



Department of Purchasing

REQUEST FOR PROPOSAL

#05RFP8304K

Public Works Project #W027

NORTH FULTON WATER SYSTEM IMPROVEMENTS DESIGN SERVICES

FOR

PUBLIC WORKS DEPARTMENT

Pre-Proposal Date/Time: Thursday, January 13, 2005 @ 2:00 pm

Last Date to Submit Written Inquiries: Friday, January 21, 2005 @ 5:00 pm

Proposal Submission Date/Time: Monday, January 31, 2005 @ 11:00 am, local time

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

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PURCHASING DEPARTMENT GENERAL REQUIREMENTS

REQUEST FOR PROPOSAL (RFP) FORM 99-RFP

THE FOLLOWING INFORMATION PERTAINS TO THE SUBMISSION OF PROPOSAL TO FULTON COUNTY, AND CONTAINS INSTRUCTIONS ON HOW PROPOSALS MUST BE PRESENTED IN ORDER TO BE CONSIDERED. IF SPECIFIC CONDITIONS OR INSTRUCTIONS IN THE TEXT OF THE RFP CONFLICT WITH THE GENERAL REQUIREMENTS AS LISTED HERE, THOSE CONDITIONS OR INSTRUCTIONS IN THE RFP SHALL PREVAIL.

1. PROPOSALS SUBMITTED IN RESPONSE TO THE ATTACHED REQUEST FOR PROPOSAL (RFP) MUST BE FORMATTED AS SPECIFIED IN THE RFP. ADDITIONAL SHEETS, LITERATURE, ETC. SHOULD BE CLEARLY IDENTIFIED.
2. THE ORIGINAL AND THE REQUIRED NUMBER OF COPIES OF THE PROPOSAL MUST BE RETURNED TO:
FULTON COUNTY PURCHASING AGENT
FULTON COUNTY PURCHASING DEPARTMENT
130 PEACHTREE STREET, S.W., SUITE 1168
ATLANTA, GA. 30303
3. THE ENVELOPE IN WHICH THE PROPOSAL IS SUBMITTED MUST BE SEALED AND CLEARLY LABELED WITH THE RFP NAME AND NUMBER, DUE DATE AND TIME, AND THE NAME OF THE COMPANY OR INDIVIDUAL SUBMITTING THE PROPOSAL. PROPOSALS MUST BE RECEIVED BY THE OPENING DATE AND TIME SHOWN ON THIS RFP IN ORDER TO BE CONSIDERED. THE PURCHASING AGENT RESERVES THE RIGHT TO OPEN ANY PROPOSAL WHICH IS NOT MARKED AS SPECIFIED.
4. PROPOSALS RECEIVED AFTER THE TIME AND DATE SPECIFIED MAY NOT BE OPENED OR CONSIDERED.
5. BY SUBMITTING A SIGNED PROPOSAL, RESPONDENT AGREES TO ACCEPT AN AWARD MADE AS A RESULT OF THE SUBMISSION OF THE PRICES AND TERMS CONTAINED IN THAT PROPOSAL. PRICES PROPOSED MUST BE AUDITED BY THE RESPONDENT TO INSURE CORRECTNESS BEFORE PROPOSAL IS SUBMITTED. PERSON SIGNING THE PROPOSAL IS RESPONSIBLE FOR THE ACCURACY OF INFORMATION IN IT. THE RESPONDENT UNDERSTANDS AND AGREES THAT THE PROPOSAL, SPECIFICATIONS, PROVISIONS, AND THE TERMS AND CONDITIONS OF THE RFP BECOME A VALID CONTRACT BETWEEN FULTON COUNTY AND THE RESPONDENT UPON NOTICE OF AWARD OF CONTRACT IN WRITING AND/OR ISSUANCE OF A PURCHASE ORDER.
6. ANY CONTRACT AWARDED AS A RESULT OF THIS PROPOSAL SHALL COMPLY FULLY WITH ALL LOCAL, STATE, AND FEDERAL LAWS AND REGULATIONS.
7. THE COUNTY RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS.

8. ABSOLUTELY NO FAX PROPOSALS OR REPRODUCTION PROPOSALS WILL BE ACCEPTED, EXCEPT THAT IF MULTIPLE COPIES OF THE PROPOSAL ARE REQUIRED, PHOTO-COPIES OF THE ORIGINAL MAY BE SUBMITTED AS THE EXTRA COPIES, PROVIDED THAT THEY ARE CLEARLY MARKED AS SUCH.
9. TYPE OR NEATLY PRINT COMPANY NAME, AS WELL AS THE FULL LEGAL NAME AND TITLE OF THE PERSON SIGNING THE PROPOSAL, IN ALL APPROPRIATE PLACES. THE RESPONDENT'S SIGNATURE MUST BE EXECUTED BY A PRINCIPAL OF THE COMPANY DULY AUTHORIZED TO MAKE CONTRACTS AND BIND THE COMPANY TO ALL TERMS BEING PROPOSED.
10. PROPOSALS MAY BE WITHDRAWN UPON RECEIPT OF A WRITTEN REQUEST PRIOR TO THE STATED DUE DATE AND TIME. IF A FIRM SEEKS TO WITHDRAW A PROPOSAL AFTER THE DUE DATE AND TIME, THE FIRM MUST PRESENT A NOTARIZED STATEMENT INDICATING THAT AN ERROR WAS MADE, WITH AN EXPLANATION OF HOW IT OCCURRED. THE WITHDRAWAL REQUEST MUST BE ACCOMPANIED BY DOCUMENTATION SUPPORTING THE CLAIM. PRIOR TO APPROVING OR DISAPPROVING THE REQUEST, AN OPINION WILL BE OBTAINED FROM FULTON COUNTY'S LEGAL COUNSEL INDICATING WHETHER THE FIRM IS BOUND BY ITS PROPOSAL.
11. 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 IN 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.
12. PROPOSE ALL ITEMS AS SPECIFIED OR INDICATE UNDER EACH ITEM WHAT ALTERNATIVE IS BEING PROPOSED AND WHY IT SHOULD BE CONSIDERED IN LIEU OF THE ORIGINAL SPECIFICATION. FAILURE TO INDICATE ANY EXCEPTIONS SHALL BE INTERPRETED AS THE RESPONDENT'S INTENT TO FULLY COMPLY WITH THE SPECIFICATIONS AS WRITTEN. CONDITIONAL OR QUALIFIED PROPOSALS - EXCEPT AS SPECIFICALLY ALLOWED IN THE SPECIFICATIONS - ARE SUBJECT TO REJECTION IN WHOLE OR IN PART.
13. FULTON COUNTY SHALL BE THE SOLE JUDGE OF THE QUALITY AND THE APPLICABILITY OF ALL PROPOSALS. DESIGN, FEATURES, OVERALL QUALITY, LOCAL FACILITIES, TERMS, AND OTHER PERTINENT CONSIDERATIONS WILL BE TAKEN INTO ACCOUNT IN DETERMINING ACCEPTABILITY.
14. THE SUCCESSFUL VENDOR MUST ASSUME FULL RESPONSIBILITY FOR DELIVERY OF ALL GOODS AND SERVICES PROPOSED AND AGREE TO RELIEVE FULTON COUNTY OF ALL RESPONSIBILITY AND COSTS FOR PROSECUTING CLAIMS.

15. THE SUCCESSFUL VENDOR MUST ASSUME FULL RESPONSIBILITY FOR RE-PLACEMENT OF ALL DEFECTIVE OR DAMAGED GOODS AND/OR PERFORMANCE OF CONTRACTED SERVICES WITHIN THIRTY (30) DAYS NOTICE BY THE COUNTY OF SUCH DEFECT, DAMAGE, OR DEFICIENCY.
16. THE SUCCESSFUL VENDOR MUST ASSUME FULL RESPONSIBILITY FOR PROVIDING WARRANTY SERVICE ON ANY AND ALL GOODS, MATERIALS, OR EQUIPMENT PROVIDED TO THE COUNTY WITH WARRANTY COVERAGE. SHOULD A VENDOR BE OTHER THAN THE MANUFACTURER, THE VENDOR AND NOT THE COUNTY IS RESPONSIBLE FOR CONTACTING THE MANUFACTURER. THE VENDOR IS SOLELY RESPONSIBLE FOR ARRANGING FOR THE SERVICE TO BE PERFORMED.
17. THE SUCCESSFUL VENDOR SHALL BE RESPONSIBLE FOR THE PROPER TRAINING AND CERTIFICATION OF PERSONNEL USED IN THE PERFORMANCE OF THE SERVICES PROPOSED.
18. THE SUCCESSFUL VENDOR SHALL NOT ASSIGN, TRANSFER, CONVEY, SUBLET, OR OTHERWISE DISPOSE OF ANY CONTRACT RESULTING FROM THE RFP OR OF ANY OR ALL OF ITS RIGHTS, TITLE, OR INTEREST THEREIN WITHOUT PRIOR WRITTEN CONSENT OF THE FULTON COUNTY BOARD OF COMMISSIONERS.
19. PROPOSALS MUST CONTAIN REFERENCES WHICH REFLECT SUCCESSFUL COMPLETION OF CONTRACTS FOR THE TYPES OF GOODS, MATERIALS, EQUIPMENT, OR SERVICES FOR WHICH THE VENDOR IS SUBMITTING A PROPOSAL TO THE COUNTY. IN INSTANCES WHERE THAT DOES NOT APPLY, THE PROPOSAL MUST CONTAIN A STATEMENT AND SUPPORTING DOCUMENTATION DEMONSTRATING SUCH EXPERTISE, KNOWLEDGE, OR EXPERIENCE TO ESTABLISH THE VENDOR SUBMITTING THE PROPOSAL AS CAPABLE OF MEETING THE DEMANDS OF THE PROPOSAL SHOULD AN AWARD BE MADE TO THEM.
20. VENDORS SUBMITTING PROPOSALS MAY BE REQUIRED TO FURNISH EVIDENCE THAT THEY MAINTAIN PERMANENT PLACES OF BUSINESS OF A TYPE AND NATURE COMPATIBLE WITH THEIR PROPOSAL, AND ARE IN ALL RESPECTS COMPETENT AND ELIGIBLE VENDORS, ABLE TO FULFILL THE TERMS OF THE SPECIFICATIONS. FULTON COUNTY MAY MAKE SUCH INVESTIGATIONS AS IT DEEMS NECESSARY TO DETERMINE THE ABILITY OF THE RESPONDENT TO PERFORM SUCH WORK, AND RESERVES THE RIGHT TO REJECT ANY PROPOSAL IF EVIDENCE FAILS TO INDICATE THAT THE PROPOSED VENDOR IS QUALIFIED TO CARRY OUT THE OBLIGATION OF THE CONTRACT AND TO COMPLETE THE WORK SATISFACTORILY.
21. BY SUBMITTING A SIGNED PROPOSAL, RESPONDENT CERTIFIES THAT THERE HAS BEEN NO COLLUSION WITH ANY OTHER RESPONDENT. REASONABLE GROUNDS FOR BELIEVING RESPONDENT HAS AN INTEREST IN MORE THAN ONE PROPOSAL WILL RESULT IN REJECTION OF ALL PROPOSALS IN WHICH THE RESPONDENT HAS AN INTEREST. ANY PARTY TO COLLUSION MAY NOT BE CONSIDERED IN FUTURE

PROPOSALS FOR THE SAME OR SIMILAR WORK.

22. UPON NOTICE OF SELECTION, THE VENDOR SUBMITTING THE PROPOSAL IS OBLIGATED TO PERFORM. SHOULD A SUCCESSFUL VENDOR REFUSE TO ENTER INTO A CONTRACT SUBSEQUENT TO AN AWARD, A PENALTY MAY BE ASSESSED AND/OR THE VENDOR MAY BE FOUND TO BE "NOT RESPONSIBLE" IN THE FUTURE.
23. IN CASE OF DEFAULT BY THE SUCCESSFUL VENDOR, FULTON COUNTY MAY PROCURE THE ARTICLES OR SERVICES FROM ANOTHER SOURCE AND HOLD THE SUCCESSFUL VENDOR RESPONSIBLE FOR ANY RESULTANT EXCESS COST.
24. SUCCESSFUL VENDORS CONTRACT DIRECTLY WITH THE 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 VENDOR BEING FOUND TO BE "NOT RESPONSIBLE" IN THE FUTURE.
25. 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 WHOM THE SERVICE OR PRODUCT WAS PROVIDED.
26. FULTON COUNTY RESERVES THE RIGHT TO ACCEPT OR REJECT ANY OR ALL PROPOSALS, OR ANY PART THEREOF, AND TO WAIVE ANY TECHNICALITIES. FULTON COUNTY RESERVES THE RIGHT TO AWARD A CONTRACT BASED ON THIS REQUEST FOR PROPOSAL AND THE PROPOSAL(S) RECEIVED - IN WHOLE OR IN PART - TO ONE OR SEVERAL VENDORS.
27. AWARDS WILL NOT NECESSARILY BE BASED ON COST ALONE. OTHER FACTORS, AS DETAILED IN THE RFP, WILL BE CONSIDERED IN DETERMINING WHAT PROPOSAL WILL BE DEEMED TO BEST MEET THE NEEDS OF FULTON COUNTY.
28. IF YOU DO NOT WISH TO FURNISH A PROPOSAL AT THIS TIME, PLEASE RETURN A COPY OF THE RFP AND STATE ON IT AND ON THE OUTSIDE OF THE ENVELOPE THAT YOU ARE SUBMITTING A "NO RESPONSE". YOU MUST STATE IN THE RESPONSE WHETHER YOUR COMPANY WISHES TO REMAIN ON FULTON COUNTY'S VENDOR LIST.
29. ALL PROPOSALS AND BIDS SUBMITTED TO FULTON COUNTY ARE SUBJECT TO THE GEORGIA "OPEN RECORDS ACT", O.C.G.A. §50-18-70 ET SEQ.
30. ALL PROPOSALS AND BIDS SUBMITTED TO FULTON COUNTY INVOLVING UTILITY CONTRACTING ARE SUBJECT TO THE GEORGIA LAW GOVERNING LICENSING OF UTILITY CONTRACTORS AND RFP CLOSING PROCEDURES, O.C.G.A. 43-14-8.2 (H).
31. PRIOR TO BEGINNING ANY WORK, SUCCESSFUL CONTRACTOR WILL FURNISH TO FULTON COUNTY (FOR THE CONTRACTING FIRM AND FOR ANY SUBCONTRACTORS) A CERTIFICATE FROM AN INSURANCE COMPANY SHOWING ISSUANCE OF WORKERS'

COMPENSATION COVERAGE FOR THE STATE OF GEORGIA OR A CERTIFICATE FROM THE GEORGIA WORKERS' COMPENSATION BOARD SHOWING PROOF OF ABILITY TO PAY COMPENSATION DIRECTLY.

32. 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.
33. 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.
34. 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 NOT RESPONSIVE, AND SAME SHALL NOT THEREAFTER BE CONSIDERED FOR AWARD.
35. ANY OFFEROR INTENDING TO RESPOND TO THIS SOLICITATION AS A JOINT VENTURE MUST SUBMIT AN EXECUTED JOINT VENTURE AGREEMENT WITH THIS OFFER. 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 BE ACCOMPANIED BY A DOCUMENT, BINDING UPON THE JOINT VENTURE AND ITS CONSISTENT MEMBERS, MAKING SUCH DESIGNATION. OFFERS FROM JOINT VENTURES THAT DO NOT INCLUDE THESE DOCUMENTS WILL BE REJECTED AS BEING NON-RESPONSIVE.

SECTION I: GENERAL REQUIREMENTS

1.0 PURPOSE

The Fulton County Purchasing Department solicits proposals from qualified and experienced vendors to provide Design Services for the North Fulton Water System Improvements Design Services Project, #W027 and to establish a contract for the Scope of Work identified within this Request for Proposal.

1.1 DESCRIPTION OF PROJECT

Project Background:

Fulton County owns, operates and maintains a potable water distribution system that supplies water from the Atlanta/Fulton County Water Treatment Plant (A/FCWTP) to residential, commercial, and industrial customers throughout North Fulton County. For more than two decades, Fulton County has continually developed and expanded the North Fulton County Water Distribution System to meet increasing system demands. The current average daily demand is approximately 30 MGD, peak day demand is 56 MGD, and peak hour demand is in excess of 100 MGD.

The North Fulton County Water Distribution System is comprised of over 350 miles of water distribution mains ranging in size from 8-inches to 48-inches in diameter, a system storage volume of 14 MG, and is energized by high service pumps located at A/FCWTP. The system currently operates on a single pressure zone with all tank overflows set at an elevation of 1284 feet.

Water System Modeling:

Since the late 1980's, Fulton County has used hydraulic pipe network models as the basis for making decisions on system improvements in North Fulton County. The first of these models was developed by Jordan, Jones, & Goulding, Inc. in the late 1980's. Havens and Emerson/Montgomery Watson developed upgrades to the model in the 1990's. Most recently, Metcalf & Eddy updated the model in 2003.

The current hydraulic model accounts for actual system improvements to the system made during the 1990's as well as adjustments to current and projected water system demands. The model consists of 525 line segments, 320 nodes, and is set up to run current and projected flow demands including average daily demand, maximum day demand (with and without the fire flow demand imposed), and peak hour demand in five year increments from 2005 till 2020. The model was then calibrated from a combination of data from existing records as well as field tests. Recommendations for system improvements to meet anticipated future conditions were then made and accepted by Fulton County.

Unlike the earlier system recommendations, M&E recommends that the system be developed, operated and maintained as three (3) separate pressure zones. This provides adequate pressure to customers at higher elevations while maintaining more reasonable pressures to customers at lower elevations. The multiple zone system provides more consistent pressures and reduces pumping costs. To implement an effective three-zone system, several changes need to be implemented to the current water distribution system. These include:

1. Isolation of the existing water distribution system into three zones by installing a combination of backflow prevention valves, pressure reducing (or sustaining) valves and/or line terminations. On some of the existing lines, looping into other existing lines within the same pressure zone may be a consideration.

2. Construction of booster pump stations to transfer water from one pressure zone to the next. The booster pump stations will also control the flow and pressure in Zone 2 and Zone 3. The pumps at the A/FCWTP will control the pressure in Zone 1.
3. Modifications to existing water tanks to allow them to function in the three-zone system. These tanks were designed and constructed to serve a single pressure zone system. The tanks will require replacement or additional piping, control valves and booster pumps to be fully functional in an effective three-zone system.

Operation/Monitoring of Water System:

Fulton County has a water services department located on Maxwell Road in Alpharetta. Presently, storage tanks are monitored at this site via a radio based SCADA System. The data is monitored with Wonderware software human machine interface (HMI) and is shared by radio with the A/FCWTP. The A/FCWTP monitors tank levels via analog signals that are displayed on panel mounted digital indicators. The Maxwell Road Facility monitors tank levels, system pressure, and valve status and has valve control capabilities. Under normal operations, A/FCWTP discharge pressures and flow are predetermined based upon historical data. Should the level in a tank fall below an ideal level, the Fulton County water superintendent contacts the A/FCWTP for more pressure/flow until the tank level stabilizes. The operation of the water distribution system is very much operated by a “hands-on” approach. The selected engineer will design a more advanced and fully automated operation/control system. See scope of services.

Description of Work

This project consists of 1) the confirmation of the current model, the conceptual development of a three-zone system, and a complete comprehensive design to develop a fully automated, three-zone water distribution system for North Fulton County. The approximate area and boundaries of the project are shown in Figure 1. The purpose of this project is to develop the requirements of an integrated three-zone water system for North Fulton County to meet the County’s needs through the year 2020.

The Engineer will be responsible for the following Tasks:

Task A: Hydraulic Analysis of the North Fulton County Water Distribution System using the County’s H2O Net Model.

1. Fulton County has recently expanded and calibrated its hydraulic model of the North Fulton Water System for water mains 8 inches in diameter and larger. The current model is calibrated at an accuracy within approximately 10% and will be available to the Engineer.
2. The Engineer will run the current model using (a) average day demand conditions, (b) maximum day conditions (with and without fire-flow demands imposed), and (c) peak hour demands for 5-year intervals from 2005 through 2020. The engineer shall identify the recommended boundaries of each pressure zone along with recommendations as to how the zone separations will be accomplished. Additional scenarios will be required for system development and detailed design.
3. The location and size of booster pump stations shall be identified along with the recommended service datum elevation for each pressure zone and each existing and proposed tanks.

Task B: Creating a Preliminary Design and System Transitioning Plan.

The transition of the North Fulton Water System is highly sensitive. As such, the Engineer shall submit a Preliminary Design and System Transitioning Plan. The Preliminary Design shall include the major system improvements and its configuration. The System Transitioning Plan shall layout a sound technical strategy for changing the system from a single pressure zone system to three separate pressure zones.

Task C: Create detailed design drawings, plans, and specifications.

The selected Engineer will create and submit a detailed design drawings, design plans, and specifications as required by Article 4 – “Scope of Services” of the Agreement.

Task D: Acquire Permits.

The selected Engineer will acquire the appropriate Land Disturbance Permits and Transportation Permits as required for construction.

Task E: Provide Engineering Construction Services.

The selected Engineer will provide engineering construction services as required by Article 4 – “Scope of Services” of the Agreement.

The engineering and design services described herein (Tasks A through Task D) shall be completed within 240 calendar days following the Notice to Proceed. The Engineering Construction Services (Task E) described in Article 4 – “Scope of Services” of the Agreement shall be completed within 365 calendar days following the Notice to Proceed of the selected contractor.

1.2 TERM OF CONTRACT

The term of the contract will be from date of award by the Fulton County Board of Commissioners through December 31, 2005.

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 proposal 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 proposals 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 proposal; 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 PROPOSAL CONTACT

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

**Fulton County Purchasing Department
Attn: William Long, Purchasing Agent
130 Peachtree Street S.W., Suite 1168
Atlanta, GA 30303
Phone: (404) 730-5800
Fax: (404) 893-1744
Reference RFP#05RFP8304K**

1.5 PRE-PROPOSAL CONFERENCE

Date/Time: Thursday, January 13, 2005 @ 2:00 pm, local time
Location: Fulton County Purchasing Department, Public Safety Building
130 Peachtree St., S.W. Suite 1168
Atlanta, Georgia, 30303

A non-mandatory pre-proposal conference will be held in the Fulton County Purchasing Department Conference Room, located at, 130 Peachtree St., SW, Suite 1168, Atlanta, Georgia, 30303, however all prospective bidders are urged to attend. *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.* Any 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-proposal 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 proposal specifications and to discuss issues from the Proposer's perspective. However, no verbal response provided at the pre-proposal 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 request for proposal, the County will attempt to notify all prospective proposers who have secured same; however, it shall be the responsibility of each proposer, prior to submitting the proposal, 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 proposal. 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 Friday, January 21, 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 proposal and the proposal RFP 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 PROPOSAL SUBMITTAL

Proposals shall clearly indicate the legal name, address, and telephone number of the proposer (company, firm, partnership, individual). Proposals shall be signed above the typed or printed name and title of the signer. The signer shall have the authority to bind the proposer to the submitted proposal. Proposals shall be publicly received. Only the names of the offerors will be disclosed at the opening.

- One (1) original and ten (10) copies of your **TECHNICAL** proposal must be submitted in one sealed package, clearly marked on the outside.
- One (1) original and two (2) copies of the **COST** proposal must be submitted in one sealed package, clearly marked on the outside.
- One (1) original and one (1) copy of the **CONTRACT COMPLIANCE FORMS** must be submitted in one sealed package, clearly marked on the outside.
- Three (3) copies of the Firms **AUDITED FINANCIAL DOCUMENT** must be submitted in one sealed package, clearly marked on the outside.
- One (1) original and one (1) copy of the **Proposal Exhibits** must be submitted in one sealed package, clearly marked on the outside.

EACH SUBMISSION PACKAGE MUST BE CLEARLY LABELED AS FOLLOWS

Fulton County Department of Purchasing
130 Peachtree Street, S.E., Suite 1168
Atlanta, Georgia 30303
RFP NUMBER: 05RFP8304K

1.8 LATE PROPOSALS/MODIFICATIONS

Late Proposals/Late Modifications: Proposals or modifications received after the proposal due date and time

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

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

1.9 PROPOSAL DEVELOPMENT EXPENSE

Any and all expenses for making proposals to the County are to be the responsibility of the proposer.

1.10 IRREVOCABLE OFFER

No Proposal may be modified, withdrawn, or cancelled by the Proposer for ninety (90) days following the date and time designated for receipt of Proposals, and each Proposer so agrees in submitting its Proposal. All adjustment factors shall remain valid during this time period unless noted otherwise.

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

1.11 RESERVED RIGHTS

Fulton County reserves the right to accept or reject any and/or all proposals, 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 proposer providing the lowest cost proposal and the County reserves the right to award the contract to the responsible proposers submitting responsive proposals with resulting agreements most advantageous and in the best interest of the County. The County shall be the sole judge of the proposals 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 proposal 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.

1.14 AVAILABILITY OF DOCUMENTS

Availability of Documents: Copies of the Request for Proposal documents will be available on hard copy at the Pre-proposal 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 selecting “**Bid Opportunity.**”

1.15 EXAMINATION OF CONTRACT DOCUMENTS

Prospective Proposers shall examine the Contract Documents and, before submitting a proposal, 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 proposer. At the time of the opening of proposals, each proposer 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 proposal process may be obtained by contacting William Long, Purchasing Department at **404-730-5800** or by writing to William Long, Chief Assistant Purchasing Agent, 130 Peachtree Street, Suite 1168, Atlanta, Georgia 30303.

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 proposal submission that the County’s decision is final and valid.

1.18 OWNER-CONTROLLED INSURANCE PROGRAM

Fulton County has implemented an Owner-Controlled Insurance Program ("OCIP") that covers this Project. Certain relevant provisions of the County’s OCIP are outlined below. This OCIP does not affect Fulton County Government’s statutory immunity. Under the OCIP, the County shall **furnish certain**

portions of the Workers' Compensation, General Liability, and Builder's Risk insurance associated with the County's construction projects. Insurance furnished under the OCIP covers the County, the Contractor and its Sub-Contractors of all tiers (with some exceptions, as described below), and other persons or interests as the County may designate in connection with the performance of the Work. As detailed below, the **Contractor** still provides certain other portions of insurance coverage not included in the OCIP.

DEFINITIONS SPECIFIC TO THIS ARTICLE 11

“Owner-Controlled Insurance Program” (OCIP) means an insurance delivery method that assures the Contractor, and its Sub-Contractors of all tiers, and other persons or interests as the County may designate in connection with the performance of the work are insured for certain prescribed Statutory Workers' Compensation, Employers Liability and Commercial General Liability, and such other coverages as the County may in writing specifically add or delete for the Project.

“OCIP Administrator” means the administrator retained by the County to implement and administer the OCIP. The OCIP Administrator is Resurgens Risk Management/Willis.

The term “enrolled” applies to the entities covered under the OCIP. The Contractor is enrolled in the OCIP. The Contractor's Sub-Contractors of all tiers shall be enrolled in the OCIP, provided in general that they are performing construction work at the Project site and that the work being performed is not temporary to the project and is an elemental component of the completed project. The Contractor shall assure that all enrolled Sub-Contractors of all tiers satisfy all safety program obligations, claim management and applicable insurance requirements relative to the OCIP. The Contractor understands that all Contractor obligations set forth in the County's OCIP, whether performed directly by the Contractor obligations set forth in the County's OCIP, whether performed directly by the Contractor or indirectly by its enrolled Sub-Contractors, are the responsibility of the Contractor. Whenever this Agreement establishes obligations for Contractor with respect to the OCIP, it shall also be deemed to establish obligations for enrolled Sub-Contractors. Certain exceptions apply to enrolled entities, as described below.

The term “non-enrolled” applies to the entities not covered under the OCIP. In general vendors, suppliers, fabricators, material dealers, drivers and others who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or form the Project site shall be considered non-enrolled entities for the purpose of insurance coverage under the County's OCIP. This non-enrolled OCIP Contractor status also applies to those contractors whose only work is temporary to the site and are not involved in any project construction that is part of the work on the finished project. The Contractor shall assure that all non-enrolled Sub-Contractors of all tiers satisfy all safety program obligations, claim management and applicable insurance requirements relative to the OCIP.

“Agent” means the Fulton County's designated Representative, as defined within this Agreement. For purposes of the OCIP, the County's designated Representative shall serve as the County's primary contact for communication with the Contractor related to the OCIP.

INSURANCE OBLIGATIONS OF THE COUNTY AND CONTRACTOR

INSURANCE PROVIDED BY THE COUNTY UNDER ITS OCIP.

- (a) The County shall secure and thereafter maintain, except as otherwise provided herein, the insurance coverages described in Subparagraphs 11.1.3.2, 11.1.3.3, and 11.1.3.4 below, covering as insured parties the County, the Contractor and its Sub-Contractors of all tiers (except as detailed below), and such other persons or interests as the County may designate in connection with the performance of the Work, and with limits not less than those specified for each coverage (“OCIP insurance coverage”).
- (b) No insurance coverage provided by the County’s OCIP shall extend to the activities or products of the following:
 - (i) Any person and/or organization that fabricates and/or manufactures products, materials, and/or supplies away from the Project site(s).
 - (ii) Any non-enrolled architect, engineer or surveyor and their consultants except where required by the Contract Documents.
 - (iii) Truckers, material-delivery, vendors, suppliers, and operators (as independent contractors), whose operation(s) and/or employee(s) is/are engaged solely in the loading, hauling and/or unloading of material, supplies and/or equipment to or from the Project site(s).
 - (iv) Any employee(s) of the Contractor or an enrolled or non-enrolled Sub-Contractor of any tier, including employee(s) of truckers, material-delivery, vendors, suppliers, and operators (as independent contractors), which is/are engaged solely in the loading, hauling and/or unloading of material, supplies and/or equipment to or from the Project site(s).
 - (v) Any employee(s) of the Contractor or an enrolled Sub-Contractor of any tier that does not work and/or generate payroll at the Project site(s).
 - (vi) Any employee(s) of the Contractor or an enrolled Sub-Contractor of any tier, not specifically required to perform Work at the Project site(s), that occasionally visits the Project site(s) to make deliveries, pick up supplies and/or personnel, to perform supervisory and/or progress inspections, or for any other reason.
 - (vii) Any other entity specifically to be determined by the County to be excluded.
 - (viii) Any leased or temporary laborers.
- (c) Unless herein otherwise specifically indicated, the policies set forth in Subparagraphs 11.1.3.2, 11.1.3.3 and 11.1.3.4 below shall cover only those operations of the insured parties performed at the Project site or sites incidental to the Work called for in this Owner-Contractor Agreement.
- (d) The County assumes no obligation to provide insurance other than that evidenced by the policies referred to in Subparagraphs 11.1.3.2, 11.1.3.3 and 11.1.3.4. Furthermore, any obligation of the County to provide insurance under its OCIP is expressly limited to the insurance referred to in Subparagraphs 11.1.3.2, 11.1.3.3 and 11.1.3.4. The County, however, reserves the right to furnish insurance coverage of various types and limits, provided that such coverage shall not be less than that specified below (so long as such insurance and limits are reasonably available in the insurance market) and provided that the costs of such insurance shall be borne by the County.

11.1.3.2 WORKERS' COMPENSATION INSURANCE

Workers' Compensation insurance in statutory limits of the Workers' Compensation laws of the State of Georgia, with Coverage B - Employer's Liability, to limits of not less than one million dollars (\$1,000,000) covering operations of the insured parties at the Project site. Coverage under the Broad Form All States extension is also included. This insurance is primary for all occurrences at the Project site.

11.1.3.3 LIABILITY INSURANCE (EXCLUDING MOTOR VEHICLE LIABILITY)

- (a) Liability insurance (excluding Motor Vehicle Liability) under a Commercial General Liability insurance policy and covering the insured parties in connection with the performance of the Work at the Project site, including hazards of operations (explosion, collapse and underground exposures), independent contractors, employees as additional insureds, completed operations (for 5 years after final completion of the Work), contractual liability coverage (for contracts related to the Work), personal injury liability coverage, and excess Employer's Liability coverage for claims arising out of the Work hereunder, for personal injury, bodily injury, and property damage, in policies of insurance such that the total available limits to all insureds combined will not be less than twenty-five million dollars (\$25,000,000) combined single limits for each occurrence and aggregates, as applicable.
- (b) Notwithstanding the actual policy deductible, the Contractor shall be liable for a deductible not to exceed five thousand dollars (\$5,000) each occurrence, to the extent losses payable are attributable to, involve, or relate to the performance, actions, errors, omissions, or negligence of the Contractor or its Sub-Contractors, uninsured parties, or any other entity or person for whom it may be responsible. The Contractor's deductible shall include the costs of defense, including court costs and attorneys' fees of a covered OCIP claim and shall not be construed to affect the Contractor rights to indemnify the County under the contract. All such deductibles shall be collected as part of the Contract close-out process and final payment.
- (c) The insurance provided under the OCIP will not extend coverage for products liability to any insured party or uninsured party. However, Products/Completed Operations liability arising from manufacturing or assembly of items manufactured or assembled at the Project site, as required by the contract, is covered.

11.1.3.4 ALL RISK BUILDER'S RISK, INCLUDING TRANSIT

- (a) All Risk Builder's Risk, including transit and installation risks, insuring the interest of the County, the Contractor and its Sub-Contractors, providing coverage on an All Risk basis, including, but not limited to, coverage against flood, fire, lightning, wind damage, hail, explosion, riot or civil commotion, aircraft and other vehicles, and collapse.
- (b) The policies for such insurance will be secured and maintained by the County in a form and amount as determined by Fulton County. The amount may be amended depending on the amount of a specific project.
- (c) Coverage will include materials, supplies and equipment that are intended for specific installation in the Work while such materials, supplies and equipment are located at the Project site, in transit or while temporarily located away from the Project site for the purpose of repair, adjustment or storage

at the risk of one of the insured parties.

- (d) Except as otherwise provided in Subparagraph 11.1.3.4(c), this insurance will not include coverage for tools or clothing of workers, or tools, equipment, protective fencing, scaffolding, temporary structures, coffer damming, pipe stalling or bracing, or forms owned, rented or used by the Contractor, its Sub-Contractors, or uninsured parties and used in the performance of the Work, unless such items are specifically identified in this Agreement and their values declared under the Builder's Risk insurance policy.
- (e) The County, its officers, agents, employees and consultants rendering services at the Project site, and the OCIP Administrator will not be liable or responsible for loss or damage to the items excluded in Subparagraph 11.1.3.4(d), and the Contractor shall indemnify and hold harmless the County, its officers, agents, employees, its consultants rendering services at the Project site, the OCIP Administrator, and other Project contractors and their Sub-Contractors from claims or causes of action brought by any person or parties as a result of loss or damage to such excluded items.
- (f) The Builder's Risk policy will be endorsed waiving the carrier's rights of recovery under subrogation against the County, its officers, agents, employees and consultants rendering services at the Project site, the OCIP Administrator, and the Contractor and its Sub-Contractors, whose respective interests are insured under such policy.
- (g) Notwithstanding the actual policy deductible, the Contractor shall be liable for a deductible not to exceed five thousand dollars (\$5,000) each occurrence for all perils excluding theft and mysterious disappearance, and twenty-five thousand dollars (\$25,000) each occurrence for theft and mysterious disappearance. All such deductibles shall be collected as part of the Contract close-out process and final payment.

11.1.3.5 CONTRACTOR RETAINS VARIOUS OBLIGATIONS

Nothing contained herein, or in any document referenced herein, shall relieve, limit or be construed to relieve or limit the Contractor, its Sub-Contractors or uninsured parties of responsibility or obligations otherwise imposed by the Contract. The OCIP shall not be construed as limiting, among other things:

- (a) The extent to which the Contractor may be held legally responsible for damages to persons or property.
- (b) The Contractor's indemnity obligations under this Agreement.

11.1.3.6 CONTRACTOR RESPONSIBILITY TO REPAIR DEFECTIVE OR DAMAGED WORK

- (a) Notwithstanding the provisions of this Agreement, and until final acceptance of the Work by the County, the Contractor shall have full and complete charge and care of the Work or any portion thereof (including the Owner-furnished supplies, material, equipment or other items to be utilized or incorporated in the Work).
- (b) The Contractor shall rebuild, repair, restore and make good losses of, and injuries or damages to, the Work or any portion thereof (including the Owner-furnished supplies, material, equipment or other

items to be utilized with, or incorporated in, the Work and which are in the Project site) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the Contractor's sole cost and expense provided, however, the County will make available applicable proceeds from the Builder's Risk policy provided by the County, as specified in Section 11.1.3.4.

11.1.3.7 ADDITIONAL INSURED

The Additional Insured on the County's OCIP policies shall include Fulton County; the County's officers, agents, employees, and consultants; the OCIP Administrator; and Contractors, including their Sub-Contractors of any tier (but excluding suppliers, vendors, material-delivery, truckers or haulers) whom Fulton County has contracted with and for whom the County has agreed to furnish coverage under the OCIP.

11.1.3.8 OWNER'S RIGHT TO AUDIT

- (a) The Contractor hereby warrants to the County the accuracy of the information provided on the OCIP Insurance Information Form submitted with its bid, and agrees that the County, its officers, agents, insurance carriers and the OCIP Administrator may audit the records of the Contractor and its Sub-Contractors to confirm the accuracy of the information provided, including, but not limited to, the accuracy of all estimated payrolls, and to ascertain any effect on insurance resulting from changes in the Work. The audit will be held during the Contractor's normal business hours at the office of the Contractor or at another mutually agreeable location.
- (b) The County shall be entitled to credits in OCIP insurance premiums that may accrue as a result of the audit.
- (c) The Contractor shall maintain or cause to be maintained sufficient records as may be necessary to audit its compliance and its Sub-Contractors' compliance with the requirements of the OCIP.

11.1.3.9 ASSIGNMENT

The Contractor and each of its Sub-Contractors of any tier shall assign to the County all return premiums, premium refunds, dividends and other monies due or to become due in connection with the insurance provided by the County. The Contractor and its Sub-Contractors of any tier shall execute such other further documentation as may be required by the County to effectuate this assignment.

11.1.3.10 OCIP CLAIMS

The Contractor, its Sub-Contractors and uninsured parties shall assist the County, its agents, and the OCIP Administrator and provide the utmost cooperation in the adjustment of claims arising out of the operations conducted under, or in connection with, the Work and shall cooperate with the County's insurance carriers in claims and demands that arise out of the Work and that the insurance carriers are called upon to adjust or resist.

11.1.3.11 LIMITATIONS ON OCIP COVERAGES

Although the scope of coverages afforded under this program may provide coverage beyond the scope required by the Owner-Contractor Agreement in the absence of an OCIP, the County makes no warranty

or representation that such broad coverage will remain in effect throughout the duration of the Work. The County further does not warrant or represent that the OCIP coverages constitute an insurance portfolio, which adequately addresses all the risk faced by the Contractor or its Sub-Contractor(s). The Contractor and Sub-Contractors of every tier shall satisfy themselves as to the existence, extent and adequacy of the OCIP coverages prior to the commencement of the Work. The cost to obtain any “extra” coverages shall be the responsibility of the Contractor. The County shall not assume any responsibility for the premium cost of any “extra” insurance. The County shall issue Certificates of Insurance and make available copies of specimen insurance policies at the time of the Notice to Proceed.

11.1.3.12 ALTERNATIVE INSURANCE

In the event the County, after commencement of the Work, is unable to furnish, or elects not to furnish or to continue to furnish, the insurance coverage herein described, and upon 30 days written notice from the County, the following shall be required:

- (a) The Contractor shall secure and maintain all, or as much of the insurance herein described, as the County designates, at the County's expense, and the County will thereafter no longer be obligated to furnish such insurance.
- (b) All insurance secured by the Contractor or its Sub-Contractors pursuant to this subparagraph shall be in policies subject to the prior written approval of the County as to form, content, limits of liability, cost and issuing company as outlined in the “Base Bid” version of this Article 11, i.e., as if the OCIP had not been implemented for the Project.

11.1.3.13 PROCEDURES AND SERVICES

The Contractor shall fully comply with, and shall require its Sub-Contractors of any tier to fully comply with, all of said plans, procedures and services, including but not limited to, completion of all necessary applications for coverage, prompt and full compliance with all audit requests and claim reporting procedures, and full compliance with the safety, loss prevention and loss control programs implemented by, or at the request of the County.

11.1.3.14 INSURANCE NECESSARY FOR THE WORK, BUT COVERING OPERATIONS OUTSIDE THE OCIP

- (a) The Contractor shall, for the duration of this Agreement, provide and maintain insurance and shall require each Sub-Contractor to provide and maintain insurance of the type and in the limits as described in Paragraph 11.2, which is intended to cover employee injury, personal injury, bodily injury and property damage liability for ongoing operations work performed away from the Project site.
- (b) The insurance described in Subparagraphs 11.2.1.2.B (Motor Vehicle Liability) and 11.2.1.2.D (Professional Liability) shall apply to Work performed by both enrolled and non-enrolled entities both at and away from the Project site, and shall be provided and maintained for the duration of this Agreement. Such insurance shall name the parties required to secure same as insureds and shall be in a form and through issuing companies acceptable to the County. Such insurance shall contain a defense of suits provision.

- (c) The Contractor shall assure that all non-enrolled entities provide and maintain, for the duration of this Agreement, insurance of the type and in the limits as described in Paragraph 11.2, which shall cover those entities for employee injury, personal injury, bodily injury, and property damage liability for any Work performed at the Project site.

11.1.3.15 CONTRACTOR OCIP OBLIGATIONS

- (a) The Contractor and each of its Sub-Contractors shall:
 - (i) Furnish to Fulton County's designated Representative all information and documentation that the County may require from time to time, in connection with the issuance of policies under this Agreement, in such form and substance as the OCIP Administrator may prescribe.
 - (ii) Furnish to the County's designated Representative monthly certified payroll and accident summary reports on forms provided by the OCIP Administrator, and payroll records, as required.
 - (iii) Segregate their respective reports relating to the Work for which OCIP coverage is herein provided, from their records relating to other work for which such coverage is not provided.
 - (iv) Promptly comply with the recommendations of the OCIP insurance carriers, as submitted through the County's designated Representative.
- (b) The Contractor shall not violate or knowingly permit to be violated any conditions of the policies of insurance provided by the County under the terms of this Agreement, and shall at all times satisfy the requirements of the issuing insurance companies.
- (c) The Contractor shall assure that all OCIP requirements imposed upon and to be performed by the Contractor shall likewise be imposed upon, assumed and performed by each of its Sub-Contractors and uninsured parties with whom it or its Sub-Contractors have a contractual relationship and are performing work under the Contract.
- (d) The Contractor shall furnish each bidding and negotiating Sub-Contractor, vendor, supplier, material dealer or other person or business entity that may provide goods or services in connection with the Work, a copy of this document describing the insurance requirements for the Contractor, and its Sub-Contractors shall require each to impose the same requirement in their subcontracting and procurement procedures.
- (e) If the Contractor or any of its Sub-Contractors should fail to comply with the requirements of this document, the County may withhold payments due to the Contractor or suspend the Work until such time as the Contractor and its Sub-Contractors have performed such obligations to the reasonable satisfaction of the County.
- (f) The Contractor agrees that the Contract Sum includes all costs of complying with the OCIP, as herein described.

11.1.3.16 NOTICES, COSTS AND LOSSES

- (a) All policies of insurance that either the Contractor, its Sub-Contractors, or the County is required to secure and maintain, shall be endorsed to provide that the insurance company shall notify the County, the Contractor, and each Named Insured at least thirty (30) days prior to the effective date of any cancellation or modification of such policies.
- (b) The Contractor shall furnish to the County's designated Representative certificates of insurance for insurance required to be maintained by the Contractor and its Sub-Contractors, as provided herein. Prior to the issuance of the Notice to Proceed, the Contractor shall not be permitted on the Project site.
- (c) The County will pay the cost of the premiums for the insurance described above as being provided by the County, and the County will receive and pay, as the case may be, all adjustments in such costs, whether by way of dividends or otherwise. The Contractor shall execute such instruments of assignment as may be necessary to permit the County's receipt of such adjustments and shall cause all Sub-Contractors covered by such insurance to do the same.
- (d) The Contractor shall be responsible for the payment of the deductible amounts indicated in Subparagraphs 11.1.3.3 and 11.1.3.4. If the actual County-provided OCIP policies have deductible amounts greater than those indicated in Subparagraphs 11.1.3.3 and 11.1.3.4, such excess amounts will be paid by the Contractor.
- (e) The Contractor shall be responsible for all losses greater than OCIP policy limits.
- (f) Payments by the insurer for all losses covered under the All Risk Builder's Risk policy, as specified in Section 11.1.3.4, will be made to the County. The County will make proceeds from the Builder's Risk policy available to the Contractor for rebuilding work damaged by covered perils.

11.1.3.17 SUBROGATION AND WAIVER

- (a) The Contractor shall require all policies of insurance that are related to the Work and that are secured and maintained by the Contractor and its Sub-Contractors to include clauses providing that each underwriter and carrier shall waive all of their respective rights of recovery, under subrogation or otherwise, against the County, its officers, agents, employees and consultants rendering services at the Project site, the OCIP Administrator, the Contractor and its Sub-Contractors, regardless of tier, and all other Project contractors and their Sub-Contractors, regardless of tier.
- (b) The Contractor waives all rights of recovery against its Sub-Contractors, the County, its officers, agents, employees and consultants rendering services at the Project site, the OCIP Administrator, and other Project contractors and their Sub-Contractors, regardless of tier, that the Contractor may have or acquire because of deductible clauses in or inadequacy of limits of policies of insurance that are in any way related to the Work and that are secured and maintained by the Contractor.
- (c) The Contractor shall require its Sub-Contractors of every tier to waive the rights of recovery in the same manner (as waived in the preceding paragraph by the Contractor) against the County, its officers, agents, employees and consultants rendering services at the Project site, the OCIP Administrator, the Contractor, and other Project contractors and their Sub-Contractors, regardless of tier.

11.1.3.18 COVERAGE DETERMINED BY POLICY

The coverages referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete, or to alter or amend any provision of the actual policies, and in matters, if any, in which the said description may be conflicting with such instruments, the provisions of the policies of the insurance shall govern.

11.2 CONTRACTOR'S LIABILITY INSURANCE

11.2.1 Pursuant to the exclusions of the Owner-Controlled Insurance Program (OCIP) described in Paragraph 11.1 above, the 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 Architect 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 **which are not covered under the OCIP**, 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 Architect 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 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, Program Manager, Construction Manager, and County's Professional Consultants as additional insured (**for all operations 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 architects 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 (refer to OCIP Enrollment procedures provided by the OCIP Administrator for more assistance, or contact Fulton County's designated Representative.)

- (a) Worker's Compensation

Each Accident	GA Statutory Limits
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$100,000
Employers Liability	\$1,000,000

General Liability

Bodily Injury/Property Damage	\$1,000,000
Personal Injury	\$1,000,000
General Aggregate	\$2,000,000

Automobile Liability

Bodily Injury	\$1,000,000 CLS
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Excess/Umbrella

As specified and required in the Contract

Professional Liability (if required by the specific Contract and Project)

Limit of \$1,000,000 or 10% of Contract value, whichever is greater.

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 are considered NON-ENROLLED in OCIP, and cannot commence work.

1.19 INSURANCE

- A. Policies and/or certificates certifying policies are to contain an agreement that the policies will not be changed and/or canceled without a ten (10) day prior notice to Fulton County, as evidenced by return receipts of registered or certified letter.
- B. Each respondent shall submit with the proposal proof of insurance indicated below. The insurance shall be for the contract period.
- C. Respondent must maintain, at their expense, insurance in at least the following amounts and types.
- D. The Contractor shall ensure that the Request for Bid/Proposal number and Project Description appears on the Certificate of Insurance.
- E. The Certificate of Insurance shall identify the Certificate Holder as:

Fulton County Government – Purchasing Department
130 Peachtree Street, S.W.
Suite 1168
Atlanta, Georgia 30303-3459

1. 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.

2. 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.

3. BUSINESS AUTOMOBILE LIABILITY INSURANCE

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

4. ELECTRONIC DATA PROCESSING LIABILITY

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

(In excess of above noted coverage's)	Each Occurrence	-	\$3,000,000
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6. PROFESSIONAL LIABILITY

Each Occurrence	-	\$5,000,000
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(Required if respondent providing quotation for professional services).

7. FIDELITY BOND

(Employee Dishonesty)	Each Occurrence	-	\$ 100,000
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Lack of insurances required in no way limits the liability of the respondent.

1.20 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.

1.21 INFORMATION TO BE SUBMITTED

Failure to submit any required data item may be cause for rejection. Proposers shall not submit data other than defined herein. In addition to the data described below, proposer may provide section dividers, a front and back cover, a table of contents, and a cover letter not to exceed 2 pages in length which may serve as an introduction to the proposal. A page refers to one side of a single 8 ½ inch x 11 inch page. Text shall be minimum 12 point.

Proposal information shall include:

Organization Description (Not to exceed three pages total)

Provide an organizational chart and a short resume of the organization. Indicate key individuals: Project Principal, Project Manager, Project Modelers, and any other technical and key relevant personnel. Also, include all subcontractors and their proposed function on this project. Indicate which firms are currently certified MFBE vendor by Department of Contract Compliance.

Technical Ability/Related Experience (Not to exceed two pages)

Provide a description of the firm's technical ability/potential and related experience. This section should explain the ability to provide the services outlined in Exhibit I, Scope of Service. To address related experience, give proof that the proposer has successful experience with projects similar to the Scope. Include a contact person, project description, project location, name of project, telephone number, and other members of your firm that can be contacted regarding these projects. Please provide experience on at least four (4) projects.

Key Personnel Experience and Availability (Not to exceed 6 pages total)

Provide a summary of those personnel anticipated to be assigned to the project and the percentage of their time committed to the project. Resumes (not to exceed 1 pages in length each) shall be provided for all key personnel, including Project Managers, all discipline lead engineers, modelers, and architectures,. These individuals shall work out of the local office and reside in the Metropolitan Atlanta area during the course of their involvement on this project. Fulton County will not pay for direct costs associated with travel, temporary housing, food, supplies, or any other costs of relocating staff temporarily or permanently for this project.

Project Approach (Not to exceed 6 pages total)

Provide a description of how the proposer will perform tasks to meet the scope of services outlined in Exhibit I that will conform to the schedule outlined in Exhibit J. This section should address how the proposer will maintain quality and recommend enhancements or improvements to the scope of services. This section should also include details regarding any unique knowledge or expertise the proposer has regarding this project and should further explain how this unique knowledge or expertise will benefit this project.

Proximity of Office to Project Site (Not to exceed 1 half page)

Provide the office location where work on this project will be performed.

Financial Responsibility (Two copies of the financial responsibility are to be submitted in separate sealed envelopes with price proposals included in each)

Provide copies of the most recent year-end audited financial statement along with financial references.

Price and Schedule of Billing Rates

Provide an estimated cost to perform the project as described under the Scope of Services, and a separate cost to perform the project including any enhancements, additional work, or other modifications presented in Section 1.16.4 “Project Approach”. The estimate shall include the estimated man-hours for each required labor category for each task and subtask presented in the Cost Proposal Summary Sheet (Tasks 1 through 7), subtotaled for each task and for the project. A schedule of standard hourly billing rates by labor category to be utilized during the course of the project shall be provided. The estimated man-hours shall be multiplied by the appropriate labor rate and added to direct costs to determine the estimated project cost. Proposer shall provide the overhead rate that includes all fringe benefits as a percentage of base salary (without fringes) and the profit percentage used in calculating standard billing rates. This is to be provided for the Prime Consultant as well as each Sub Consultant. Computer usage is to be included in the overhead rate and will not be considered as a direct expense. No markup is to be provided on expenses, subconsultants or other non-labor cost. Proposer shall provide a list of spending categories, i.e., printing, travel, phone, fax, mail, delivery charge, contract employees, etc. for each task identified in the proposal.

1.22 AWARD

The award of the contract shall be made by the Board of Commissioners of Fulton County to the responsible proposer whose proposal is determined, upon written recommendation by the County Manager, the Purchasing Agent and the Director of Environment and Community Development, to be in the best interest of the County taking into consideration price and the evaluation factors set forth in the Request For Proposal.

1.23 EVALUATION AND RECOMMENDATION CRITERIA

The award of this contract will be made by the Board of Commissioners of Fulton County to the responsible proposer whose proposal is determined, upon written recommendation by the County Manager, the Purchasing Agent and the Director of Public Works, to be in the best interest of the Fulton County. Consideration is made for price, experience, expertise, location, references, and other evaluation factors set forth in the Request for Proposal.

Proposal Evaluation Criteria:

Technical

Consideration	Explanation	
Technical Approach	The Proposer will be evaluated on the technical approach section presented in the proposal. The County will consider sound engineering principles, ingenuity, and creativity.	
Experience	The Proposer will be evaluated on the experience the firm has with related projects. The references listed in the proposal will be contacted to complete a phone survey. In particular, the County will give special consideration to quality of work and ability to complete projects on schedule. Modeling experience will be evaluated separately.	
Modeling	The Proposer will be evaluated on their expertise and experience with H2ONet modeling software. Special consideration will be given to the proper with more that 5 years experience total using the H2ONet model.	
Location	The Proposer will be given the full 10% for having an office in Fulton County, Georgia that performs the majority of work. 0% will be given otherwise.	
Personnel Resumes	The Proposer will be evaluated on the experience of the team members.	
Costs	The County will allocate 35% of the evaluation to costs presented in the cost proposal. The County will award the most points to the lowest reasonable and responsive cost proposal.	
Total Points		

1.24 SPECIAL PROVISIONS

Prior to commencement of the project, the Proposer 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 Proposer shall submit transmittals of all correspondence, telephone conversations, and minutes of all meetings relative to the Project.

The Proposer 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 Proposer 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 Proposer, the County will provide the necessary documents identifying the Proposer for the purpose described in the Request for Proposal. If the property owner or occupant denies the Proposer 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 Proposer shall perform the services required to accomplish the work plan as stated. The Proposer 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 Proposer under Request for Proposal #05RFP8304K – North Fulton Water System Improvements

the proposal are indicated in a personnel listing attached thereto, and incorporated therein by reference. No changes or substitutions shall be permitted in the Proposer's key personnel as set forth herein without the prior written approval of the Director of Environment and Community Development or his designee. The Proposer shall employ only qualified persons in those positions involving supervision and/or design of the work.

1.25 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
Bid/RFP #: **05RFP8304K**

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.

1.26 MINIMUM PRIME PARTICIPATION

Fulton County policy Section 102-357 states that no contract or project will be presented to the Board of Commissioners for approval which does not require that the prime contractor or vendor for the project or contract actually perform no less than 51 percent of the scope of the work of the prime contract.

1.27 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.

1.28 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.

1.29 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

- **2.1 Contractor's Georgia Utilities License Certificate**
- **2.2 Confidentiality/Non-Disclosure Statement**
- **2.3 Non-Collusion Affidavit of Proposer**
- **2.4 Non-Collusion Affidavit of Subcontractor**
- **2.5 Certificate of Acceptance of Request for Proposal Requirements**
- **2.6 Certificate Regarding Debarment**
- **2.7 Promise of Non-Discrimination**
- **2.8 Employment Record**
- **2.9 Schedule of Intended Subcontractor Utilization**
- **2.10 Letter of Intent to Perform as a Subcontractor or Provided Materials or Services**
- **2.11 Declaration Regarding Subcontractor Practices**
- **2.12 Joint Venture Disclosure Affidavit**
- **2.13 Prime/Subcontractor Utilization Report (Post Award Only)**

NOTE: The Utility Contractors license (For all contractors engaged in Utility Contracting – Utility Contracting is defined as the undertaking to construct, erect, alter or repair or to have constructed, erected, altered, or repaired any utility system in which the cost of the utility system work exceeds one hundred thousand dollars - \$100,000) number is also required to be clearly printed on the Proposers/Bidders Envelope

Contractor’s Name: _____

Utility Contractor’s License Number: _____

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 Proposal/Bid for this Project.

Signed: _____

Printed: _____

Date: _____

2.2

CONFIDENTIALITY/NON-DISCLOSURE STATEMENT

CERTIFICATION OF NONDISCLOSURE OF CONFIDENTIAL INFORMATION REGARDING FULTON COUNTY WATER SYSTEMS.

PROPOSER agrees that all PROPOSER-Developed Information, all information provided by FULTON COUNTY and PROPOSER, and all information becoming known to PROPOSER concerning FULTON COUNTY'S inventions, discoveries, improvements, processes or methods, business plans, ventures, or practices, enterprises, explorations, mining information, manufacturing or other plant design, location of operation, or any other information affecting the business or professional operations of FULTON COUNTY ("FULTON COUNTY Proprietary Information") will be maintained confidentially by PROPOSER and shall not be published, disseminated, revealed in any manner or to any party, or used in the design, production, manufacture, use, or operation of any other article, material, mine, process plant, business, or the performance of services without first obtaining FULTON COUNTY'S written consent thereto, except for the performance of work or services under this Solicitation or any resulting Contract, that the provisions of this paragraph as they relate to confidentiality will not apply to FULTON COUNTY'S Proprietary Information that was known to PROPOSER at the same time it was obtained directly or indirectly from FULTON COUNTY, or is acquired by PROPOSER from a third party and such third party did not obtain such information directly or indirectly from FULTON COUNTY under an obligation not disclosed, or is or becomes published or otherwise available in the public domain other than by violation of the conditions of this Solicitation or any resulting Contract by PROPOSER. PROPOSER is fully responsible for all such FULTON COUNTY'S Proprietary Information in PROPOSER'S possession and PROPOSER will promptly, upon completion of work or services or on demand, return to FULTON COUNTY all documents and reproductions thereof containing any of FULTON COUNTY'S Proprietary Information. The requirement is subject to the laws of the state of Georgia.

The PROPOSER shall include the foregoing requirement in all solicitations, subcontracts, and purchase orders issued under this solicitation or any contract issued as a result of this solicitation.

(Signature)

(Date)

(Name Printed)

(Organization)

2.3

NON-COLLUSION AFFIDAVIT OF PROPOSER
(FC Sec 2-320, (11))

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

State of _____)

)ss.

County of _____)

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

- (1) He is _____
(owner, partner officer, representative, or agent) of _____ the Proposer that has submitted the Proposal;
- (2) He is fully informed respecting the preparation and contents of the proposal and of all pertinent circumstances respecting such proposal;
- (3) Such Proposal is genuine and is not a collusive of sham proposal;
- (4) Neither the said Proposer 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 Proposer, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the proposal has been submitted or refrain from submitting a proposal 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 Proposer, firm or person to fix the price or prices in the Proposal or of any other proposer, or to fix any overhead, profit or cost element of the proposal price or the proposal price of any other proposer, 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 proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the proposer 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)

2.4

NONCOLLUSION AFFIDAVIT OF SUBCONTRACTOR
(FC Sec 2-320, (11))

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

State of _____)

)ss.

County of _____)

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

He is _____

(owner, partner officer, representative, or agent)

of _____, hereinafter referred to as the "Subcontractor";

- (2) He is fully informed respecting the preparation and contents of the Proposal submitted by the Subcontractor to _____, the Contractor for certain work connection with the _____ Contractor pertaining to the Project in Fulton County, Georgia.
- (3) Such Subcontractor's Proposal is genuine and is not a collusive of sham Proposal;
- (4) Neither the said Subcontractor 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 Proposer, firm or person to submit a collusive or sham Proposal in connection with such Contract or to refrain from submitting a Proposal in connection with such Contract or has in any manner, directly or indirectly, sought by unlawful agreement or connivance with any other Proposer, firm or person to fix the price or prices in said Subcontractor's proposal, or to secure through 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 Subcontractor's Proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer 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)

2.5

CERTIFICATE OF ACCEPTANCE OF REQUEST FOR PROPOSAL REQUIREMENTS

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

This is to certify that on this day, proposer acknowledges that he/she has read this proposal 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 proposal herein and to legally obligate the proposer thereto.

Company: _____

Signature: _____

Name: _____

Title: _____ Date: _____

(CORPORATE SEAL)

CERTIFICATE REGARDING DEBARMENT

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

- (1) THE BIDDER CERTIFIES, BY SUBMISSION OF THIS BID OR PROPOSAL THAT NEITHER IT OR ITS SUBCONTRACTORS IS PRESENTLY DEBARRED, SUSPENDED, PROPOSED FOR DEBARMENT, DECLARED INELIGIBLE, OR VOLUNTARILY EXCLUDED FROM PARTICIPATION IN THE TRANSACTION BY THE FULTON COUNTY GOVERNMENT.
- (2) WHERE THE VENDOR IS UNABLE TO CERTIFY TO ANY OF THE STATEMENTS IN THIS CERTIFICATION, SUCH VENDOR OR SUBCONTRACTOR SHALL ATTACH AN EXPLANATION TO THIS BID OR PROPOSAL.

SIGNATURE

DATE

INSTRUCTIONS FOR CERTIFICATION

- (1) BY SIGNING AND SUBMITTING THIS PROPOSAL, THE BIDDER IS PROVIDING THE CERTIFICATION SET OUT BELOW.
- (2) THE CERTIFICATION IN THIS CLAUSE IS A MATERIAL REPRESENTATION OF FACT UPON WHICH RELIANCE WILL BE HEREIN PLACED IN AWARDED A CONTRACT. IF IT IS LATER DETERMINED THAT THE PROSPECTIVE VENDOR KNOWINGLY RENDERED AN ERRONEOUS CERTIFICATION, IN ADDITION TO OTHER REMEDIES AVAILABLE TO FULTON COUNTY, THE DEPARTMENT WITH WHICH THE TRANSACTION ORIGINATED MAY PURSUE AVAILABLE REMEDIES, INCLUDING SUSPENSION AND/OR DEBARMENT, FOR WITHDRAWAL OF AWARD OR TERMINATION OF A CONTRACT.
- (3) THE BIDDER SHALL PROVIDE IMMEDIATE WRITTEN NOTICE TO THE PURCHASING AGENT TO WHOM THIS BID/PROPOSAL IS SUBMITTED IF AT ANYTIME THE BIDDER LEARNS THAT ITS CERTIFICATION WAS ERRONEOUS WHEN SUBMITTED OR HAS BECOME ERRONEOUS BY REASON OF CHANGED CIRCUMSTANCES.

(FC CODE SEC. 2-322. DEBARMENT). (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, OR JOINT VENTURE, HOWEVER DESIGNATED OR STRUCTURED; PROVIDED, FURTHER, THAT ANY SUCH ENTITY SHALL ALSO BE SUBJECT TO SUSPENSION UNDER THIS SECTION IF ANY OF ITS CONSTITUENTS, MEMBERS, SUBCONTRACTORS AT ANY TIER OF SUCH ENTITY’S CONSTITUENTS OR MEMBERS, IS FOUND TO HAVE COMMITTED

ANY ACT CONSTITUTING A CAUSE FOR SUSPENSION 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 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 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 SUB-CONTRACT, OR IN PERFORMANCE OF SUCH CONTRACT OR SUB-CONTRACT;
- (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 BASIS FOR SUSPENSION;
 - C. MATERIAL MISREPRESENTATION 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) **COMMISSION OR SOLICITATION** OF ANY ACT THAT WOULD CONSTITUTE A VIOLATION OF THE ETHICAL STANDARDS SET FORTH IN FULTON COUNTY 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 51 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 sub-contractor or a joint venture partner, in performing work under contract with the county.

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:

**2.7 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		AFRICA AMERICAN		ASIAN AMERICAN		HISPANIC		CACUASIAN		OTHER	
	M	F	M	F	M	F	M	F	M	F	M	F
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: _____

2.9

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: _____

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 this 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: _____

**2.10 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)

RFP Number 05RFP8302K
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 Comm	Project Comp	Estimated D

(Prime Bidder)

(Subcontractor)

Signature _____

Signature _____

Title _____

Title _____

Date _____

Date _____

2.11

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 _____
(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**

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 venture 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 venture 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 venture.
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 venture will be responsible for material purchases including the estimated cost thereof? How will the purchase be financed?
8. Which joint venture 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 venture.
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 venture 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>Race</u>	<u>Sex</u>	<u>Financial Decisions</u>	<u>Supervision Field Operation</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.

2.13

**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
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	Contract Period	
					Starting Date	Ending Date
TOTALS						

Executed By: _____
(Signature)

_____ (Printed Name)

SECTION: III

SCOPE OF SERVICES

Unless modified in writing by both parties in the manner specified in the agreement, duties of ENGINEER shall not be construed to exceed those services specifically set forth herein. ENGINEER agrees to provide all services, products, and data and to perform all tasks described herein.

The scope of services for this project consists of the following:

- A. Hydraulic Analysis of the North Fulton County Water Distribution System using the County's H2O Net Model.
- B. Creating a Preliminary Design and System Transitioning Plan.
- C. Create detailed design drawings, plans, and specifications.
- D. Acquire Permits.
- E. Provide engineering construction services.

The ENGINEER is responsible for the following tasks:

Task A Hydraulic Analysis: The ENGINEER will perform a hydraulic analysis of the North Fulton County Water Storage and Distribution System using H2ONet. The PROJECT MANAGER will provide the ENGINEER with the H2ONet data file containing the model scenarios used as the basis for this project. The ENGINEER will update the model with current water usage data and perform necessary hydraulic analysis to transition the system into three isolated pressure zones.

Task B Preliminary Design: The ENGINEER will create a Preliminary Design and a Water System Transitioning Plan.

The Preliminary Design must be stamped by a Licensed Georgia Professional Engineer. The Preliminary Design will contain plan and profile views of each isolated pressure zone and a comprehensive view of the entire North Fulton Water System. The profile views shall include the hydraulic gradient and the basic instrumentation and controls for each pressure zone. The plan view shall include the pressure isobars at 10psi intervals and all pertinent facilities. The preliminary design shall also include the pump specifications, water mains route, pump station building layout, and parking and landscape schematic.

The Engineer will perform a Constructability Survey to determine if the physical location is suitable to the layout and design of the booster pump station and associated water mains. Consideration should be given to access of the property, staging equipment, utility access, storm water drainage, and all other design factors. Research property plats along design water mains. Create drawing: 1. Meets and Bounds. 2. Identified permanent or temporary easements.

ask C Detailed Design:

The Engineer is responsible for designing three booster pump stations with associated buildings, two miles of 18 inch water main, the connection of the water mains and booster pump stations with the existing system, isolation valves (or similar), and instrumentation and controls components.

30% Design Submittal

The selected engineer will submit four (4) copies of the 30% design packages that will include the following:

- Hydraulic profile
- Plan View
- Architectural Site Layout
- Flow Diagram
- Pipe and Instrumentation Diagram (P&ID)
- Electrical One Line Drawing
- Control Logic
- Specifications for all equipment
- Cost estimates for the entire project

Architectural Site Layout Submittal

The selected engineer will submit an architectural site layout with the 30%, 60%, and 100% design submittals. The architectural site layout will include the booster pump station building, fencing, driveways, sidewalks, above ground utility structures, landscaping layout, and any other above ground structures. The building layout drawing will be signed and stamped by an engineer or architect licensed by the state of Georgia. The architectural site layout should include all details and specifications required to construct the building, parking area, side walks, trees, and any other structures identified in the layout. All buildings must be designed to the current Fulton County Building Code.

60% Design Submittal

The selected engineer will submit a design that is 60% complete as dictated by the schedule. The 60% design submittal will include four copies of the Architectural Site Layout and drawings listed in the 30% design.

100% Design Submittal

The selected engineer will submit a complete design of the booster pump station that includes four copies of the Architectural Site Layout and drawings listed in the 30% design. The completed design will have all comments by the Department of Public Works and the Department of Environmental and Community Development incorporated or addressed within. Also, the 100% design submittal must come after the Constructability Analysis and must address and incorporate all design conflicts produced by it. Electronic copy of this submittal will be provided to the Program Project Manager. The Engineer shall identify safety concerns and address each as they relate to construction and operation of the system.

This design effort will also include specifications for construction and the SCADA controls system. The design shall be thorough and complete so that a contractor can interpret the design and construct all elements of the design including the instrumentations and controls without further clarification.

The Engineer shall develop an Automated Operation Control Plan for each isolated pressure zone and the entire water distribution system that will remove and replace (recycle) a portion of each tank contents periodically. The

final design of the three pressure zone system should consider the Safe Drinking Water Act and its amendments and should ensure the water contained in the tank and the water mains meets the chemical standards outlined in the Safe Drinking Water Act. The system is to be designed to manage its contents in a fashion that legally meets Georgia's Environmental Protection Division standards.

The Automated Operation Control Plan shall include an Emergency Response Plan. The Emergency Response Plan shall present system and personnel procedures in case of failures. The Plan shall include drawings that display normal pumping and water flow routes and alternative emergency pumping and water flow routes.

The engineer will use Fulton County specifications where applicable. A specification booklet is attached as a reference. Where not included in the Fulton County specifications, standards in the industry or best commercial available standards or code will prevail.

Project Permits

The selected engineer will acquire the Land Disturbance Permit and any Transportation Permits.

Task E Engineering Construction Services

The selected engineer will provide engineering services during construction. The engineer will review and approve all equipment submittals and respond to requests for information (RFIs) during construction and will attend the construction progress meetings twice each month.

Schedule

The engineer will create and maintain a project schedule that will outline all project tasks and milestones. The schedule will show a clear critical path and baseline. The baseline will not change once approved. The schedule will be resource loaded, progress loaded and submitted via an electronic copy and hard copy. An updated schedule will be brought to each biweekly progress meeting and attached to each invoice. The electronic deliverable should be in MS Project 2000 format or later. The Engineer will maintain the schedule in full and will submit updated copies to the Program Project Manager as requested (electronic version). The Engineer will record actual dates in the schedule and will record notes addressing any slippages. No tasks will be longer than 20 calendar days. If the Engineer becomes more than two weeks behind schedule, the Engineer will submit a recovery schedule to meet the contract completion date. The recovery schedule will be submitted within 72 hours of becoming behind schedule for two weeks.

Meeting Minutes

The engineer will be responsible for taking and distributing the biweekly meeting minutes. The construction contractor will be responsible for the meeting minutes during the construction phase of the project. Two days after each biweekly design progress meeting, the engineer will submit a draft of the minutes for the Program Project Manager's approval. Once approved, the engineer will distribute the minutes as directed by the Program Project Manager.

The following information will be made available at the request of the Engineer:

1. The H₂O Net software Model of North Fulton Water System prepared by M&E September 8, 2003.
2. M&E Technical Memorandum: Freemanville Road Pipeline Analysis. February 24, 2003.
3. Available GIS information.

4. Interviews with County staff.
5. Fulton County specification booklet will be provided as a reference.

DELIVERABLES: ENGINEER shall deliver to COUNTY all reports, specifications and drawings prepared under the terms of this AGREEMENT that are specified in Article 4 “Scope of Services”. ENGINEER shall provide to COUNTY all deliverables specified in Article 4 “Scope of Services”. Deliverables shall be furnished to COUNTY by ENGINEER in a media of form that is acceptable and usable by COUNTY at no additional cost at the end of the project. The ENGINEER will provide four (4) copies of each of the design submittals.

SERVICES PROVIDED BY COUNTY: ENGINEER shall gather from COUNTY all available non-privileged data and information pertinent to the performance of the services for the PROJECT. COUNTY shall have the final decision as to what data and information is pertinent.

COUNTY has appointed Parsons PM Team, Program Managers for this project, a COUNTY authorized representative with respect to work to be performed under this AGREEMENT until COUNTY gives written notice of the appointment of a successor. COUNTY representative shall have complete authority to transmit instructions, receive information, and define COUNTY’S policies. ENGINEER may rely upon written consents and approvals signed by COUNTY’S representative. The Project Manager shall represent the COUNTY.

SECTION IV: Cost Fee Schedule

PLEASE COMPLETE AS DIRECTED AND INSERT IN YOUR SEPARATE SEALED COST PROPOSAL

Cost Proposal Summary Sheet

		Number of Hours by Discipline							Totals			
Task		Principal	Technical	Project M	Project E	Modeler	Archit	CAD	Admin	Labor Cost	ODC Cos	Total Cost
1.	Hydraulic Analysis											
2.	Constructability A											
3.	Design											
4.	Permitting											
5.	Contractor Procur											
6.	Construction Engi Services											
7.	Management/ Con											
										Total Cost		

Please include the labor rates to be applied for the entire project. If additional positions apply, please submit the appropriately modified Cost Proposal Summary Sheet.

Note: All costs for products and services required in Article A “Scope of Services” shall be included in the Cost Proposal Summary Sheet.

SECTION V:

SAMPLE AGREEMENT

CONTRACT AGREEMENT

Index of Articles

- ARTICLE 1. ENGINEER/OWNER AGREEMENT
- ARTICLE 2. SEVERABILITY
- ARTICLE 3. DESCRIPTION OF PROJECT
- ARTICLE 4. SCOPE OF SERVICES
- ARTICLE 5. DELIVERABLES
- ARTICLE 6. SERVICES PROVIDED BY COUNTY
- ARTICLE 7. MODIFICATIONS
- ARTICLE 8. TIME OF PERFORMANCE
- ARTICLE 9. COMPENSATION AND PAYMENT FOR ENGINEER SERVICES
- ARTICLE 10. PERSONNEL AND EQUIPMENT
- ARTICLE 11. SUSPENSION OF WORK
- ARTICLE 12. DISPUTES
- ARTICLE 13. TERMINATION OF AGREEMENT FOR CAUSE
- ARTICLE 14. TERMINATION FOR CONVENIENCE OF COUNTY
- ARTICLE 15. WAIVER OF BREACH
- ARTICLE 16. INDEPENDENT ENGINEER
- ARTICLE 17. RESPONSIBILITY OF ENGINEER
- ARTICLE 18. COOPERATION WITH OTHER ENGINEERS
- ARTICLE 19. ACCURACY OF WORK
- ARTICLE 20. REVIEW OF WORK
- ARTICLE 21. INDEMNIFICATION
- ARTICLE 22. CONFIDENTIALITY
- ARTICLE 23. OWNERSHIP OF INTELLECTUAL PROPERTY AND INFORMATION:
- ARTICLE 24. COVENANT AGAINST CONTINGENT FEES
- ARTICLE 25. INSURANCE
- ARTICLE 26. PROHIBITED INTEREST
- ARTICLE 27. SUBCONTRACTING
- ARTICLE 28. ASSIGNABILITY
- ARTICLE 29. ANTI-KICKBACK CLAUSE
- ARTICLE 30. AUDITS AND INSPECTORS
- ARTICLE 31. ACCOUNTING SYSTEM
- ARTICLE 32. VERBAL AGREEMENT
- ARTICLE 33. NOTICES
- ARTICLE 34. JURISDICTION
- ARTICLE 35. EQUAL EMPLOYMENT OPPORTUNITY
- ARTICLE 36. FORCE MAJEURE

AGREEMENT

This agreement, made and entered into as of the _____ day of _____, 2005 by and between **FULTON COUNTY, GEORGIA** a political subdivision of the State of Georgia, hereinafter referred to as "COUNTY", and ----- to provide professional engineering services in Georgia, hereinafter referred to as "ENGINEER":

WITNESSETH

WHEREAS, COUNTY through its Department of Public Works (hereinafter referred to as the "DEPARTMENT") desires to retain a qualified and experienced ENGINEER to perform certain services regarding the **North Fulton Water System Improvements – Design Services** (hereinafter, referred to as the "PROJECT").

WHEREAS, ENGINEER has represented to COUNTY that it is experienced and has qualified and local staff available to commit to the PROJECT and COUNTY has relied upon such representations.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, COUNTY and ENGINEER agree as follows:

ARTICLE 1. **ENGINEER/OWNER AGREEMENT:** COUNTY hereby engages ENGINEER, and ENGINEER hereby agrees to perform the services hereinafter set forth. This Agreement, including the Request for Proposal Addenda accepted by ENGINEER, and Technical Approach Section of the ENGINEER's Proposal submitted and accepted by COUNTY constitutes the entire Agreement of the parties pertaining to the subject matter hereof and is intended as a complete and exclusive statement of promises, representations, discussions and agreements oral or otherwise that have been made in connection therewith. The Technical Approach Section of Proposal is to explain the ENGINEERs intent to meet the objectives and specifications outlined in the Request for Proposal and Addenda. Where there is a conflict of scope between the Request for Proposal, Addenda, and ENGINEER's Proposal, the Request for Proposal, and Addenda governs. No modifications or amendment to this Agreement shall be binding upon the parties unless the same is in writing, signed by the COUNTY and the ENGINEER'S duly authorized representatives, and entered upon the meeting minutes of the Fulton County Board of Commissioners. Any conflicts between the Request for Proposal and Addenda shall be interpreted in writing by the Project Manager or COUNTY and made binding as part of this agreement.

ARTICLE 2. **SEVERABILITY:** If any provision of this Agreement is held to be unenforceable 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.

ARTICLE 3. **DESCRIPTION OF PROJECT:** COUNTY and ENGINEER agree the PROJECT is as described in Article 4 "Scope of Services". All Exhibits referenced in this agreement are incorporated by reference and constitute an integral part of this AGREEMENT as if they were contained herein.

ARTICLE 4. **SCOPE OF SERVICES:** Unless modified in writing by both parties in the manner specified in the agreement, duties of ENGINEER shall not be construed to exceed those services specifically set forth herein. ENGINEER agrees to provide all services, products, and data and to perform all tasks described herein.

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SERVICES PROVIDED BY COUNTY: ENGINEER shall gather from COUNTY all available non-privileged data and information pertinent to the performance of the services for the PROJECT. COUNTY shall have the final decision as to what data and information is pertinent.

COUNTY has appointed Parsons PM Team, Program Managers for this project, a COUNTY authorized representative with respect to work to be performed under this AGREEMENT until COUNTY gives written notice of the appointment of a successor. COUNTY representative shall have complete authority to transmit instructions, receive information, and define COUNTY'S policies. ENGINEER may rely upon written consents and approvals signed by COUNTY'S representative. The Project Manager shall represent the COUNTY.

ARTICLE 7. **MODIFICATIONS/CHANGE ORDERS:** If during the course of performing the work, COUNTY and ENGINEER agree that it is necessary to make changes in the PROJECT as described herein and referenced exhibits, such changes will be incorporated in written supplemental agreements to this AGREEMENT. Any such supplemental agreement shall not become effective or binding unless approved by the Board of Commissioners and entered on the minutes. Such modifications shall conform to the requirements of Fulton County Policy 800-6, which is incorporated by reference herein.

ARTICLE 8. **TIME OF PERFORMANCE:** ENGINEER shall not proceed to furnish such services and COUNTY shall not become obligated to pay for same until a written authorization to proceed (Notice to Proceed) has been sent to ENGINEER from COUNTY. The time of performance shall begin upon the date of Notice to Proceed and continue for a total contract time of two hundred forty (240) calendar days for design services and three hundred sixty-five (365) calendar days for construction services after a Notice to Proceed letter is issued for construction services. The ENGINEER shall begin work under this agreement no later than five (5) days after the effective date of notification to proceed.

The following are the major milestones for the engineer.

MILESTONE	SCHEDULE
Preliminary Design and System T Plan Submittal	60 calendar days after notice to proceed (NTP) date
30% Design Submittal	105 calendar days after notice to proceed (NTP) date
60% Design Submittal	45 calendar days after 30% design submittal
100% Design Submittal	45 calendar days after 60% design submittal
Construction Specifications and a	20 calendar days after 100% design submittal
Acquire all permits	45 calendar days after 100% design submittal
Design Progress Meetings	Monthly
Construction Engineering Service	Immediately after Notice to Proceed (NTP) is issued (1 year duration)

The engineer will submit a detailed project schedule. This schedule will be submitted to the PROGRAM PROJECT MANAGER five (5) calendar days after the Notice to Proceed. The PROJECT MANAGER must accept the schedule prior to the Engineer submitting an invoice.

ARTICLE 9. **COMPENSATION AND PAYMENT FOR ENGINEER SERVICES:** The County will make payments to the ENGINEER on the basis of a duly certified and approved estimate of the Work completed through the 25th day of each calendar month, as reviewed by the Project Manager, provided the estimate was submitted in accordance with the following requirements:

9.1 The Applications for Payment shall be itemized as directed by the Program Project Manager. Applications for Payment are to serve as certification by the ENGINEER as to the status of the Work.

9.2 On or prior to the 20th day of each month, the ENGINEER will prepare a preliminary, itemized Application for Payment for work completed and the value of any stored materials, projected through the 25th of the current month, as well as additional information required herein or as the County and PROGRAM PROJECT MANAGER may require to verify and approve the amount of payment applied for. The ENGINEER may be requested to review the Application for Payment with the PROGRAM PROJECT MANAGER on the jobsite in order to verify work in place or the location of stored materials.

9.3 After the PROGRAM PROJECT MANAGER has advised the ENGINEER of the acceptability of the Application for Payment, and on or before the 25th day of each month, the ENGINEER shall submit to the PROGRAM PROJECT MANAGER an itemized, notarized Application for Payment. The ENGINEER shall also submit, if requested, additional documentation, including, but not limited to, all sworn statements, waivers and releases of liens and claims, including those required of subENGINEERS of any tier as may be requested by the PROGRAM PROJECT MANAGER, reflecting all retainage, previous Applications for Payment, payment for labor and material, payment for materials stored and other documentation and requirements related to Work performed as provided elsewhere in the Contract Documents or as required by the PROGRAM PROJECT MANAGER.

9.4 Late applications will not be accepted for any reason whatsoever. If the ENGINEER is late with its pay application, it will not be processed until the next pay cycle.

9.5 The ENGINEER shall submit the Application for Payment in four (4) paper hardcopies and one electronic copy on 3.5" disk or Compact Disk. Each copy shall display an original signature by a duly authorized agent of the ENGINEER/ENGINEERING FIRM. The application shall be generated by the use of Microsoft Excel or other applications package acceptable to the PROGRAM PROJECT MANAGER, and provided that the forms generated are in the format acceptable to the PROGRAM PROJECT MANAGER. All four copies shall be individually notarized.

9.6 The ENGINEER shall submit a schedule with each invoice that includes: (1) baseline, (2) critical path, (3) progress loaded, and (4) cost/labor loaded. The schedule should be updated through the billing period of the most current pay applications submitted. The costs should reflect and total the costs of the project.

9.7 At no time during the contract will the ENGINEER be allowed to bill for an amount which is in excess of the amount of its contract, including all signed and executed change orders.

9.8 As 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 site, provided such materials are stored according to the provisions of the Contract Documents and the satisfaction of the PROGRAM PROJECT MANAGER.

9.10 The ENGINEER shall include with his payment request an itemization of the quantity of such materials, and shall document with invoices, Bills of Sale or other documentation acceptable to the PROGRAM PROJECT MANAGER, the cost of said materials.

9.11 NOT USED

9.12 If the ENGINEER has made Application for Payment as detailed herein, the Construction Manager will confirm the amounts to be paid to the ENGINEER, certify each copy by original signature, retain one signed copy for its project files, and transmit the remaining copies as Certification for Payment to the County.

9.13 The ENGINEER may expect payment from the County within forty-five (45) days of the Certification by the PROGRAM PROJECT MANAGER of the ENGINEER's submittal of an Application for Payment per Paragraph 1.0 of this Section. Any follow-up inquiries on the status of payments shall be through the PROGRAM PROJECT MANAGER. The ENGINEER is not permitted to contact the County directly with any payment inquiries.

No approval of any application for progress payment, nor any progress payment, nor any partial or entire use of occupancy of the Work or the Project by the County, shall constitute an acceptance of any Work not in accordance

with the Contract

The total contract amount for the PROJECT shall not exceed _____, which is full payment for a complete scope of services

ENGINEER agrees that the compensation provided within shall be full and final settlement of all claims arising against COUNTY for work done, materials furnished, cost incurred or otherwise arising out of this AGREEMENT and shall release COUNTY from any and all further claims related to payment for services and materials furnished in connection with this AGREEMENT.

COUNTY and ENGINEER agree that in the event any agreement provision pertaining to the time of payment, the rate of payment, and any rates of interest differs from any provision of the Prompt Pay Act, such provision of the Prompt Pay Act is hereby waived and said agreement provision shall control.

County shall not be responsible for any interest penalty for any late payment.

ARTICLE 10. **PERSONNEL AND EQUIPMENT:** ENGINEER shall identify in writing a project manager who shall have sole authority to represent ENGINEER on all manners pertaining to this contract.

ENGINEER represents that it has secured or will secure, at its' own expense, all equipment and personnel necessary to complete this AGREEMENT, none of whom shall be employees of or have any contractual relationship with COUNTY. All of the services required hereunder will be performed by ENGINEER under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

ENGINEER shall employ those people, who are in responsible charge of supervision on the work performed on this PROJECT, duly registered in the State of Georgia in the appropriate area.

ENGINEER shall endorse all deliverables including reports, and contract plans. Such endorsements shall be made by a person duly registered for such services by the governing authority authorized by the State of Georgia, being in the full employ of ENGINEER and responsible for the work prescribed by this AGREEMENT.

ARTICLE 11. **SUSPENSION OF WORK:** COUNTY may order ENGINEER in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine appropriate for the convenience of COUNTY. The time for completion of the work shall be extended by the number of days the work is suspended. County shall not be responsible for any claims, damages or cost stemming from any delay of the project.

ARTICLE 12. **DISPUTES:** Except as otherwise provided in this AGREEMENT, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the County's authorized representative. He shall reduce his decision to writing and mail or otherwise furnish a copy thereof to ENGINEER. The decision of the County authorized designee shall be final and conclusive unless, within in 30 days from the date of receipt of such copy, ENGINEER mails or otherwise furnishes to the County authorized designee a copy of a written appeal. The decision of the County authorized designee for the determination of such appeal shall be final and conclusive. This condition shall not be pleaded in any suit involving a question of fact arising under this AGREEMENT. Provided, however, that any such decision is not fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, ENGINEER shall be afforded an opportunity to be heard and to offer

evidence in support of his appeal. Pending any final decision of a dispute hereunder, ENGINEER shall proceed diligently with the performance of the Agreement and in accordance with the Director of Public Works' decision.

ARTICLE 13. **TERMINATION OF AGREEMENT FOR CAUSE:** Either COUNTY or ENGINEER may terminate work in the event the other party fails to perform in accordance with the provisions of this AGREEMENT. Termination of this agreement is accomplished by 30 days prior written notice from the party initiating termination to the other. Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender. Failure to maintain the scheduled level of effort as proposed and prescribed in Exhibit D entitled, - Schedule of Work", or deviation from the aforesaid schedule without prior approval of COUNTY, shall constitute cause for termination. In such event, copies of finished or unfinished documents prepared by ENGINEER under this AGREEMENT shall be submitted to COUNTY as stated in Exhibit C entitled, - Deliverables". ENGINEER shall be entitled to receive compensation for any satisfactory work completed on such documents as reasonably determined by COUNTY, including reasonable costs for the orderly filing and closing of the project.

ARTICLE 14. **TERMINATION FOR CONVENIENCE OF COUNTY:** Notwithstanding any other provisions, COUNTY may terminate this AGREEMENT for its convenience at any time by a written notice to ENGINEER. If the AGREEMENT is terminated for convenience by COUNTY as provided in this article, ENGINEER will be paid compensation for those services actually performed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by ENGINEER which shall itemize each task element and briefly state what work has been completed and what work remains to be done. ENGINEER shall also be paid for reasonable costs for the orderly filing and closing of the project.

ARTICLE 15. **WAIVER OF BREACH:** The waiver by either party of a breach or violation of any provision of this Agreement, shall not operate or be construed to be, a waiver of any subsequent breach or violation of the same or other provision thereof.

ARTICLE 16. **INDEPENDENT ENGINEER:** ENGINEER shall perform the services under this AGREEMENT as an independent ENGINEER and nothing contained herein shall be construed to be inconsistent with relationship or status. Nothing in this AGREEMENT shall be interpreted or construed to constitute ENGINEER or any of its agents or employees to be the agent, employee or representative of COUNTY.

ARTICLE 17. **RESPONSIBILITY OF ENGINEER:** ENGINEER is employed to render a professional service only and any payments made to ENGINEER are compensation solely for such services rendered and recommendations made in carrying out the work.

ARTICLE 18. **COOPERATION WITH OTHER ENGINEERS:** ENGINEER will undertake the PROJECT in cooperation with and in coordination with other studies, projects or related work performed for, with or by COUNTY'S employees, appointed committee(s) or other ENGINEERS. ENGINEER shall fully cooperate with such other related ENGINEERS and COUNTY employees or appointed committees. ENGINEER shall provide within his schedule of work, time and effort to coordinate with other ENGINEERS under contract with COUNTY. ENGINEER shall not commit or permit any act, which will interfere with the performance of work by any other ENGINEER or by COUNTY employees.

ARTICLE 19. **ACCURACY OF WORK:** ENGINEER shall be responsible for the accuracy of his work and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by the COUNTY will not relieve ENGINEER of the responsibility of subsequent corrections of any errors and the clarification of any ambiguities. ENGINEER shall prepare any plans, report, field work, or data required by COUNTY to correct its errors or omissions. The above consultation, clarification or correction shall be made

without added compensation to ENGINEER. ENGINEER shall give immediate attention to these changes so there will be a minimum of delay to others.

ARTICLE 20. **REVIEW OF WORK:** Authorized representatives of COUNTY may at all reasonable times review and inspect PROJECT activities and data collected under this AGREEMENT and amendments thereto. All reports, drawings, studies, specifications, estimates, maps and computations prepared by or for ENGINEER, shall be available to authorized representatives of COUNTY for inspection and review at all reasonable times in the main office of COUNTY. Acceptance shall not relieve ENGINEER of its professional obligation to correct, at its expense, any of its errors in work. COUNTY may request at any time and ENGINEER shall produce progress prints or copies of any work as performed under this Agreement. Refusal by ENGINEER to submit progress reports and/or plans shall be cause for COUNTY, without any liability thereof, to withhold payment to ENGINEER until ENGINEER complies with COUNTY'S request in this regard. COUNTY'S review recommendations shall be incorporated into the plans by ENGINEER.

ARTICLE 21. **INDEMNIFICATION:** ENGINEER agrees to protect, defend, indemnify, and hold harmless COUNTY, its officers, agents, employees and successors and assigns from and against any and all liability, loss, damages, claims, suits, liens, and judgments including attorneys fees, of whatever nature, including claims for contributions and/or indemnification, for injuries to or death or any person or persons, or damage to the property or other rights of any person or persons caused by the performance or non-performance by ENGINEER of the AGREEMENT, whether such injury, death, loss or damage results from any cause whatsoever. ENGINEER'S obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove, shall also include but not limited to any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of produce or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations.

ENGINEER further agrees to protect, defend, indemnify and hold harmless COUNTY, its officers, agents and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employees of ENGINEER. These indemnities shall not be limited by reason of the listing of any insurance coverage.

ARTICLE 22. **CONFIDENTIALITY:** ENGINEER agrees that its conclusions and any reports are for the confidential information of COUNTY and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to COUNTY, and will only discuss the same with it or its authorized representatives, except as required under this AGREEMENT to provide information to the public. Upon completion of this AGREEMENT term, all documents, reports, maps, data and studies prepared by ENGINEER pursuant thereto and any equipment paid for by COUNTY as a result of this AGREEMENT, shall become the property of COUNTY and be delivered to the Director of the DEPARTMENT.

Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the work conducted under this AGREEMENT shall not be presented publicly or published without prior approval in writing of COUNTY.

It is further agreed that if any information concerning the PROJECT, its conduct results, or data gathered or processed should be released by ENGINEER without prior approval from COUNTY, the release of the same shall constitute grounds for termination of this AGREEMENT without indemnity to ENGINEER, but should any such information be released by COUNTY or by ENGINEER with such prior written approval, the same shall be regarded as Public information and no longer subject to the restrictions of this AGREEMENT.

ARTICLE 23. **OWNERSHIP OF INTELLECTUAL PROPERTY AND INFORMATION:** ENGINEER agrees that Fulton County is the sole owner of all information, data, and materials that are developed or prepared subject to this contract. ENGINEER or any subENGINEER is not allowed to use or sell any information subject to this contract for educational, publication, profit, research or any other purpose without the written and authorized consent of the Director of the DEPARTMENT. All electronic files used on this PROJECT, including any custom or commercially available software developed or used by ENGINEER, shall become the property of Fulton County. Any required licenses and fees for software or other required materials shall be purchased and/or paid for by ENGINEER and registered in the name of the Director of the DEPARTMENT. ENGINEER agrees to provide at no cost to COUNTY any upgrades to any software used on this PROJECT which may be developed for a period of seven years from the date of completion of the project. Any work developed for use on this project may be released as public domain information by the Director of the DEPARTMENT at his sole discretion.

ARTICLE 24. **COVENANT AGAINST CONTINGENT FEES:** ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees maintained by ENGINEER for the purpose of securing business and that ENGINEER has not received any non-COUNTY fee related to this AGREEMENT without the prior written consent of COUNTY. For breach or violation of this warranty, COUNTY shall have the right to annul this AGREEMENT without liability or at its discretion to deduct from the Contract Price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE 25. **INSURANCE:** Fulton County has implemented an Owner-Controlled Insurance Program ("OCIP") that covers this Project. Certain relevant provisions of the County's OCIP are outlined below. This OCIP does not affect Fulton County Government's statutory immunity. Under the OCIP, the County shall **furnish certain portions** of the Workers' Compensation, General Liability, and Builder's Risk insurance associated with the County's construction projects. Insurance furnished under the OCIP covers the County, the ENGINEER and its Sub-ENGINEERs of all tiers (with some exceptions, as described below), and other persons or interests as the County may designate in connection with the performance of the Work. As detailed below, the **ENGINEER** still provides certain other portions of insurance coverage not included in the OCIP.

25.1 DEFINITIONS SPECIFIC TO THIS ARTICLE

(I) "Owner-Controlled Insurance Program" (OCIP) means an insurance delivery method that assures the ENGINEER, and its Sub-ENGINEERs of all tiers, and other persons or interests as the County may designate in connection with the performance of the work are insured for certain prescribed Statutory Workers' Compensation, Employers Liability and Commercial General Liability, and such other coverage's as the County may in writing specifically add or delete for the Project.

(II) "OCIP Administrator" means the administrator retained by the County to implement and administer the OCIP. The OCIP Administrator is Resurgens Risk Management/Willis.

(III) The term "enrolled" applies to the entities covered under the OCIP. The ENGINEER is enrolled in the OCIP. The ENGINEER's Sub-ENGINEERs of all tiers shall be enrolled in the OCIP, provided in general that they are performing construction work at the Project site and that the work being performed is not temporary to the project and is an elemental component of the completed project. The ENGINEER shall assure that all enrolled Sub-ENGINEERs of all tiers satisfy all safety program obligations, claim management and applicable insurance requirements relative to the OCIP. The ENGINEER understands that all ENGINEER obligations set forth in the

County's OCIP, whether performed directly by the ENGINEER obligations set forth in the County's OCIP, whether performed directly by the ENGINEER or indirectly by its enrolled Sub-ENGINEERS, are the responsibility of the ENGINEER. Whenever this Agreement establishes obligations for ENGINEER with respect to the OCIP, it shall also be deemed to establish obligations for enrolled Sub-ENGINEERS. Certain exceptions apply to enrolled entities, as described below.

(IV) The term "non-enrolled" applies to the entities not covered under the OCIP. In general vendors, suppliers, fabricators, material dealers, drivers and others who merely transport, pick up, deliver or carry materials, personnel, parts or equipment or any other items or persons to or from the Project site shall be considered non-enrolled entities for the purpose of insurance coverage under the County's OCIP. This non-enrolled OCIP ENGINEER status also applies to those ENGINEERS whose only work is temporary to the site and are not involved in any project construction that is part of the work on the finished project. The ENGINEER shall assure that all non-enrolled Sub-ENGINEERS of all tiers satisfy all safety program obligations, claim management and applicable insurance requirements relative to the OCIP.

(V) "Agent" means the Fulton County's designated Representative, as defined within this Agreement. For purposes of the OCIP, the County's designated Representative shall serve as the County's primary contact for communication with the ENGINEER related to the OCIP.

25.2 INSURANCE PROVIDED BY THE COUNTY UNDER ITS OCIP.

(I) The County shall secure and thereafter maintain, except as otherwise provided herein, the insurance coverages described in Subparagraphs 11.1.3.2, 11.1.3.3, and 11.1.3.4 below, covering as insured parties the County, the ENGINEER and its Sub-ENGINEERS of all tiers (except as detailed below), and such other persons or interests as the County may designate in connection with the performance of the Work, and with limits not less than those specified for each coverage ("OCIP insurance coverage").

(II) No insurance coverage provided by the County's OCIP shall extend to the activities or products of the following:

(a) Any person and/or organization that fabricates and/or manufactures products, materials, and/or supplies away from the Project site(s).

(b) Any non-enrolled architect, engineer or surveyor and their consultants except where required by the Contract Documents.

(c) Truckers, material-delivery, vendors, suppliers, and operators (as independent ENGINEERS), whose operation(s) and/or employee(s) is/are engaged solely in the loading, hauling and/or unloading of material, supplies and/or equipment to or from the Project site(s).

(d) Any employee(s) of the ENGINEER or an enrolled or non-enrolled Sub-ENGINEER of any tier, including employee(s) of truckers, material-delivery, vendors, suppliers, and operators (as independent ENGINEERS), which is/are engaged solely in the loading, hauling and/or unloading of material, supplies and/or equipment to or from the Project site(s).

(e) Any employee(s) of the ENGINEER or an enrolled Sub-ENGINEER of any tier that does not work and/or generate payroll at the Project site(s).

(f) Any employee(s) of the ENGINEER or an enrolled Sub-ENGINEER of any tier, not specifically required to perform Work at the Project site(s), that occasionally visits the Project site(s) to make deliveries, pick up supplies and/or personnel, to perform supervisory and/or progress inspections, or for any other reason.

(g) Any other entity specifically to be determined by the County to be excluded.

(h) Any leased or temporary laborers.

(III) Unless herein otherwise specifically indicated, the policies set forth in Subparagraphs 11.1.3.2, 11.1.3.3 and 11.1.3.4 below shall cover only those operations of the insured parties performed at the Project site or sites incidental to the Work called for in this Owner-ENGINEER Agreement.

(IV) The County assumes no obligation to provide insurance other than that evidenced by the policies referred to in Subparagraphs 11.1.3.2, 11.1.3.3 and 11.1.3.4. Furthermore, any obligation of the County to provide insurance under its OCIP is expressly limited to the insurance referred to in Subparagraphs 25.3, 25.4 and 25.5. The County, however, reserves the right to furnish insurance coverage of various types and limits, provided that such coverage shall not be less than that specified below (so long as such insurance and limits are reasonably available in the insurance market) and provided that the costs of such insurance shall be borne by the County.

25.3 WORKERS' COMPENSATION INSURANCE

Workers' Compensation insurance in statutory limits of the Workers' Compensation laws of the State of Georgia, with Coverage B - Employer's Liability, to limits of not less than one million dollars (\$1,000,000) covering operations of the insured parties at the Project site. Coverage under the Broad Form All States extension is also included. This insurance is primary for all occurrences at the Project site.

25.4 LIABILITY INSURANCE (EXCLUDING MOTOR VEHICLE LIABILITY)

Liability insurance (excluding Motor Vehicle Liability) under a Commercial General Liability insurance policy and covering the insured parties in connection with the performance of the Work at the Project site, including hazards of operations (explosion, collapse and underground exposures), independent ENGINEERS, employees as additional insureds, completed operations (for 5 years after final completion of the Work), contractual liability coverage (for contracts related to the Work), personal injury liability coverage, and excess Employer's Liability coverage for claims arising out of the Work hereunder, for personal injury, bodily injury, and property damage, in policies of insurance such that the total available limits to all insured's combined will not be less than twenty-five million dollars (\$25,000,000) combined single limits for each occurrence and aggregates, as applicable.

Notwithstanding the actual policy deductible, the ENGINEER shall be liable for a deductible not to exceed five thousand dollars (\$5,000) each occurrence, to the extent losses payable are attributable to, involve, or relate to the performance, actions, errors, omissions, or negligence of the ENGINEER or its Sub-ENGINEERS, uninsured parties, or any other entity or person for whom it may be responsible. The ENGINEER's deductible shall include the costs of defense, including court costs and attorneys' fees of a covered OCIP claim and shall not be construed to affect the ENGINEER rights to indemnify the County under the contract. All such deductibles shall be collected as part of the Contract close-out process and final payment.

The insurance provided under the OCIP will not extend coverage for products liability to any insured party or uninsured party. However, Products/Completed Operations liability arising from manufacturing or assembly of

items manufactured or assembled at the Project site, as required by the contract, is covered.

25.5 ALL RISK BUILDER'S RISK, INCLUDING TRANSIT

(I) All Risk Builder's Risk, including transit and installation risks, insuring the interest of the County, the ENGINEER and its Sub-ENGINEERS, providing coverage on an All Risk basis, including, but not limited to, coverage against flood, fire, lightning, wind damage, hail, explosion, riot or civil commotion, aircraft and other vehicles, and collapse.

(II) The policies for such insurance will be secured and maintained by the County in a form and amount as determined by Fulton County. The amount may be amended depending on the amount of a specific project.

(III) Coverage will include materials, supplies and equipment that are intended for specific installation in the Work while such materials, supplies and equipment are located at the Project site, in transit or while temporarily located away from the Project site for the purpose of repair, adjustment or storage at the risk of one of the insured parties.

(IV) Except as otherwise provided in Subparagraph 25.5(III), this insurance will not include coverage for tools or clothing of workers, or tools, equipment, protective fencing, scaffolding, temporary structures, coffer damming, pipe stalling or bracing, or forms owned, rented or used by the ENGINEER, its Sub-ENGINEERS, or uninsured parties and used in the performance of the Work, unless such items are specifically identified in this Agreement and their values declared under the Builder's Risk insurance policy.

(V) The County, its officers, agents, employees and consultants rendering services at the Project site, and the OCIP Administrator will not be liable or responsible for loss or damage to the items excluded in Subparagraph 25.5(IV), and the ENGINEER shall indemnify and hold harmless the County, its officers, agents, employees, its consultants rendering services at the Project site, the OCIP Administrator, and other Project ENGINEERS and their Sub-ENGINEERS from claims or causes of action brought by any person or parties as a result of loss or damage to such excluded items.

(VI) The Builder's Risk policy will be endorsed waiving the carrier's rights of recovery under subrogation against the County, its officers, agents, employees and consultants rendering services at the Project site, the OCIP Administrator, and the ENGINEER and its Sub-ENGINEERS, whose respective interests are insured under such policy.

(VII) Notwithstanding the actual policy deductible, the ENGINEER shall be liable for a deductible not to exceed five thousand dollars (\$5,000) each occurrence for all perils excluding theft and mysterious disappearance, and twenty-five thousand dollars (\$25,000) each occurrence for theft and mysterious disappearance. All such deductibles shall be collected as part of the Contract close-out process and final payment.

25.6 ENGINEER RETAINS VARIOUS OBLIGATIONS

Nothing contained herein, or in any document referenced herein, shall relieve, limit or be construed to relieve or limit the ENGINEER, its Sub-ENGINEERS or uninsured parties of responsibility or obligations otherwise imposed by the Contract. The OCIP shall not be construed as limiting, among other things:

(I) The extent to which the ENGINEER may be held legally responsible for damages to persons or property.

(II) The ENGINEER's indemnity obligations under this Agreement.

25.7 ENGINEER RESPONSIBILITY TO REPAIR DEFECTIVE OR DAMAGED WORK

(I) Notwithstanding the provisions of this Agreement, and until final acceptance of the Work by the County, the ENGINEER shall have full and complete charge and care of the Work or any portion thereof (including the Owner-furnished supplies, material, equipment or other items to be utilized or incorporated in the Work).

(II) The ENGINEER shall redesign, repair, restore and make good losses of, and injuries or damages to, the Work or any portion thereof (including the Owner-furnished supplies, material, equipment or other items to be utilized with, or incorporated in, the Work and which are in the Project site) before final acceptance of the Work. Such rebuilding, repair or restoration shall be at the ENGINEER's sole cost and expense provided, however, the County will make available applicable proceeds from the Builder's Risk policy provided by the County, as specified in Section 25.5.

25.8 ADDITIONAL INSURED

The Additional Insured on the County's OCIP policies shall include Fulton County; the County's officers, agents, employees, and consultants; the OCIP Administrator; and ENGINEERs, including their Sub-ENGINEERs of any tier (but excluding suppliers, vendors, material-delivery, truckers or haulers) whom Fulton County has contracted with and for whom the County has agreed to furnish coverage under the OCIP.

25.9 OWNER'S RIGHT TO AUDIT

(I) The ENGINEER hereby warrants to the County the accuracy of the information provided on the OCIP Insurance Information Form submitted with its bid, and agrees that the County, its officers, agents, insurance carriers and the OCIP Administrator may audit the records of the ENGINEER and its Sub-ENGINEERs to confirm the accuracy of the information provided, including, but not limited to, the accuracy of all estimated payrolls, and to ascertain any effect on insurance resulting from changes in the Work. The audit will be held during the ENGINEER's normal business hours at the office of the ENGINEER or at another mutually agreeable location.

(II) The County shall be entitled to credits in OCIP insurance premiums that may accrue as a result of the audit.

(III) The ENGINEER shall maintain or cause to be maintained sufficient records as may be necessary to audit its compliance and its Sub-ENGINEERs' compliance with the requirements of the OCIP.

25.10 ASSIGNMENT

The ENGINEER and each of its Sub-ENGINEERs of any tier shall assign to the County all return premiums, premium refunds, dividends and other monies due or to become due in connection with the insurance provided by the County. The ENGINEER and its Sub-ENGINEERs of any tier shall execute such other further documentation as may be required by the County to effectuate this assignment.

25.11 OCIP CLAIMS

The ENGINEER, its Sub-ENGINEERs and uninsured parties shall assist the County, its agents, and the OCIP Administrator and provide the utmost cooperation in the adjustment of claims arising out of the operations conducted under, or in connection with, the Work and shall cooperate with the County's insurance carriers in claims

and demands that arise out of the Work and that the insurance carriers are called upon to adjust or resist.

25.12 LIMITATIONS ON OCIP COVERAGES

Although the scope of coverage's afforded under this program may provide coverage beyond the scope required by the Owner-ENGINEER Agreement in the absence of an OCIP, the County makes no warranty or representation that such broad coverage will remain in effect throughout the duration of the Work. The County further does not warrant or represent that the OCIP coverage's constitute an insurance portfolio, which adequately addresses all the risk faced by the ENGINEER or its Sub-ENGINEER(s). The ENGINEER and Sub-ENGINEERS of every tier shall satisfy themselves as to the existence, extent and adequacy of the OCIP coverage's prior to the commencement of the Work. The cost to obtain any "extra" coverage's shall be the responsibility of the ENGINEER. The County shall not assume any responsibility for the premium cost of any "extra" insurance. The County shall issue Certificates of Insurance and make available copies of specimen insurance policies at the time of the Notice to Proceed.

25.13 ALTERNATIVE INSURANCE

In the event the County, after commencement of the Work, is unable to furnish, or elects not to furnish or to continue to furnish, the insurance coverage herein described, and upon 30 days written notice from the County, the following shall be required:

- (I) The ENGINEER shall secure and maintain all, or as much of the insurance herein described, as the County designates, at the County's expense, and the County will thereafter no longer be obligated to furnish such insurance.
- (II) All insurance secured by the ENGINEER or its Sub-ENGINEERS pursuant to this subparagraph shall be in policies subject to the prior written approval of the County as to form, content, limits of liability, cost and issuing company as outlined in the "Base Bid" version of this Article 25 as if the OCIP had not been implemented for the Project.

25.14 PROCEDURES AND SERVICES

The ENGINEER shall fully comply with, and shall require its Sub-ENGINEERS of any tier to fully comply with, all of said plans, procedures and services, including but not limited to, completion of all necessary applications for coverage, prompt and full compliance with all audit requests and claim reporting procedures, and full compliance with the safety, loss prevention and loss control programs implemented by, or at the request of the County.

25.15 INSURANCE NECESSARY FOR THE WORK, BUT COVERING OPERATIONS OUTSIDE THE OCIP

- (I) The ENGINEER shall, for the duration of this Agreement, provide and maintain insurance and shall require each Sub-ENGINEER to provide and maintain insurance of the type and in the limits as described in Paragraph 25.20, which is intended to cover employee injury, personal injury, bodily injury and property damage liability for ongoing operations work performed away from the Project site.
- (II) The insurance described in Subparagraphs 25.20.II (Motor Vehicle Liability) and 25.20.IV (Professional Liability) shall apply to Work performed by both enrolled and non-enrolled entities both at and away from the Project site, and shall be provided and maintained for the duration of this Agreement. Such insurance shall name the parties required to secure same as insured's and shall be in a form and through issuing companies acceptable to

the County. Such insurance shall contain a defense of suits provision.

(III) The ENGINEER shall assure that all non-enrolled entities provide and maintain, for the duration of this Agreement, insurance of the type and in the limits as described in Paragraph 11.2, which shall cover those entities for employee injury, personal injury, bodily injury, and property damage liability for any Work performed at the Project site.

25.16 ENGINEER OCIP OBLIGATIONS

(I) The ENGINEER and each of its Sub-ENGINEERs shall:

(a) Furnish to Fulton County's designated Representative all information and documentation that the County may require from time to time, in connection with the issuance of policies under this Agreement, in such form and substance as the OCIP Administrator may prescribe.

(b) Furnish to the County's designated Representative monthly certified payroll and accident summary reports on forms provided by the OCIP Administrator, and payroll records, as required.

(c) Segregate their respective reports relating to the Work for which OCIP coverage is herein provided, from their records relating to other work for which such coverage is not provided.

(d) Promptly comply with the recommendations of the OCIP insurance carriers, as submitted through the County's designated Representative.

(II) The ENGINEER shall not violate or knowingly permit to be violated any conditions of the policies of insurance provided by the County under the terms of this Agreement, and shall at all times satisfy the requirements of the issuing insurance companies.

(III) The ENGINEER shall assure that all OCIP requirements imposed upon and to be performed by the ENGINEER shall likewise be imposed upon, assumed and performed by each of its Sub-ENGINEERs and uninsured parties with whom it or its Sub-ENGINEERs have a contractual relationship and are performing work under the Contract.

(IV) The ENGINEER shall furnish each bidding and negotiating Sub-ENGINEER, vendor, supplier, material dealer or other person or business entity that may provide goods or services in connection with the Work, a copy of this document describing the insurance requirements for the ENGINEER, and its Sub-ENGINEERs shall require each to impose the same requirement in their subcontracting and procurement procedures.

(V) If the ENGINEER or any of its Sub-ENGINEERs should fail to comply with the requirements of this document, the County may withhold payments due to the ENGINEER or suspend the Work until such time as the ENGINEER and its Sub-ENGINEERs have performed such obligations to the reasonable satisfaction of the County.

(VI) The ENGINEER agrees that the Contract Sum includes all costs of complying with the OCIP, as herein described.

25.17 NOTICES, COSTS AND LOSSES

(I) All policies of insurance that either the ENGINEER, its Sub-ENGINEERs, or the County is required to secure and maintain, shall be endorsed to provide that the insurance company shall notify the County, the

ENGINEER, and each Named Insured at least thirty (30) days prior to the effective date of any cancellation or modification of such policies.

(II) The ENGINEER shall furnish to the County's designated Representative certificates of insurance for insurance required to be maintained by the ENGINEER and its Sub-ENGINEERS, as provided herein. Prior to the issuance of the Notice to Proceed, the ENGINEER shall not be permitted on the Project site.

(III) The County will pay the cost of the premiums for the insurance described above as being provided by the County, and the County will receive and pay, as the case may be, all adjustments in such costs, whether by way of dividends or otherwise. The ENGINEER shall execute such instruments of assignment as may be necessary to permit the County's receipt of such adjustments and shall cause all Sub-ENGINEERS covered by such insurance to do the same.

(IV) The ENGINEER shall be responsible for the payment of the deductible amounts indicated in Subparagraphs 11.1.3.3 and 11.1.3.4. If the actual County-provided OCIP policies have deductible amounts greater than those indicated in Subparagraphs 11.1.3.3 and 11.1.3.4, such excess amounts will be paid by the ENGINEER.

(V) The ENGINEER shall be responsible for all losses greater than OCIP policy limits.

(VI) Payments by the insurer for all losses covered under the All Risk Builder's Risk policy, as specified in Section 11.1.3.4, will be made to the County. The County will make proceeds from the Builder's Risk policy available to the ENGINEER for rebuilding work damaged by covered perils.

25.18 SUBROGATION AND WAIVER

(I) The ENGINEER shall require all policies of insurance that are related to the Work and that are secured and maintained by the ENGINEER and its Sub-ENGINEERS to include clauses providing that each underwriter and carrier shall waive all of their respective rights of recovery, under subrogation or otherwise, against the County, its officers, agents, employees and consultants rendering services at the Project site, the OCIP Administrator, the ENGINEER and its Sub-ENGINEERS, regardless of tier, and all other Project ENGINEERS and their Sub-ENGINEERS, regardless of tier.

(II) The ENGINEER waives all rights of recovery against its Sub-ENGINEERS, the County, its officers, agents, employees and consultants rendering services at the Project site, the OCIP Administrator, and other Project ENGINEERS and their Sub-ENGINEERS, regardless of tier, that the ENGINEER may have or acquire because of deductible clauses in or inadequacy of limits of policies of insurance that are in any way related to the Work and that are secured and maintained by the ENGINEER.

(III) The ENGINEER shall require its Sub-ENGINEERS of every tier to waive the rights of recovery in the same manner (as waived in the preceding paragraph by the ENGINEER) against the County, its officers, agents, employees and consultants rendering services at the Project site, the OCIP Administrator, the ENGINEER, and other Project ENGINEERS and their Sub-ENGINEERS, regardless of tier.

25.19 COVERAGE DETERMINED BY POLICY

(I) The coverages referred to above are set forth in full in the respective policy forms, and the foregoing descriptions of such policies are not intended to be complete, or to alter or amend any provision of the actual policies, and in matters, if any, in which the said description may be conflicting with such instruments, the

provisions of the policies of the insurance shall govern.

25.20 ENGINEER'S LIABILITY INSURANCE

Pursuant to the exclusions of the Owner-Controlled Insurance Program (OCIP) described in Paragraph 11.1 above, the ENGINEER 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 Architect or Engineer hired by the County, and any parties, consultants, or Sub-ENGINEERS 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 ENGINEER's operations under this Agreement **which are not covered under the OCIP**, whether such operations be by himself or by any Sub-ENGINEER, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

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

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

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

(b) 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**);

(c) 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, Program Manager, PROGRAM PROJECT MANAGER, and County's Professional Consultants as additional insured (**for all operations away from the Project site**).

Professional Liability insurance, specifying that the ENGINEER shall be responsible to the County for acts, errors and omissions of the ENGINEER's directors, officers, employees and parties in privity of the contract with the ENGINEER to perform a portion of the work, including their agents and employees (**for all operations both at and away from the Project site**). The ENGINEER shall require the architects 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.

(III) The insurance required by Subparagraph 25.20 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 (refer to OCIP Enrollment procedures provided by the OCIP Administrator for more assistance, or contact Fulton County's designated Representative.)

(a) Worker's Compensation

Each Accident	GA Statutory Limits
Disease – Policy Limit	\$500,000
Disease – Each Employee	\$100,000
Employers Liability	\$1,000,000

General Liability

Bodily Injury/Property Damage	\$1,000,000
Personal Injury	\$1,000,000
General Aggregate	\$2,000,000

Automobile Liability

Bodily Injury	\$1,000,000 CLS
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Excess/Umbrella

As specified and required in the Contract

Professional Liability (if required by the specific Contract and Project)

Limit of \$1,000,000 or 10% of Contract value, whichever is greater.

Note: The ENGINEER shall provide and shall require all Sub-ENGINEERS 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 ENGINEER and any Sub-ENGINEER are considered NON-ENROLLED in OCIP, and cannot commence work.

ARTICLE 26. **PROHIBITED INTEREST:**

Conflict of Interest: ENGINEER agrees that it presently has no interest and shall acquire no interest indirect, that would conflict in any manner or degree with the performance of its service hereunder. ENGINEER further agrees that, in the performance of the AGREEMENT, no person having any such interest shall be employed. Comment [slk1]:

Interest of Public Officials: No member, officer or employee of COUNTY during his tenure shall have any interest, direct or indirect, in this AGREEMENT or the proceeds thereof.

ARTICLE 27. **SUBCONTRACTING:** Except as identified in Exhibit F entitled, - Key Personnel Listing”, ENGINEER shall not subcontract any part of the work covered by this AGREEMENT or permit subcontracted work to be further subcontracted without prior written approval of COUNTY.

ARTICLE 28. **ASSIGNABILITY:** ENGINEER shall not assign or subcontract this AGREEMENT or any portion thereof without the prior expressed written consent of COUNTY. Any attempted assignment or subcontracting by ENGINEER without the prior expressed written consent of COUNTY shall at COUNTY’S sole option terminate this Agreement without any notice to ENGINEER of such termination. ENGINEER binds itself, its successors, assigns, and legal representatives of such other party in respect to all covenants, agreements and obligations

contained herein.

ARTICLE 29. **ANTI-KICKBACK CLAUSE:** Salaries of engineers, surveyors, draftsmen, clerical and technicians performing work under this AGREEMENT shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law. ENGINEER hereby promises to comply with all applicable "Anti-Kickback" Laws, and shall insert appropriate provisions in all subcontracts covering work under this AGREEMENT.

ARTICLE 30. **AUDITS AND INSPECTORS:** At any time during normal business hours and as often as COUNTY may deem necessary, ENGINEER shall make available to COUNTY and/or representatives of the COUNTY for examination all of its records with respect to all matters covered by this AGREEMENT.

ARTICLE 32. **VERBAL AGREEMENT:** No verbal agreement or conversation with any officer, agent or employee of COUNTY either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms of obligations herein contained, nor shall such verbal agreement or conversation entitle ENGINEER to any additional payment whatsoever under the terms of this AGREEMENT. All changes to this shall be in writing and the form of a change order in supplemental agreement, approved by the COUNTY, and entered on the Minutes of the Board of Commissioners.

ARTICLE 33. **NOTICES:** All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notice to COUNTY, shall be addressed as follows:

T.K. Equels, Assistant Director
Fulton County Department of Public Works
141 Pryor Street, S.W., Suite 6001
Atlanta, Georgia 30303

Notices to ENGINEER shall be addressed as follows:

Contact Name
Name of ENGINEER
Address of ENGINEER
Phone Number of ENGINEER

ARTICLE 34. **JURISDICTION:** This AGREEMENT shall be administered and interpreted under the laws of the State of Georgia. Jurisdiction of litigation arising from this AGREEMENT shall be in that state. 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.

Whenever reference is made in the Agreement to standards or codes in accordance with which work is to be performed, the edition or revision of the standards or codes current on the effective date of this AGREEMENT shall apply, unless otherwise expressly stated.

ARTICLE 35. **EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this AGREEMENT, ENGINEER agrees as follows:

ENGINEER will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin;

ENGINEER will, in all solicitations or advertisements for employees placed by, or on behalf of, ENGINEER state that all qualified applicants, will receive consideration for employment without regard to race, creed, color, sex or national origin;

ENGINEER will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the AGREEMENT so that such provision will be binding upon each subENGINEER, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

ARTICLE 36. **FORCE MAJEURE:** Neither COUNTY nor ENGINEER 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 ENGINEER from performing its obligations hereunder in the event of riots, rebellions or legal strikes.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

WITNESS WHEREOF, each of the parties hereto has caused **AGREEMENT** to be executed and delivered on this, the _____ day of _____, 2005.

Attest:

NAME OF ENGINEER

By: _____

Title: _____

Seal (Affix)

Attest:

FULTON COUNTY, GEORGIA

Mark Massey, Clerk of Commission
Board of Commissioners,

By: _____
Karen Handel, Chair

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By: _____
Office of County Attorney
Assistant Director of Public Works

By: _____
T.K. Equels

FINAL AFFIDAVIT

TO FULTON COUNTY, GEORGIA

I, _____, hereby certify that all suppliers of materials, equipment and service, subcontractors, mechanic, and laborers employed by _____ or any of its subcontractors in connection with the design and/or construction of _____ at Fulton County have been paid and satisfied in full as of _____, 20____, and that there are no outstanding obligations or claims of any kind for the payment of which Fulton County on the above-named project might be liable, or subject to, in any lawful proceeding at law or in equity.

Signature

Title

Personally appeared before me this _____ day of _____ 20____.
_____, who under Oath deposes and says that he is
_____ of the firm of _____, that he has read the above statement
and that to the best of his knowledge and belief same is an exact true statement.

Notary Public

Commission expires:
