issued by the County which would require the expenditure of substantial amounts of special supervision (beyond the foreman level) by the Contractor, the Contractor may, at the sole direction of the Construction Manager, be allowed to incorporate these charges into the agreement cost for the change.

12.1.5 In Subparagraphs 12.1.3 and 12.1.4 above, the allowance for overhead and profit combined, included in the total cost or credit to the County, shall be based on the following schedule:

12.1.5.1 For the Contractor, for any work performed by the Contractor's own forces, ten (10) percent of the cost.

12.1.5.2 For the Contractor, for any work performed by a Contractor's subcontractor, five (5) percent of the amount due the subcontractor.

12.1.5.3 For each subcontractor or sub-subcontractor involved, for any work performed by that subcontractor's or sub-subcontractor's own forces, ten (10) percent of the cost.

12.1.5.4 For each subcontractor, for work performed by a sub-subcontractor, five (5) percent of the amount due to the sub-subcontractor.

12.1.5.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 12.1.5 above unless modified otherwise.

12.1.6 In order to facilitate checking of quotations for extras or credits, all proposals or Bids, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor cost, materials and subcontracts. Labor and materials shall be itemized in the manner defined in Subparagraph 12.1.4 above. Where major cost items are subcontracts, they shall be itemized also. In no case shall a change be approved without such itemization.

12.1.7 No payment shall be made for any changes to the contract that are not included in a fully executed Change Order.

12.2 CONCEALED CONDITIONS

12.2.1 Should concealed conditions be encountered in the performance of the Work below the surface of the ground, or should concealed or unknown conditions in an existing structure be at variance with the conditions indicated by the Contract Documents, or should unknown physical conditions below the surface of the ground or concealed or unknown conditions in an existing structure 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, be encountered, the Contract Sum and Contract Time shall be equitably adjusted by Change Order upon request by either party made within five (5) days after the first observance of the conditions. No such request for equitable adjustment shall be valid unless the Contractor complies with this (20) days notice and Subparagraph 12.3.1 below.

12.3 REQUESTS FOR ADDITIONAL COST

12.3.1 If the Contractor wishes to request an increase in the Contract Sum, the Contractor shall give the Construction Manager written notice thereof within five (5) days after the occurrence of the event, or identification of the conditions, giving rise to such request.

This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.7 of this Agreement, and Subparagraph 12.1.4 above. **No such request shall be valid unless so made within the five (5) days specified above.** If the County and the Contractor cannot agree on the amount of the adjustment in the Contract Sum, it shall be determined by the Construction Manager. Any change in the Contract Sum resulting from such claim shall be documented by Change Order.

12.3.2 If the Contractor claims that additional cost is involved because of, but not limited to (1) any interpretation pursuant to Subparagraph 2.2.7 of this Agreement, (2) any order by the County to stop the Work pursuant to Paragraph 3.3 of this Agreement where the Contractor was not at fault, or any such order by the Construction Manager as the County's agent, or (3) any written order for a minor change in the Work issued pursuant to Paragraph 12.4 below, the Contractor shall submit a request for an increase in the Contract Sum as provided in Subparagraph 12.3.1 above. No such claim shall be valid unless the Contractor complies with Subparagraph 12.3.1 above.

12.4 MINOR CHANGES IN THE WORK

12.4.1 The Engineer and the Construction Manager will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued by the Construction Manager, and shall be binding on the County and the Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 13

UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK

13.1.1 If any portion of the Work should be covered contrary to the request of the Engineer or the Construction Manager, or to requirements specifically expressed in the Contract Documents, the work must, if requested in writing, be uncovered for their observation and shall be replaced at the Contractor's expense.

13.1.2 If any other portion of the Work has been covered which the Engineer or the Construction Manager has not specifically requested to observe prior to its being covered, either may request to see such Work and it shall be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be submitted to the Construction Manager. If such Work be found not in accordance with the Contract Documents, the Contractor shall pay such costs unless it be found that this condition was caused by the County or a separate contractor as provided in Article 6 of this Agreement, in which event the County shall be responsible for the payment of the cost of uncovering and replacing the cover, and the cost of repair of any damage to the Work shall be borne by the party responsible as provided in Article 6 of this Agreement.

13.2 CORRECTION OF WORK

13.2.1 The Contractor shall, within seven (7) days after notice, commence correction of all Work rejected by the Engineer or the Construction Manager as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion of the Work and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including compensation for the Engineer's and the Construction Manager's additional services made necessary thereby.

13.2.2 If within one (1) year after the Date of Substantial Completion of the Project or designated portion thereof, or within one year after acceptance by the County of designated equipment, or

within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall commence correction **within seven (7) days** after receipt of a written notice from the County to do so unless the County has previously given the Contractor a written acceptance of such condition. This obligation shall survive both final payment for the Work or designated portion thereof and termination of the Contract.

13.2.2.1 The warranty against defects in equipment and workmanship on all mechanical and electrical equipment and work shall be for the specified period of time of normal operation without breakdown or malfunction.

13.2.2.2 The warranty period for mechanical and electrical equipment shall begin at the Date of Substantial Completion of the Work or from the date the equipment is put into normal operation after a breakdown or malfunction that occurred after the Date of Substantial Completion of the Work, but before the date of Final Completion, whichever date is the later.

13.2.3 The Contractor shall remove from the site all portions of the Work which are defective or nonconforming and which have not been corrected under Subparagraphs 4.6.1, 13.2.1 and 13.2.2 of this Agreement, unless removal is waived by the County.

13.2.4 If the Contractor fails to correct defective or nonconforming Work as provided in Subparagraphs 4.6.1, 13.2.1, and 13.2.2 of this Agreement, the County may correct it in accordance with Paragraph 3.4 of this Agreement.

13.2.5 If the Contractor does not proceed with the correction of such defective or nonconforming Work within the time limits set herein, the County may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days thereafter, the County may, upon ten (10) additional days' written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor, including compensation for the Engineer's and the Construction Manager's additional services made necessary thereby. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the County.

13.2.6 The Contractor shall bear the cost of making good all Work of the County or separate contractors destroyed or damaged by correction or removal of defective work.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents, including Paragraph 4.6 of this Agreement. The establishment of the time periods noted in Subparagraph 13.2.2 above, or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents, relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NONCONFORMING WORK

13.3.1 If the County prefers to accept defective or nonconforming Work, the County may do so instead of requiring its removal and correction, in which case a Change Order shall be issued to reflect a reduction in the Contract Sum where appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 14

TERMINATION OF THE CONTRACT

14.1 TERMINATION FOR DEFAULT

- 14.1.1 This Contract may be terminated for default by the County upon the occurrence of any of the following events:
- 14.1.1.1 Persistent failure or refusal on the part of the Contractor to perform the Work in accordance with the Contract Documents, including, but not limited to, failure or refusal to supply enough properly skilled workers or suitable materials or equipment, or failure to adhere to the required construction scheduling responsibilities;
 - 14.1.1.2 Insolvency or bankruptcy of the Contractor, whether voluntary or involuntary;
 - 14.1.1.3 Any general assignment by the Contractor for the benefit of creditors;
 - 14.1.1.4 Appointment of a trustee, receiver, custodian, or agent of the Contractor for the benefit of creditors or for the purpose of enforcing a lien against the property of the Contractor;
 - 14.1.1.5 Written admission by the Contractor of its inability to pay its debts generally as they become due;
 - 14.1.1.6 Disregard on the part of the Contractor of laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction; or
 - 14.1.1.7 Substantial violation of any other provision of the Contract Documents.
- 14.1.2 Should any of the above events occur, and should the Contractor fail **within seven (7) days** after receipt of written notice to commence and continue correction of such default, neglect or violation with diligence and promptness, the County may, **after seven (7) days** following receipt by the Contractor of an additional written notice and without prejudice to any other remedy the County may have, terminate the services the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by or in the possession of the Contractor, and may finish the Work by whatever methods the County may deem expedient.
- 14.1.3 If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including compensation for the Construction Manager's, the Engineer's, and the County's other Professional Consultant's additional services made necessary thereby, such excess shall be paid to the Contractor. However, in such case the Contractor shall not be entitled to receive any payment until the Work is finished. If the cost of finishing the Work exceeds the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the County. The amount to be paid to the Contractor or to the County, as the case may be, shall be made, upon application, in the manner provided in Article 9 of this Agreement, and this obligation for payment shall survive the termination of the Contract.

14.2 TERMINATION FOR CONVENIENCE OF THE COUNTY

- 14.2.1 Immediately upon receipt of written notice to the Contractor, or within such time as may otherwise be specified in such notice, the County may, without cause and without prejudice to any other right or remedy, terminate this Contract, in whole or in part, for its convenience.
- 14.2.2 In the event of termination in accordance with Subparagraph 14.2.1 above, the Contractor shall be paid for all Work performed and acceptable to the County, and any expense sustained shall be limited to the cost of such Work plus reasonable termination expenses, to include costs required for an orderly shutdown of the Work on site.

14.3 TERMINATION PROVISIONS

- 14.3.1 After receipt of written notice of termination from the County pursuant to Paragraph 14.1 or 14.2, the Contractor shall:
- 14.3.1.1 Stop work on the date and to the extent specified in the notice of termination;
 - 14.3.1.2 Place no further purchase orders or subcontracts for materials, equipment, supplies, services, or facilities except as may be necessary for the completion of such portion of the Work under this Contract not terminated;
 - 14.3.1.3 Terminate all purchase orders and subcontracts to the extent that they relate to the performance of the Work terminated by the notice of termination;
 - 14.3.1.4 Assign to the County, in the manner, at the times, and to the extent directed by the County, all of the rights, title, and interests of the Contractor under the purchase orders and subcontracts so terminated, in which case the County shall have the right, at its discretion, to settle or pay any or all claims arising out of the termination of such purchase orders and subcontracts;
 - 14.3.1.5 Transfer title and deliver to the County, in the manner, at the times, and to the extent directed by the County:
 - a. The fabricated and unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with, the performance of the Work terminated by the notice of termination; and
 - b. The completed or partially completed plans, drawings, information, and other property related to the Work.
 - 14.3.1.6 Complete performance of such part of the Work as shall not have been terminated by the notice of termination.
- 14.3.2 The Contractor acknowledges and agrees that if any court rules that termination by the County was a wrongful termination, such action by the County shall be deemed a termination for convenience, and the Contractor shall only be entitled to recover legitimate expenses up to the time of termination, and shall not be entitled to fees, costs, expenses, profits, or overhead after the date of termination.

ARTICLE 15

NON-DISCRIMINATION IN CONTRACTING & PROCUREMENT

- 15.1.1 It is the policy of Fulton County that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the Board of Commissioners that Fulton County and all vendors and contractors doing business with it shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the Board without regard to the race, color, gender or national origin of the ownership of any such business. Similarly, it is the policy of Fulton County that the contracting and procurement practices of Fulton County should not implicate Fulton County as a passive participant in discriminatory practices engaged in by private contractors or vendors who seek to obtain contracts with Fulton County.
- 15.1.2 The above policy is formalized in the “Ordinance providing for non-discrimination in purchasing and contracting; to provide for the monitoring of purchasing and contracting by the Department of Contract Compliance; to provide for the investigation by the

Department of Contract Compliance regarding allegations of discrimination by persons or entities that do business with Fulton County; to provide for hearings regarding allegations of Discrimination; to provide for sanctions; and for other purposes”, established by the Fulton County Board of Commissioners on July 7, 1999.

15.1.3 A summary of the objectives and provisions of the ordinance, as well as forms required to be submitted by the Design/Builder, are included in Section 00 430 of the Bidding Manual.

ARTICLE 16

FULL PERFORMANCE REPRESENTATION

By executing this Agreement, the undersigned Contractor declares and represents that it has reviewed and understands the Contract Documents and has examined the site of the Work and informed itself fully in regard to all conditions pertaining to the place where the Work is to be done, including those conditions affecting the cost of the Work and the delivery, handling and storage of equipment and materials at the place where the Work is to be executed; that the Contractor and its subcontractors have examined and read the Contract Documents; and it has satisfied itself that the Contract Documents are an adequate and acceptable reflection of Work which is required to be performed; that it is willing and able to perform all of the necessary Work based upon the information and representations contained within the Contract Documents; and that it shall perform such necessary Work according the requirements of the Contract Documents, for the price prescribed, and within the time allotted. The Contractor hereby agrees that no additional information is required to complete the Work within the cost and schedule constraints established and agreed upon within this Agreement.

In witness whereof, the parties have executed this [**contract/agreement/amendment*] this _____ day of _____, 2005.

For **[Legal Name of Vendor], Inc.*

Attest:

**[Name of person signing for vendor]*

(Signature)

**[Title of person signing]*

(seal)

Name (Typed or Printed)

Title

For Fulton County

Attest:

Board of Commissioners

Mark Massey, County Clerk (seal)

Approved as to Content:

Approved as to Form:

John H. Culbreth, Director
Department of Parks and Recreation

Office of the County Attorney