

MAJOR PROJECTS

TASK ORDER PROGRAM AGREEMENT
BETWEEN
AUGUSTA, GEORGIA
AND
CONTRACTOR

CONTRACTOR:

PROJECT: TASK ORDER PROGRAM

DATE EXECUTED:

DATE COMPLETED:

MAJOR PROJECTS

TASK ORDER PROGRAM AGREEMENT
BETWEEN
AUGUSTA, GEORGIA
AND
CONTRACTOR

This Agreement is made and entered into this ____ day of _____, 20__ by and between AUGUSTA, Georgia, a political subdivision of the State of Georgia, hereinafter called "AUGUSTA" and _____, a Corporation authorized to do business in Georgia, hereinafter called the "CONTRACTOR."

WHEREAS, AUGUSTA desires to engage qualified licensed contractors to furnish services for:

Task Order Program

WHEREAS, the CONTRACTOR has represented to AUGUSTA that it is qualified, licensed, ready and able to perform the Work in connection with this task order program, and AUGUSTA has relied upon such representation.

Furthermore, the CONTRACTOR shall perform and furnish all the materials, labor, equipment, and other things necessary for each Task Order at the locations identified in the Task Order, in accordance with the Contract Documents as defined by the General and Special Conditions hereto attached, which are hereby made a part of this agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenant herein contained, it is agreed by and between AUGUSTA and the CONTRACTORS that:

CONTRACT DOCUMENTS AND SPECIFICATIONS

FOR

TASK ORDER PROGRAM SERVICES

Augusta, Georgia

The Honorable Garnett L Johnson, Mayor

Commissioners:

Jordan Johnsn

Stacy Pulliam

Catherine Smith McKnight

Alvin Mason

Bobby Williams

Tony Lewis

Sean Frantom

Brandon Garrett

Francine Scott

Wayne Guilfoyle

Wes Byne

Director, Augusta Utilities Department

Augusta Utilities Department

452 Walker Street, Suite 200

Augusta, GA 30901

DATE

_____, 2024

CONTENTS

SECTION

TITLE

IB	Instructions to Bidders
NA	Notice of Award
NP	Notice to Proceed
CO	Change Order
BB	Bid Bonds
PB	Performance and Payment Bonds
A	Agreement
Attachment A	Scope of Services
Attachment B	Compensation
Attachment C	Listing of Key Personnel

DRAFT

GENERAL CONDITIONS

ARTICLE 1--DEFINITIONS

Wherever used in this Agreement or in other Contract Documents, whether in the singular or in the plural, the following terms shall have the following meanings:

Addenda-Any changes, revisions or clarifications of the Contract Documents which have been duly issued by AUGUSTA to prospective Bidders prior to the time of opening of Bids.

Agreement-The written agreement between AUGUSTA and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

Agreement Execution - means the date on which CONTRACTOR executes and enters into an Agreement with AUGUSTA to perform the Work.

Agreement Price - means the total monies, adjusted in accordance with any provision herein, payable to the CONTRACTOR under this Agreement.

Application for Payment-The form accepted by PROJECT MANAGER which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

AUGUSTA -means a legal entity AUGUSTA, Georgia, a political subdivision of the State of Georgia.

Bid-The offer or proposal of the bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

Bonds-Bid, performance and payment bonds and other instruments of security furnished by CONTRACTOR and its Surety in accordance with the Contract Documents.

Change Order-- A document recommended by PROJECT MANAGER, which is signed by CONTRACTOR and AUGUSTA, and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

Contract - means the Agreement Documents specifically identified and incorporated herein by reference.

Contract Documents- All documents which define the scope of the project, including but not limited to, this Agreement, task orders, specifications, advertisement for bids, instructions to bidders, the bid, the proposal, bonds, general conditions, special conditions, insurance and technical specifications.

Contract Price-The moneys payable by AUGUSTA to CONTRACTOR under the Contract Documents as stated in the Agreement and/or Task Orders

Contract Time - means the period of time stated in this Agreement for the completion of the Work.

CONTRACTOR - means the party or parties contracting directly with AUGUSTA to perform Work pursuant to this Agreement.

Day-Either a working day or calendar day as specified in the bid documents. If a calendar day shall fall on a legal holiday, that day will be omitted from the computation. Legal Holidays: New Year's Day, Martin Luther King Day, Memorial Day, 4th of July, Labor Day, Veterans Day, Thanksgiving Day and the following Friday, and Christmas Day.

Defective- An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to PROJECT MANAGER's recommendation of final payment, unless responsibility for the protection thereof has been assumed by AUGUSTA at Substantial Completion.

Drawings-The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by PROJECT MANAGER and are referred to in the Contract Documents.

Effective Date of the Agreement-The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed by the Mayor of Augusta, Georgia.

Field Order-A written order issued by PROJECT MANAGER that modifies Drawings and Specifications, but which does not involve a change in the Contract Price or the Contract Time.

Laws or Regulations-Laws, rules, regulations, ordinances, codes and/or orders.

Notice of Award-The written notice by AUGUSTA to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, AUGUSTA will sign and deliver the Agreement.

Notice to Proceed-A written notice given by PROJECT MANAGER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents and/or the Task Orders.

PROJECT MANAGER-The professional in charge serving Augusta with architectural or engineering and inspection services, their successor, or any other person or persons, employed by Augusta, for the purpose of directing or having in charge the work embraced in this Contract.

Specifications-Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Subcontractor - means any person, firm, partnership, joint venture, company, corporation, or entity having a contractual agreement with CONTRACTOR or with any of its subcontractors at any tier to provide a part of the Work called for by this Agreement.

Substantial Completion-The Work (or a specified part thereof) has progressed to the point where, in the opinion of PROJECT MANAGER as evidenced by PROJECT MANAGER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be used for the purposes for which it is intended, or if there be no such certificate issued, when final payment is due. The terms "substantially complete" and "substantially completed" as applied to any Work refer to Substantial Completion thereof.

Supplemental Agreement - means a written order to CONTRACTOR signed by AUGUSTA and accepted by CONTRACTOR, effecting an addition, deletion or revision in the Work, or an adjustment in the Agreement Price or the Contract Time, issued after execution of this Agreement.

Task Order - means a written order specifying a Scope of Services, time of completion and compensation limit for services being provided by CONTRACTOR. Task Orders shall be incorporated by reference as part of the Supplemental Conditions of this Agreement.

Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, and furnishing documents all as required by the Contract Documents. Work includes services as may be more specifically defined in the Task Orders, assigned to or undertaken by CONTRACTOR under this Agreement.

Work Change Directive-A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by AUGUSTA and recommended by PROJECT MANAGER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed. A Work Change Directive may not change the Contract Price or the Contract Time but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time as provided in within this Agreement.

Written Amendment-A written amendment of the Contract Documents, signed by AUGUSTA and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or non-technical rather than strictly Work-related aspects of the Contract Documents.

ARTICLE 2 – PRELIMINARY MATTERS

CONTRACTOR, as a licensed Contractor, has entered in this Agreement with AUGUSTA to provide services, consisting of, but not limited to the installation, maintenance and/or repair of potable water and sanitary sewer lines, including all appurtenances, and services as may be more specifically defined in the various task orders, for the Task Order Program Project in accordance with the requirements as outlined in and attached as Attachment A - Scope of Services and other relevant data defining the Project.

Copies of Documents:

2.1. After the award of the Contract and/or assignment to work Emergency projects, AUGUSTA may furnish CONTRACTOR, upon request, at no cost, one (1) complete set of the Contract Documents for execution of the work. Additional sets of the project manual and drawings and/or individual pages or sheets of the project manual or drawings will be furnished by AUGUSTA upon CONTRACTOR's request and at CONTRACTOR's expense, which will be AUGUSTA's standard charges for printing and reproduction.

Contract Time, Notice to Proceed:

2.2. The Contract Time shall commence at selection by AUGUSTA of CONTRACTOR as Task Order Program Contractors and execution of this Agreement.

Starting the Project:

2.3. CONTRACTOR shall begin the Work on the date the Contract Time commences, as designated per the Notice to Proceed and/or assignment to work Emergency projects. No Work shall be done prior to the date on which the Contract Time commences. Any Work performed by CONTRACTOR prior to date on which Contract Time commences shall be at the sole risk of CONTRACTOR.

Before Starting Construction:

2.4. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to PROJECT MANAGER any conflict, error, ambiguity, or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from PROJECT MANAGER before proceeding with any Work affected thereby. CONTRACTOR shall be liable to AUGUSTA for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents, if CONTRACTOR knew or reasonably should have known thereof.

2.5. Within ten days after the Notice to Proceed and/or assignment to work Emergency projects (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to PROJECT MANAGER and AUGUSTA for review:

2.5.1. An estimated progress schedule indicating the starting and completion dates of the various stages of the Work, if requested by PROJECT MANAGER:

2.5.2. A preliminary schedule of Shop Drawing and Sample submissions, and

2.5.3. A preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission

Pre-construction Conference:

2.6. Before any Work at the site is started, a conference may be held and attended by CONTRACTOR, AUGUSTA, PROJECT MANAGER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in 2.5 as well as procedures for handling Shop Drawings and other submittals, processing applications for payment and maintaining required records.

DRAFT

ARTICLE 3 – CONTRACT DOCUMENTS; INTENT, AMENDING, REUSE

3.1 List of Documents

The Agreement, the Attachments, the General Conditions, the Special Conditions, the Procurement RFQ/Bid package documents, any Supplemental Written Agreements, including Task Orders shall constitute the Agreement Documents (the “Agreement”).

Conflict and Precedence

The Agreement Documents are complementary, and what is called for by one is as binding as if called for by all. In the event there are any conflicting provisions or requirements in the component parts of this Agreement, the several Agreement Documents shall take precedence in the following order:

1. Agreement - Including Attachments
2. General Conditions
3. Supplemental Conditions - Including Task Orders
4. Procurement RFQ/Bid package documents

3.2 Intent:

1. The Contract Documents comprise the entire agreement between AUGUSTA and CONTRACTOR concerning the Work. The Contract Documents are complementary: what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the State of Georgia.

2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be supplied whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words shall be interpreted in accordance with that meaning.

3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in 3.6 or 3.7, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents) and the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation). Clarifications and interpretations of the Contract Documents shall be issued by PROJECT MANAGER as provided for within this Agreement.

4. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.

5. If, during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to within this Agreement, CONTRACTOR shall so report to PROJECT MANAGER in writing at once and before proceeding with the Work affected thereby and shall obtain a written interpretation or clarification from PROJECT MANAGER; however, CONTRACTOR shall not be liable to AUGUSTA or PROJECT MANAGER for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

3.3 Amending and Supplementing Contract Documents:

1.) The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

1. a formal Written Amendment,
2. a Change Order, or
3. a Work Change Directive.

2.) As indicated within this Agreement, Contract Price and Contract Time may only be changed by a Change Order or a Written Amendment.

3.) In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized in one or more of the following ways:

1. a Field Order.
2. PROJECT MANAGER's approval of a Shop Drawing or sample, or
3. PROJECT MANAGER's written interpretation or clarification.

3.4 Reuse of documents:

1.) Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with AUGUSTA shall have or acquire any title to or Ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of PROJECT MANAGER or PROJECT MANAGER's consultant; and they shall not reuse such Drawings, Specifications or other documents (or copies of any thereof) on extensions of the Project or any other project without written consent of AUGUSTA and PROJECT MANAGER and specific written verification or adaptation by PROJECT MANAGER.

3.5 BINDINGS

It is further agreed that AUGUSTA and CONTRACTOR each binds itself and themselves, its or their successors, executors, administrators and assigns to the other party to this Agreement and to its or their successors, executors and assigns in respect to all covenants of this Agreement. Except as above, neither AUGUSTA nor the CONTRACTOR shall assign, sublet or transfer its or their interest in this Agreement without prior written consent of the other party hereto.

DRAFT

ARTICLE 4 – PROPERTY INFORMATION AND PHYSICAL CONDITIONS

4.1 Physical Conditions:

4.1.1. *Explorations and Reports:* Reference is made to the Supplementary Conditions for identification of those reports of explorations and tests of subsurface conditions at or contiguous to the site that have been utilized in preparing the Contract Documents and those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized in preparing the Contract Documents.

4.1.2. CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against AUGUSTA, PROJECT MANAGER, or any of PROJECT MANAGER's Consultants with respect to:

4.1.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or

4.1.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or

4.1.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.

4.1.3. If conditions are encountered, excluding existing utilities, at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then CONTRACTOR shall give AUGUSTA notice thereof promptly before conditions are disturbed and in no event later than 48 hours after first observance of the conditions.

4.1.4. The AUGUSTA and PROJECT MANAGER shall promptly investigate such conditions, and, if they differ materially and cause an increase or decrease in CONTRACTOR's cost of, or time required for, performance of any part of the Work, the AUGUSTA and PROJECT MANAGER shall recommend an equitable adjustment in the Contract Price or Contract Time, or both. If the AUGUSTA and PROJECT MANAGER determine that the conditions at the Site are not materially different from those indicated in the Contract Documents or are not materially different from those ordinarily found and that no change in the terms of the Contract is justified, the PROJECT

MANAGER shall notify CONTRACTOR of the determination in writing. The Work shall be performed after direction is provided by the PROJECT MANAGER.

4.2 Documentation evidencing Property Condition before and after work:

4.2.1. *Requirements for Pictures and/or other documentation regarding the pre-work and post-work condition of property:* Proper documentation, including date video and/or photographs, shall be maintained by the CONTRACTOR properly showing the preconstruction and post-construction condition of property in accordance with generally accepted industry standards. CONTRACTOR should address any questions related to proper documentation in writing to the PROJECT MANAGER within a reasonable amount of time of commencing work.

DRAFT

ARTICLE 5 – BONDS AND INSURANCE

5.1 Performance and Other Bonds:

5.1.1 CONTRACTOR may be required to furnish performance and payment Bonds, each in an amount at least equal to the Contract Price as Security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect at least until one year after the date when final payment becomes due, except as otherwise provided by Law or Regulation or by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Supplementary Conditions. All Bonds shall be in the forms prescribed by Law or Regulation or by the Contract Documents and be executed by such sureties as are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds, and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.

5.2 Licensed Sureties and Insurers; Certificates of Insurance

5.2.1 All bonds and insurance required by the Contract Documents to be purchased and maintained by CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the State of Georgia to issue bonds or insurance policies for the limits and coverages so required. All bonds signed by an agent must be accompanied by a certified copy of authority to act. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.2.2. CONTRACTOR shall deliver to AUGUSTA, with copies to each additional insured identified in 5.3, an original or a certified copy of the complete insurance policy for each policy required, certificates of insurance (and other evidence of insurance requested by AUGUSTA or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with 5.3.

5.2.3. If the surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of as provided for within this Agreement, CONTRACTOR shall within five days thereafter substitute another Bond and Surety, both of which must be acceptable to AUGUSTA.

5.3 CONTRACTOR's Liability Insurance:

5.3.1 CONTRACTOR shall purchase and maintain such comprehensive general liability and other insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable:

5.3.1. Claims under workers' or workmen's compensation, disability benefits and other similar employee benefit acts;

5.3.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.3.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employees;

5.3.4. Claims for damages insured by personal injury liability coverage which are sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason;

5.3.5. Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom;

5.3.6. Claims arising out of operation of Laws or Regulations for damages because of bodily injury or death of any person or for damage to property; and

5.3.7. Claims for damages because of bodily injury or death of any person or property damage arising out of the OWNERSHIP, maintenance or use of any motor vehicle.

The insurance required by this paragraph 5.3 shall include the specific coverage's and be written for not less than the limits of liability and coverage's provided in the Supplementary Conditions, or required by law, whichever is greater. The comprehensive general liability insurance shall include completed operations insurance. All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty days prior written notice has been given to AUGUSTA, and PROJECT MANAGER by certified mail. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work. In addition, CONTRACTOR shall maintain such completed operations insurance for at least two years after final payment and furnish AUGUSTA with evidence of continuation of such insurance at final payment and one year thereafter.

5.4 Contractual Liability Insurance:

5.4.1 The comprehensive general liability insurance required by paragraph 5.3 will include contractual liability insurance applicable to CONTRACTOR's obligations.

5.5 Indemnification

5.5.1. CONTRACTOR shall indemnify and hold harmless AUGUSTA, PROJECT MANAGER, and its employees and agents from and against all liabilities, claims, suits, demands, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from the performance of its Work, provided that any such liability, claim, suit, demand, damage, loss, or

expense (a) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and (b) is caused in whole or in part by an act or omission of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, whether or not it is caused in whole or in part by the negligence or other fault of a party indemnified hereunder.

5.5.2. In any and all claims against AUGUSTA or any of its agents or employees by any employee of CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under the previous paragraph shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any SUBCONTRACTOR under workmen’s compensation acts, disability benefit acts, or other employee benefit acts.

5.5.3. CONTRACTOR shall indemnify and hold harmless AUGUSTA and anyone directly or indirectly employed by it from and against all claims, suits, demands, damages, losses expenses (including attorneys’ fees) arising out of any infringement on patent or copyrights held by others and shall defend all such claims in connection with any alleged infringement of such rights.

5.6 CONTRACTOR’S LIABILITY INSURANCE:

Insurance shall be written with limits of liability shown below or as required by law, whichever is greater:

Commercial General Liability (per occurrence) Each Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000
Products	\$ 2,000,000
Personal & Adv Injury	\$ 1,000,000
Fire Damage	\$ 500,000
Automobile Liability (any auto) Combined Single Limit	\$ 1,000,000
Excess Liability (any auto) Each Occurrence	\$ 5,000,000
Workers Compensation	Statutory Limits
Employer Liability	\$1,000,000

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.1. CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of Work. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

1. **PROFESSIONAL STANDARDS**

The standard of care for all services performed or furnished by CONTRACTOR under this Agreement will be the level of care and that is ordinarily used by members of CONTRACTOR’S profession practicing under similar conditions, and in accordance with the latest version of the Codes and/or any additional generally accepted industry standards.

6.2. CONTRACTOR shall keep on the Work, at all times during its progress, a competent resident superintendent, who shall not be replaced without written notice to AUGUSTA and PROJECT MANAGER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit evening work or the performance of Work on Saturday, Sunday or any legal holiday without Property owner's written consent given after prior written notice to PROJECT MANAGER, except as may otherwise be provided in Project Task Order as approved by the PROJECT MANAGER.

6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals whether temporary or permanent necessary for the execution, testing, initial operation, and completion of the Work as required by the Contract Documents.

6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by PROJECT MANAGER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable Supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be

effective to assign to PROJECT MANAGER, or any of PROJECT MANAGER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions as provided for within this Agreement.

Adjusting Progress Schedule:

6.6 CONTRACTOR shall submit to PROJECT MANAGER for acceptance to the extent indicated in this Agreement adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.

Substitutes or "Or-Equal" Items:

6.7.1. Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by PROJECT MANAGER if sufficient information is submitted by CONTRACTOR to allow PROJECT MANAGER to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by PROJECT MANAGER will include the following as supplemented in the General Requirements. Requests for review of substitute items of material and equipment will not be accepted by PROJECT MANAGER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to PROJECT MANAGER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with AUGUSTA for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other CONTRACTORS affected by the resulting change, all of which shall be considered by PROJECT MANAGER. In evaluating the proposed substitute, PROJECT MANAGER may require CONTRACTOR to furnish, at CONTRACTOR's expense, additional data about the proposed substitute.

6.7.2. If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to PROJECT MANAGER, if CONTRACTOR submits sufficient information to allow PROJECT MANAGER to determine that the substitute proposed is equivalent to that indicated or required by the Contract

Documents. The procedure for review by PROJECT MANAGER will be similar to that provided in this Agreement as applied by PROJECT MANAGER and as may be supplemented in the General Requirements.

6.7.3. PROJECT MANAGER will be allowed a reasonable time within which to evaluate each proposed substitute. PROJECT MANAGER will be the sole judge of acceptability and no substitute will be ordered, installed or utilized without PROJECT MANAGER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. AUGUSTA may require CONTRACTOR to furnish, at CONTRACTOR's expense, a special performance guarantee or other surety with respect to any substitute. PROJECT MANAGER will record time required by PROJECT MANAGER and PROJECT MANAGER's consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not PROJECT MANAGER accepts a proposed substitute, CONTRACTOR shall reimburse AUGUSTA for the charges of PROJECT MANAGER and PROJECT MANAGER's consultants for evaluating each proposed substitute.

Concerning Subcontractors, Suppliers and Others:

6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to AUGUSTA and PROJECT MANAGER as indicated in paragraph 6.8.2) whether initially or as a substitute, against whom AUGUSTA or PROJECT MANAGER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

6.8.2. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers or other persons or organizations including those who are to furnish the principal items of materials and equipment to be submitted to AUGUSTA prior to the Effective Date of the Agreement for acceptance by AUGUSTA and PROJECT MANAGER and if CONTRACTOR has submitted a list thereof in accordance with the Supplementary Conditions, AUGUSTA's or PROJECT MANAGER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute, the Contract Price will be increased by the difference, and the cost occasioned by such substitution and an appropriate Change Order will be issued or Written Amendment signed. No acceptance by AUGUSTA or PROJECT MANAGER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of AUGUSTA or PROJECT MANAGER to reject defective Work.

6.9. CONTRACTOR shall be fully responsible to AUGUSTA and PROJECT MANAGER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between AUGUSTA or PROJECT MANAGER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of AUGUSTA or PROJECT MANAGER to pay or to see

to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

6.10. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

6.11. All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of AUGUSTA and PROJECT MANAGER and contains waiver provisions as required as within this Agreement. CONTRACTOR shall pay each Subcontractor a just share of any insurance moneys received by CONTRACTOR on account of losses under policies issued as provided for within this Agreement.

Patent Fees and Royalties:

6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. CONTRACTOR shall indemnify and hold harmless AUGUSTA and PROJECT MANAGER and anyone directly or indirectly employed by either of them from and against all claims, damages, losses and expenses including attorneys' fees and court and arbitration costs arising out of any infringement on patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights.

Permits:

6.13. CONTRACTOR shall obtain and pay for all construction and encroachment permits, inclusive of required bonds; licenses; governmental charges and inspection fees; and all public utility charges which are applicable and necessary for the execution of the Work. All permit costs shall be included in the base bid. Permits, if any, that are provided and paid for by AUGUSTA are listed in the Supplementary Conditions. Any delays associated with the permitting process will be considered for time extensions only and no damages or additional compensation for delay will be allowed.

Laws and Regulations:

6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither AUGUSTA nor PROJECT MANAGER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.

6.14.2. If CONTRACTOR observes that any of the Contract Documents are contradictory to such laws, rules, and regulations, it will notify the Project Manager promptly in writing. Any

necessary changes shall then be adjusted by an appropriate Change Order. If CONTRACTOR performs any Work that it knows or should have known to be contrary to such laws, ordinances, rules, and regulations and without such notice to the Project Manager, it shall bear all related costs.

Taxes:

6.15. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

Use of Premises:

6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements. CONTRACTOR shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Any loss or damage to CONTRACTOR's or any Subcontractor's equipment is solely at the risk of CONTRACTOR. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the AUGUSTA or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against AUGUSTA or PROJECT MANAGER by any such AUGUSTA or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold AUGUSTA harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of PROJECT MANAGERS, architects, attorneys and other PROJECT MANAGERS and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against AUGUSTA to the extent based on a claim arising out of CONTRACTOR's performance of the Work.

6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris or contaminants resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by AUGUSTA. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger them.

Record Documents:

6.19. CONTRACTOR shall keep at the site and in good order one record copy of the Contract Documents and all Drawings and Specifications. These documents shall be annotated on a continuing basis to show all changes in red made during the construction process. These shall be available to PROJECT MANAGER and shall be submitted with the Application for Final Payment.

Safety and Protection:

6.20. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall assume all risk of loss for stored equipment or materials, irrespective of whether CONTRACTOR has transferred the title of the stored equipment or materials to AUGUSTA. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all employees on the Work and other persons and organizations who may be affected thereby;

6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify Property owners of adjacent property and of Underground Facilities and utility property owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of AUGUSTA or PROJECT MANAGER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR). CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and PROJECT MANAGER has issued a notice to AUGUSTA and CONTRACTOR (except as otherwise expressly provided in connection with Substantial Completion).

6.21. CONTRACTOR shall designate a responsible member of its organization whose duty shall be the prevention of accidents at the site. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to the Project Manager.

Emergencies:

6.22. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from PROJECT MANAGER or AUGUSTA, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give PROJECT MANAGER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If PROJECT MANAGER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Work Change Directive or Change Order be issued to document the consequences of the changes or variations.

6.22.1. CONTRACTOR shall immediately notify PROJECT MANAGER of all events involving injuries to any person on the Site, whether or not such person was engaged in the construction of the Project, and shall file a written report on such person(s) and any other event resulting in property damage of any amount within five (5) days of the occurrence.

6.22.2. If PROJECT MANAGER determines that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Change Order will be issued to document the consequences of such action.

Continuing the Work:

6.30. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with AUGUSTA. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as otherwise permitted within this Agreement or as CONTRACTOR and AUGUSTA may otherwise agree in writing.

Cleaning Up:

6.31. CONTRACTOR shall maintain the site free from accumulations of waste materials, rubbish, and other debris or contaminants resulting from the work on a daily basis or as required. At the completion of the work, CONTRACTOR shall remove all waste materials, rubbish, and debris from the site as well as all tools, construction equipment and machinery, and surplus materials and will leave the Site clean and ready for occupancy by AUGUSTA. All disposal shall be in accordance with applicable Laws and Regulations. In addition to any other rights available to AUGUSTA under the Contract Documents, CONTRACTOR's failure to maintain the site may result in withholding of any amounts due CONTRACTOR. CONTRACTOR will restore to original condition those portions of the site not designated for alteration by the Contract Documents.

Indemnification:

6.32. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless AUGUSTA, PROGRAM MANAGER and PROJECT MANAGER and their consultants, agents and employees from and against all claims, damages, losses and expenses,

direct, indirect or consequential (including but not limited to fees and charges of PROGRAM MANAGER, PROJECT MANAGERS, architects, attorneys and other PROJECT MANAGERS and court and arbitration costs) arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom and (b) is caused in whole or in part by any negligent act or omission of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder or arises by or is imposed by Law and Regulations regardless of the negligence of any such party.

6.33. In any and all claims against AUGUSTA, PROGRAM MANAGER or PROJECT MANAGER or any of their consultants, agents or employees by any employee of CONTRACTOR, any Subcontractor, any person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, the indemnification obligation under paragraph 6.32 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any such Subcontractor or other person or organization under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

6.34. The obligations of CONTRACTOR under paragraph 6.32 shall not extend to the liability of PROJECT MANAGER, PROJECT MANAGER's consultants, agents or employees arising out of the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications.

CONTRACTOR, in order to determine the requirements of the Project, shall review the information in Attachment A - Scope of Services. CONTRACTOR shall review its understanding of the Project requirements with AUGUSTA and shall advise AUGUSTA of additional data or services which are not a part of CONTRACTOR's services, if any, necessary for design to begin.

ARTICLE 7 – AUGUSTA'S RESPONSIBILITIES

7.1. Except as otherwise provided in this Agreement, AUGUSTA shall issue all communications to CONTRACTOR through the PROJECT MANAGER.

7.2. AUGUSTA shall furnish the data required of AUGUSTA under the Contract Documents promptly.

7.3. AUGUSTA shall make payments as provided for under the Contract Documents and the Task Orders.

DRAFT

ARTICLE 8 – PROJECT MANAGER’S STATUS DURING WORK

8.1 Visits to Site:

PROJECT MANAGER will make visits to the site at intervals appropriate to the various stages of project to observe the premises and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. PROJECT MANAGER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. PROJECT MANAGER's efforts will be directed toward providing for AUGUSTA a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations as an experienced and qualified design PROJECT MANAGER, PROJECT MANAGER will keep AUGUSTA informed of the progress of the Work and will endeavor to guard AUGUSTA against defects and deficiencies in the Work.

8.2 Clarifications and Interpretations:

PROJECT MANAGER shall issue such written clarifications or interpretations of the Contract Documents (in the form of Drawings or otherwise) as may be determined necessary, or as reasonably requested by CONTRACTOR, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification and interpretation entitles it to an increase in the Contract Price and/or Contract Time, CONTRACTOR may make a claim as provided for within this Agreement

8.3 Authorized Variations in Work:

PROJECT MANAGER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on AUGUSTA and also on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided for within this Agreement.

8.4 Rejecting Defective Work:

PROJECT MANAGER will have authority to disapprove or reject Work which PROJECT MANAGER believes to be defective and will also have authority to require special inspection or testing of the Work as provided for within this Agreement whether or not the Work is fabricated, installed or completed.

8.5 Decisions on Disputes:

8.5.1 PROJECT MANAGER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and

other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims as provided for within this Agreement in respect of changes to the Contract Price or Contract Time will be referred initially to PROJECT MANAGER in writing with a request for a formal decision in accordance with this paragraph, which PROJECT MANAGER will render in writing within a reasonable time. Written notice of each such claim, dispute and other matter will be delivered by the claimant to PROJECT MANAGER and the other party to the Agreement promptly (but in no event later than thirty days after the occurrence of the event giving rise thereto) and written supporting data will be submitted to PROJECT MANAGER and the other party within sixty days after such occurrence unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim.

8.5.2 When functioning as interpreter and judge as provided for within this Agreement, PROJECT MANAGER will not show partiality to AUGUSTA or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by PROJECT MANAGER as provided for within this Agreement with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided for within this Agreement) will be a condition precedent to any exercise by AUGUSTA or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter.

8.6 Limitations on PROJECT MANAGER's Responsibilities:

8.6.1 Neither PROJECT MANAGER's authority to act under this Article or elsewhere in the Contract Documents nor any decision made in good faith to exercise such authority shall give rise to any duty or responsibility of PROJECT MANAGER to CONTRACTOR, any Subcontractor, any of their agents or employees.

8.6.2 PROJECT MANAGER shall not be responsible for the construction means, methods, techniques, sequences, or procedures or the safety precautions and programs used. PROJECT MANAGER shall not be responsible for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents.

8.6.3 PROJECT MANAGER shall not be responsible for the acts or omissions of CONTRACTOR, any Subcontractors, any agents or employees, or any other persons performing any of the Work.

ARTICLE 9 – CHANGES IN THE WORK

1. Without invalidating the Contract, AUGUSTA may at any time or from time to time order additions, deletions, or revisions in the Work. The AUGUSTA shall provide CONTRACTOR with a proposal request, identifying the Work to be added, deleted or revised. Upon receipt, CONTRACTOR shall promptly submit a written proposal for the changed work prepared in accordance within this Agreement. If the proposal request calls only for the deletion of Work, the AUGUSTA may order the partial suspension of any Work related to the proposed deletion, in which case CONTRACTOR must cease performance as directed; CONTRACTOR shall not be entitled to claim lost profits on deleted work. All changed Work shall be executed under the applicable conditions of the Contract Documents.

2. Additional Work performed by CONTRACTOR without authorization of a Change Order will not entitle CONTRACTOR to an increase in the Contract Price or an extension of the Contract Time, except in the case of an emergency as provided as provided for within this Agreement. The effect of this paragraph shall remain paramount and shall prevail irrespective of any conflicting provisions contained in these Contract Documents.

3. Upon agreement as to changes in the Work to be performed, Work performed in an emergency as provided for within this Agreement, and any other claim of CONTRACTOR for a change in the Contract Time or the Contract Price, PROJECT MANAGER will prepare a written Change Order to be signed by PROJECT MANAGER and CONTRACTOR and submitted to AUGUSTA for approval.

4. In the absence of an agreement as provided for within this Agreement, AUGUSTA may, at its sole discretion, issue a Work Change Directive to CONTRACTOR. Pricing of the Work Change Directive will be in accordance within the terms of this Agreement. The Work Change Directive will specify a price, and if applicable a time extension, determined to be reasonable by AUGUSTA. If CONTRACTOR fails to sign such Work Change Directive, CONTRACTOR may submit a claim in accordance within the terms of this Agreement, but CONTRACTOR shall nevertheless be obligated to fully perform the work as directed by the Work Change Directive.

5. CONTRACTOR shall proceed diligently with performance of the Work as directed by AUGUSTA, regardless of pending claim actions, unless otherwise agreed to in writing.

6. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

ARTICLE 10 – CHANGES IN THE CONTRACT PRICE

1. The Contract Price constitutes the total compensation (subject to written authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.

2. The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to PROJECT MANAGER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless PROJECT MANAGER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by PROJECT MANAGER

DRAFT

ARTICLE 11 – CHANGE OF CONTRACT TIME

1. The Contract Time may only be changed by a Change Order. Any request for an extension in the Contract Time shall be made in writing and delivered to PROJECT MANAGER and AUGUSTA within seven (7) calendar days of the occurrence first happening and resulting in the claim. Written supporting data will be submitted to PROJECT MANAGER and AUGUSTA within fifteen (15) calendar days after such occurrence unless the AUGUSTA allows additional time. All claims submitted by CONTRACTOR for adjustments to the Contract Time must set forth in detail the reasons for and causes of the delay and clearly indicate why the subject delay was beyond CONTRACTOR's control or fault.

2. If CONTRACTOR is delayed at any time in the performance, progress, commencement, or completion of the Work by any act or neglect of AUGUSTA or PROJECT MANAGER, or by an employee of either, or by any separate CONTRACTOR employed by AUGUSTA, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties, utility conflicts which could not have been identified or foreseen by CONTRACTOR using reasonable diligence, or any causes beyond CONTRACTOR's control or fault, then the Contract Time shall be extended by Change Order for such reasonable time as AUGUSTA may determine. CONTRACTOR shall be entitled to an extension of time for such causes only for the number of days of delay which AUGUSTA may determine to be due solely to such causes and only to the extent such occurrences actually delay the completion of the Work and then only if CONTRACTOR shall have strictly complied with all the requirements of the Contract Documents. Provided, however, notwithstanding anything in the Contract Documents to the contrary, no interruption, interference, inefficiency, suspension or delay in the performance, progress, commencement or completion of the Work for any cause whatsoever, including those for which AUGUSTA or PROJECT MANAGER may be responsible in whole or in part, shall relieve CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from AUGUSTA. CONTRACTOR's sole and exclusive remedy against AUGUSTA for interruption, interference, inefficiency, suspension or delay of any aspect of the Work shall be the right to seek an extension to the Contract Time in accordance with the procedures set forth herein.

ARTICLE 12 – WARRANTY AND GUARANTEE; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1 Warranty and Guarantee:

1. CONTRACTOR warrants and guarantees to AUGUSTA that all materials and equipment will be new unless otherwise specified and that all work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the requirements of the Contract Documents and any inspections, tests, or approvals referred to in this Article. All unsatisfactory Work, all faulty Work and all Work not conforming to the requirements of the Contract Documents or such inspections, tests, approvals, or all applicable building, construction and safety requirements shall be considered defective. Notice of all defects shall be given to CONTRACTOR by PROJECT MANAGER. All defective work, whether or not in place, may be rejected, corrected, or accepted as provided in this Article.

2. CONTRACTOR shall warrant and guarantee to AUGUSTA that all materials and equipment will be new unless otherwise specified and that all work will be of good quality, performed in a workmanlike manner, free from faults or defects, and in accordance with the requirements of the Contract Documents and any inspections, tests, or approvals referred to in this Article. All unsatisfactory Work, all faulty Work and all Work not conforming to the requirements of the Contract Documents or such inspections, tests, approvals, or all applicable building, construction and safety requirements shall be considered defective.

3. CONTRACTOR shall warrant and guarantee to AUGUSTA that all Work will be covered by a Warranty for a period of One (1) Calendar year, unless otherwise specified by requisite permit(s). Said Warranty runs directly from the CONTRACTOR to each individual property owner.

12.2 Access to Work:

1. For the duration of the Work, PROJECT MANAGER and its representatives, other designated representatives of AUGUSTA, and authorized representatives of any regulatory agency shall at all times be given access to the Work. CONTRACTOR shall provide proper facilities for such access and observation of the Work and also for any inspection or testing by others.

12.3 Uncovering Work:

1. If any Work required to be inspected, tested or approved is covered prior thereto without the prior written approval of PROJECT MANAGER, or if any Work is covered contrary to the request of PROJECT MANAGER, the Work shall, if requested by PROJECT MANAGER, be uncovered for observation, inspection, testing or approval and replaced at CONTRACTOR'S expense.

2. If PROJECT MANAGER considers it necessary or advisable that covered Work be observed by PROJECT MANAGER or inspected or tested by others, CONTRACTOR, at PROJECT

MANAGER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as PROJECT MANAGER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall bear all direct and consequential costs of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction (including but not limited to fees and charges of PROJECT MANAGERS, architects, attorneys and other PROJECT MANAGERS), and AUGUSTA shall be entitled to an appropriate decrease in the Contract Price and, if the parties are unable to agree as to the amount thereof, AUGUSTA may make a claim therefor as provided for within this Agreement. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction, and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided for within this Agreement

12.4 AUGUSTA May Stop the Work:

1. When Work is defective or when CONTRACTOR fails to supply sufficient skilled workmen or suitable materials or equipment or make prompt payments to Subcontractors for labor, materials, or equipment or if CONTRACTOR violates any provisions of these Contract Documents, AUGUSTA may order CONTRACTOR to stop the Work until the cause for such order has been eliminated. However, this right of AUGUSTA to stop the Work shall not give rise to any duty on the part of AUGUSTA to exercise this right for the benefit of CONTRACTOR or any other party. CONTRACTOR shall have no right to claim an increase in the Contract Price or Contract Time or other damages for a stop work order under this paragraph.

12.5 Correction or Removal of Defective Work:

1. When directed by PROJECT MANAGER, CONTRACTOR shall promptly, without cost to AUGUSTA and as specified by PROJECT MANAGER, either correct the defective Work whether fabricated, installed, or completed, or remove it from the site and replace it with non-defective Work. If CONTRACTOR does not correct such defective Work or remove and replace such defective Work within a reasonable time, as specified in a written notice from PROJECT MANAGER, AUGUSTA may have the deficiency corrected. All direct and indirect costs of such correction shall be paid by CONTRACTOR or deducted from payment to CONTRACTOR. CONTRACTOR will also bear the expense of correcting or removing and replacing all Work of others destroyed or damaged by the correction, removal, or replacement of the defective Work.

12.6 One Year Correction Period:

1. If, after approval of final payment and prior to the expiration of one year after the date of substantial completion or such longer period of time as may be prescribed by law; by the terms of any applicable special guarantee required by the Contract Documents; and/or as specified by requisite permit(s), any Work or materials are found to be defective, incomplete, or otherwise not in accordance with the Contract Documents, CONTRACTOR shall promptly, without cost to AUGUSTA and in accordance with AUGUSTA's written instructions, either correct such defective Work or if it has been rejected by AUGUSTA, remove it from the Site and replace it with

non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, AUGUSTA may have the defective Work corrected, removed, or replaced. All direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other PROJECT MANAGERS) will be paid by CONTRACTOR.

12.7 Neglected Work by CONTRACTOR

1. If CONTRACTOR neglects to execute the Work in accordance with the Contract Documents, including any requirements of the progress schedule, PROJECT MANAGER may direct CONTRACTOR to submit a recovery plan and take specific corrective actions including, but not limited to, employing additional workmen and/or equipment, and working extended hours and additional days, all at no cost to AUGUSTA in order to put the Work back on schedule. If CONTRACTOR fails to correct the deficiency or take appropriate corrective action, AUGUSTA may terminate the contract or CONTRACTOR's right to proceed with that portion of Work and have the Work done by others. The cost of completion under such procedure shall be charged against CONTRACTOR. A Change Order shall be issued incorporating the necessary revisions in the Contract Documents, including an appropriate reduction in the Contract Price. If the payments due CONTRACTOR are not sufficient to cover such amount, CONTRACTOR shall pay the difference to AUGUSTA.

2. Should CONTRACTOR work overtime, weekends or holidays to regain the schedule, all costs to AUGUSTA of associated inspection, construction management and resident engineers shall be identified to CONTRACTOR and the Contract Price reduced by a like amount via Change Order.

ARTICLE 13 – SUSPENSION OF WORK AND TERMINATION

13.1 AUGUSTA May Suspend Work:

1. AUGUSTA may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and PROJECT MANAGER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefore as provided for within this Agreement.

13.2 Termination For Cause:

1. Upon the occurrence of any one or more of the following events:

1.1. if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

1.2. if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

1.3. if CONTRACTOR makes a general assignment for the benefit of creditors;

1.4. if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

1.5. if CONTRACTOR admits in writing an inability to pay its debts generally, as they become due;

1.6. if CONTRACTOR fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established within this Agreement as revised from time to time);

1.7. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

1.8. if CONTRACTOR disregards the authority of PROJECT MANAGER; or

1.9. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents,

AUGUSTA may, after giving CONTRACTOR (and the surety, if there be one) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which AUGUSTA has paid CONTRACTOR but which are stored elsewhere, and finish the Work as AUGUSTA may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of PROJECT MANAGERS, architects, attorneys and other PROJECT MANAGERS and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to AUGUSTA. Such costs incurred by AUGUSTA will be approved as to reasonableness by PROJECT MANAGER and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph, AUGUSTA shall not be required to obtain the lowest price for the Work performed.

2. In the event AUGUSTA terminates the contract for cause and it is subsequently judicially determined that there was no cause for termination, the termination for convenience provision will be the means for disposition of the balance of the contract obligations.

13.3 Termination for Convenience

Upon seven working days' written notice to CONTRACTOR and PROJECT MANAGER, AUGUSTA may, without cause and without prejudice to any other right or remedy of AUGUSTA, elect to terminate the Contract. In such case, CONTRACTOR shall be paid (without duplication of any items):

1. For completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

2. For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;

3. For all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, suppliers and others; and

4. For reasonable expenses directly attributable to termination.

5. CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

6. Where CONTRACTOR's services have been so terminated by AUGUSTA, the termination will not affect any rights or remedies of AUGUSTA against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by AUGUSTA will not release CONTRACTOR from liability.

13.4 CONTRACTOR May Stop Work or Terminate:

If through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety calendar days by AUGUSTA or under an order of court or other public authority, or PROJECT MANAGER fails to act on any Application for Payment within thirty days after it is submitted or AUGUSTA fails for thirty-one days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may upon seven working days' written notice to AUGUSTA and PROJECT MANAGER and provided AUGUSTA or PROJECT MANAGER did not remedy such suspension or failure within that time, terminate the Agreement and recover from AUGUSTA payment on the same terms as provided for within this Agreement. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if PROJECT MANAGER has failed to act on an Application for Payment within thirty days after it is submitted or AUGUSTA has failed for thirty-one calendar days after it is submitted to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven days' written notice to AUGUSTA and PROJECT MANAGER stop the Work until receipt of payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph are not intended to preclude CONTRACTOR from making claim as provided for within this Agreement for an increase in Contract Price or Contract Time or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations as provided for within this Agreement to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with AUGUSTA.

13.5 SPECIFIED EXCUSES FOR DELAY OR NON-PERFORMANCE

CONTRACTOR is not responsible for delay in performance caused by hurricanes, tornadoes, floods, and other severe and unexpected acts of nature. In any such event, the contract price and schedule shall be equitably adjusted.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

-PAYMENTS SHALL BE MADE IN ACCORDANCE WITH APPROVED PAY APPLICATION(S).

CONTRACTOR shall provide pricing and details of said work as requested by PROJECT MANAGER.

AUGUSTA shall compensate the CONTRACTOR for services, which have been authorized by AUGUSTA under the terms of this Agreement.

The CONTRACTOR may submit to AUGUSTA an application for payment, in a form acceptable to AUGUSTA and accompanied by all support documentation requested by AUGUSTA, for payment for the services, which were completed during the billing period. AUGUSTA shall review for approval said invoices. AUGUSTA shall have the right to reject payment of any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined solely by AUGUSTA, are unreasonably in excess of the actual work completed. AUGUSTA shall pay each such invoice or portion thereof as approved, provided that the approval or payment of any such invoice shall not be considered to be evidence of performance by the CONTRACTOR to the point indicated by such invoice, or of receipt of acceptance by AUGUSTA of the service covered by such invoice. AUGUSTA shall pay any undisputed items contained in such invoices.

Partial payments will be considered, but shall be decided on a case by case basis depending on the scope, duration, and total amount of specific project.

Each invoice shall be accompanied by a letter progress report describing the total work accomplished for each phase and any problems, which have been encountered, which may inhibit execution of the work. The CONTRACTOR shall also submit an accurate updated schedule, and an itemized description of the percentage of total work completed for each phase during the billing period.

When AUGUSTA authorizes the CONTRACTOR to proceed with the work authorized in a Task Order, it agrees to pay the CONTRACTOR for work completed, on the basis of Task Order Bid Schedule.

GEORGIA PROMPT PAY ACT:

This Agreement is intended by the Parties to, and does, supersede any and all provisions of the Georgia Prompt Pay Act, O.C.G.A. Section 13-11-1, et seq. In the event any provision of this Agreement is inconsistent with any provision of the Prompt Pay Act, the provision of this Agreement shall control.

Defective pricing

To the extent that the pricing provided by CONTRACTOR is erroneous and defective, the parties may, by agreement, correct pricing errors to reflect the intent of the parties.

Interest

Notwithstanding any provision of the law to the contrary, the parties agree that no interest shall be due CONTRACTOR on any sum held as retainage pursuant to the Contract Documents and CONTRACTOR specifically waives any claim to same.

DRAFT

ARTICLE 15 – DISPUTE RESOLUTION

1. All disputes arising under this Contract or its interpretation whether involving law or fact or both, or extra work, and all claims for alleged breach of contract shall within ten (10) working days of the commencement of the dispute be presented by CONTRACTOR to AUGUSTA for decision. All papers pertaining to claims shall be filed in quadruplicate. Such notice need not detail the amount of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, CONTRACTOR shall proceed with the Work as directed. Any claim not presented within the time limit specified in this paragraph shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) working days of its commencement, the claim will be considered only for a period commencing ten (10) working days prior to the receipt by AUGUSTA of notice thereof. Each decision by AUGUSTA will be in writing and will be mailed to CONTRACTOR by registered or certified mail, return receipt requested, directed to his last known address.

2. All claims, disputes and other matters in question between AUGUSTA and CONTRACTOR arising out of, or relating to, the Contract Documents or the breach thereof shall be decided under Georgia Law in the Superior Court of Richmond County, Georgia. CONTRACTOR by execution of the Contract consents to jurisdiction and venue in the Superior Court of Richmond County, Georgia, and waives any right to contest same.

3. **RESPONSIBILITY FOR CLAIMS AND LIABILITY**

The CONTRACTOR shall be responsible for any and all damages to properties or persons caused by its employees, subcontractors, or agents, and shall hold harmless AUGUSTA, its officers, agents and employees from all suits, claims, actions or damages of any nature whatsoever to the extent found to be resulting from the CONTRACTOR, its subcontracts, or agent in the negligent performance or non-performance of work under this Agreement. These indemnities shall not be limited by reason of the listing of any insurance coverage.

ARTICLE 15 – MISCELLANEOUS

15.1. Giving Notice:

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid. Notices shall be addressed as follows:

AUGUSTA:

ADMINISTRATOR
AUGUSTA, GEORGIA
535 Telfair Street
Suite 910
Augusta, GA 30911

CONTRACTOR:

Copy to:

DIRECTOR
AUGUSTA UTILITIES DEPARTMENT
452 Walker Street, Suite 200
Augusta, GA 30901

15.2 Computation of Time:

1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

2. A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

15.3 PROFESSIONAL STANDARDS

The standard of care for all services performed or furnished by CONTRACTOR under this Agreement will be the level of care and that is ordinarily used by members of CONTRACTOR'S profession practicing under similar conditions.

15.4 PERSONNEL

The CONTRACTOR represents that it has secured or will secure, at its own expense, all personnel necessary to complete this Agreement; none of whom shall be employees of, or have any contractual relationship with, AUGUSTA. All of the services required hereunder will be

performed by the CONTRACTOR under its supervision, and all personnel engaged in the work shall be qualified and shall be authorized or permitted under law to perform such services.

All key professional personnel, including subcontractors, engaged in performing services for the CONTRACTOR under this agreement are indicated in a personnel listing attached hereto as Attachment C - Listing of Key Personnel and incorporate herein by reference. No changes or substitution shall be permitted in the CONTRACTOR's Key Personnel without the prior written approval of AUGUSTA or his designee.

15.5 RESPONSIBILITY FOR CLAIMS AND LIABILITY

1. The CONTRACTOR shall be responsible for any and all damages to properties or persons caused by its employees, subcontractors, or agents, and shall hold harmless AUGUSTA, its officers, agents and employees from all suits, claims, actions or damages of any nature whatsoever to the extent found to be resulting from the CONTRACTOR, its subcontracts, or agent in the negligent performance or non-performance of work under this Agreement. These indemnities shall not be limited by reason of the listing of any insurance coverage.

2. Should AUGUSTA or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim should be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions as provided for within this Agreement shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

15.6. INDEPENDENT CONTRACTOR

The CONTRACTOR shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute the CONTRACTOR or any of its agents or employees to be the agent, employee, or representative of AUGUSTA.

15.7 OPEN RECORDS

CONTRACTOR acknowledge that all records relating to this Agreement and the services to be provided under the contract may be a public record subject to Georgia's Open Records Act (O.C.G.A. § 50-18-70, et seq.). CONTRACTOR shall cooperate fully in responding to such request and making all records, not exempt, available for inspection and copying as provided by law.

15.7 RECORDS RETENTION

CONTRACTOR shall keep adequate records and supporting documentation applicable to this Work and Contract. Said records and documentation shall be retained by CONTRACTOR for a minimum of five (5) years from the date of final completion or termination of this Contract. AUGUSTA shall have the right to audit, inspect, and copy all such records and documentation as often as AUGUSTA deems necessary during the period of the Contract and for a period of five (5)

years thereafter provided, however, such activity shall be conducted only during normal business hours. AUGUSTA, during this period of time, shall also have the right to obtain a copy of and otherwise inspect any audit made at the direction of CONTRACTOR as concerns the aforesaid records and supporting documentation.

15.8 COVENANT AGAINST CONTINGENT FEES

The CONTRACTOR 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 or bona fide established commercial or selling agencies maintained by CONTRACTOR for the purpose of securing business and that the CONTRACTOR has not received any non- AUGUSTA fee related to this Agreement without the prior written consent of AUGUSTA. For breach or violation of this warranty, AUGUSTA shall have the right to annul this Agreement without liability or at its discretion to deduct from the Agreement Price of consideration the full amount of such commission, percentage, brokerage or contingent fee.

15.9 EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the CONTRACTOR agrees as follows: (1) the CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin; (2) the CONTRACTOR will, in all solicitations or advertisements for employees placed by qualified applicants, receive consideration for employment without regard to race, creed, color, sex or national origin; (3) the CONTRACTOR 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 subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies of raw materials.

15.10 DRUG FREE WORK PLACE

CONTRACTOR shall be responsible for insuring that its employees shall not be involved in any manner with the unlawful manufacture, distribution, dispensation, possession, sale or use of a controlled substance in the workplace. For purposes of the policy, "workplace" is defined as AUGUSTA owned or leased property, vehicles, and project or client site. Any violation of the prohibitions may result in discipline and/or immediate discharge.

CONTRACTOR shall notify the appropriate federal agencies of an employee who has a criminal drug statute conviction for workplace violation.

CONTRACTOR may require drug or alcohol testing of employees when contractually or legally obligated, or when good business practices would dictate.

15.11 ANTI-KICKBACK CLAUSE

Salaries of architects, drafters, engineer's, 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. The

CONTRACTOR hereby promises to comply with all applicable "Anti-kickback" laws, and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

15.12 AUDITS AND INSPECTORS

At any time during normal business hours and as often as AUGUSTA may deem necessary, the CONTRACTOR shall make available to AUGUSTA and/or audit representatives of AUGUSTA for examination all of its records with respect to all matters covered by this Agreement. It shall also permit AUGUSTA and/or representatives of the audit, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

The CONTRACTOR shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and used in support of its proposal and shall make such material available at all reasonable times during the period of the Agreement, and for three years from the date of final payment under the Agreement, for inspection by AUGUSTA or any reviewing agencies, and copies thereof shall be furnished upon request at cost plus 10%. The CONTRACTOR agrees that the provisions of this Article shall be included in any Agreements it may make with any subcontractor, assignee, or transferee.

15.13 ASSIGNABILITY

The CONTRACTOR shall not assign or transfer whether by an assignment or novation, any of its rights, obligations, benefits, liabilities or other interest under this Agreement without the written consent of AUGUSTA.

15.14 PROHIBITED INTERESTS

1. **Conflict of Interest:** The CONTRACTOR agrees that it presently has no interest and shall acquire no interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. The CONTRACTOR further agrees that, in the performance of the Agreement, no person having such interest shall be employed.
2. **Interest of Public Officials:** No member, officer, or employee of AUGUSTA during his tenure or for one year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
3. **Employment of AUGUSTA's Personnel:** The CONTRACTOR shall not employ any person or persons in the employ of AUGUSTA for any work required by the terms of the Agreement, without the written permission of AUGUSTA except as may otherwise be provided for herein.

15.15 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent, or employee of AUGUSTA, either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein contained, nor shall such verbal agreement or conversation entitle the

CONTRACTOR to any additional payment whatsoever under the terms for this Agreement. All changes to this Agreement shall be in writing and appended hereto as prescribed within this Agreement

15.16 LOCAL SMALL BUSINESS:

In accordance with Chapter 10B of the AUGUSTA, GA. CODE, Contractors agree to collect and maintain all records necessary to for Augusta, Georgia to evaluate the effectiveness of its Local Small Business Opportunity Program and to make such records available to Augusta, Georgia upon request. The requirements of the Local Small Business Opportunity Program can be found at www.augustaga.gov. In accordance with AUGUSTA, GA. CODE, Contractors shall report to Augusta, Georgia the total dollars paid to each subcontractor, vendor, or other business on each contract, and shall provide such payment affidavits, regarding payment to subcontractors, if any, as required by Augusta, Georgia. Such utilization reports shall be in the format specified by the Director of Minority and Small Business Opportunities, and shall be submitted at such times as required by Augusta, Georgia. Required forms can be found at www.augustaga.gov. If you need assistance completing a form or filing information, please contact the Local Small Business Opportunity Program Office at (706)821-2406. Failure to provide such reports within the time period specified by Augusta, Georgia shall entitle Augusta, Georgia to exercise any of the remedies set forth, including but not limited to, withholding payment from the contractor.

15.17 E-VERIFY:

All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program. All contractors and subcontractors must provide their *E-Verify number* and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to its contract with Augusta, Georgia the contractor will secure from such subcontractor(s) each subcontractor's *E-Verify number* as evidence of verification of compliance with O.C.G.A. § 13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to Augusta, Georgia at the time the subcontractor(s) is retained to perform such physical services

EXTENT OF THE AGREEMENT

This Agreement represents the entire agreement between AUGUSTA and CONTRACTOR and supersedes all prior negotiations, representations and agreements, either written or oral.

ACKNOWLEDGEMENTS

"Contractor acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, Contractor is deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of Contractor's provision of goods or services to Augusta, Georgia under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Contractor may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Contractor agrees that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the Contractor provides goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by Contractor. Contractor assumes all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized, including, without limitation, all remedies at law or equity." This acknowledgement shall be a mandatory provision in all Augusta, Georgia contracts for goods and services, except revenue producing contracts

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, said parties have hereunto set their seals the day and year written below:

CITY:

AUGUSTA, GEORGIA (AUGUSTA)

CONTRACTOR:

BY: _____

BY: _____

PRINTED NAME: Garnett L. Johnson

PRINTED NAME _____

AS ITS: MAYOR

AS ITS: _____

ATTEST CLERK:

ATTEST:

PRINTED NAME: Lena J. Bonner

PRINTED NAME _____

AS ITS: Clerk of Commission

AS ITS: _____

DATE: _____

DATE: _____

Copy To:

DIRECTOR
AUGUSTA UTILITIES DEPARTMENT
452 Walker Street, Suite 200
Augusta, GA 30901

ATTACHMENT A - SCOPE OF SERVICES

-TASK ORDER PROGRAM

PROJECT DESCRIPTION:

Projects shall consist of, but are not limited to the installation, maintenance and/or repair of potable water and sanitary sewer lines, including all appurtenances related thereto. Said projects may be further defined as:

I.) Emergency Projects:

Projects which require attention within two (2) hours of notification, examples include shut downs or water main breaks, etc.

Contractors will be contacted in a rotating basis to preform emergency work as needed. The selected contractors will be required to respond to the work request within a two (2) hour period.

When time permits, a bid schedule will be provided Contractor in advance of the work. In these instances, Contractor will be required to provide a completed bid schedule to the Augusta Utilities Department for approval prior to beginning work.

II.) Pre-planned Urgent Projects:

Projects will generally within the following categories: (i) general maintenance; (ii) routine repairs; and/or (iii) new construction.

Contractors will bid on any designated TASK ORDER PROGRAM project as proposed by the Augusta Utilities Department (AUD).

AUD shall provide all required plans, specifications, bid sheets, details, etc. and project management for each project.

AUD will then enter into a detailed contractual agreement with Contractor to provide the construction services necessary to complete specific projects as awarded under the TASK ORDER PROGRAM. Contractor will be required to complete each awarded project as defined in referenced project plans, specifications, and bid documents.

ATTACHMENT B - COMPENSATION

AUGUSTA shall compensate the CONTRACTOR for services, which have been authorized by AUGUSTA under the terms of this Agreement.

The CONTRACTOR may submit to AUGUSTA an application for payment, in a form acceptable to AUGUSTA and accompanied by all support documentation requested by AUGUSTA, for payment for the services, which were completed during the billing period. AUGUSTA shall review for approval said invoices. AUGUSTA shall have the right to reject payment of any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined solely by AUGUSTA, are unreasonably in excess of the actual phase of completion of each phase. AUGUSTA shall pay each such invoice or portion thereof as approved, provided that the approval or payment of any such invoice shall not be considered to be evidence of performance by the CONTRACTOR to the point indicated by such invoice, or of receipt of acceptance by AUGUSTA of the service covered by such invoice. AUGUSTA shall pay any undisputed items contained in such invoices.

AUGUSTA shall make no payments for stored material.

Each invoice shall be accompanied by a letter progress report describing the total work accomplished for each phase and any problems, which have been encountered, which may inhibit execution of the work. The CONTRACTOR shall also submit an accurate updated schedule, and an itemized description of the percentage of total work completed for each phase during the billing period.

When AUGUSTA authorizes the CONTRACTOR to proceed with the work authorized in a Task Order, it agrees to pay the CONTRACTOR for work completed, on the basis of the standard billing rates agreed upon and provided in Contract Documents including, but not limited to those principals and employees engaged directly on the work.

To the extent that the pricing provided by CONTRACTOR is erroneous and defective, the parties may, by agreement, correct pricing errors to reflect the intent of the parties.

The terms of this agreement supersede any and all provisions of the Georgia Prompt Pay Act.

ATTACHMENT C - LISTING OF KEY PERSONNEL

CONTRACTOR shall provide qualified personnel to perform its work. The list of key personnel below, including a designated Program Manager will not change or be reassigned without the written approval of AUGUSTA. Those personnel committed for this work are as follows:

Name	Title/Position	Contact Information

DRAFT