

SECTION 00090
THE CONTRACT FOR CONSTRUCTION
AND INCORPORATED GENERAL CONDITIONS

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THE CONTRACT FOR CONSTRUCTION AND INCORPORATED GENERAL CONDITIONS

This Contract is made by and between the City of Dalton, GA (the "Owner") and R W Smith Company (the "Contractor") under seal for construction of "A New Building for Dalton Police Department" (the "Project"). The Owner and the Contractor hereby agree as follows:

ARTICLE 1. THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

1.1.1 The Contract between the Owner and the Contractor, of which this Contract is a part, consists of the Contract Documents. It shall be effective on the date this Contract is executed by the last party to execute it.

1.2 The Contract Documents

1.2.1 The Contract Documents consist of this Contract, the Specifications, the Drawings, Supplemental Conditions, all Change Orders and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with the following (if any):

1.2.2 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data, and shall give written notice to the Owner and the Architect of any inconsistency, ambiguity, error, or omission that the Contractor discovers regarding these documents before proceeding with the affected Work. The issuance or the express or implied approval by the Owner or the Architect of the Contract Documents, Shop Drawings, or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Architect to only prepare documents for the Project, including the Drawings and Specifications, which are accurate, adequate, consistent, coordinated and sufficient for construction. **HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING SUCH DOCUMENTS.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed, and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

1.2.3 The Contractor herein acknowledges and represents that prior to the submission of its bid, and prior to its execution of this Contract, it visited and carefully examined the Project site and any and all structures located thereon, and it thoroughly correlated the results of such visit and examination with the requirements of the Contract Documents. The Contractor further acknowledges that it has become familiar with the local conditions

under which the Work is to be performed, and the cost of properly addressing such conditions during performance of the Work is included in the Contract Price.

1.2.4 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, or other categories nor the organization or arrangement of the Design shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors. Unless otherwise provided herein, a reference to "Article" or "Section" shall include all sections, subsections, and other subdivisions of such Section or Article.

1.3 Ownership of Contract Documents

1.3.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one record set of the Contract Documents upon completion of the Project. However, in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the Owner's prior written authorization.

1.4 Hierarchy of Contract Documents

1.4.1 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following hierarchy shall control: (a) as between figures given on Drawings and the scaled measurements, the figures shall govern; (b) as between large scale drawings and small scale drawings, the large scale shall govern; (c) as between Drawings and Specifications, the requirements of the Specifications shall govern; (d) as between the Contract for Construction and Incorporated General Conditions and the Specifications, the requirements of the Contract for Construction and Incorporated General Conditions shall govern; (e) as between any Supplemental Conditions and the Contract for Construction and Incorporated General Conditions, the requirements of the Supplemental Conditions shall govern. As set forth hereinabove, any and all conflicts, discrepancies, or inconsistencies shall be immediately reported to the Owner and the Architect in writing by the Contractor.

ARTICLE 2. THE WORK

2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract.

2.2 The term "Work" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: (i) construction of the whole or a designated part of the Project; (ii) furnishing of any required surety bonds and insurance; and (iii) the provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools,

transportation, storage, power, permits and licenses required of the Contractor. Fuel, heat, light, cooling and all other utilities as required by this Contract shall also be deemed part of the Work. The Work to be performed by the Contractor is generally described as follows:

ARTICLE 3. CONTRACT TIME

3.1 Time and Damages for Delay

3.1.1 The Contractor shall commence the Work on 5/6/2024 and shall achieve Substantial Completion of the Work no later than 5/22/2025. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time."

3.1.2 The Contractor shall pay the Owner the sum of **\$500** per day for each and every calendar day of delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable under this Section shall be payable not as a penalty but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to cover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Notwithstanding any other provision of this Section, the Owner and the Contractor expressly agree that the liquidated damages set forth herein do not contemplate, nor do they cover, any Funding Delay Damages as identified in Section 5.6.1.2. Any such Funding Delay Damages shall be in addition to the liquidated damages allowed pursuant to this Section.

3.2 Substantial Completion

3.2.1 "Substantial Completion" shall mean that stage in the completion of the Work when the Work is sufficiently complete in accordance with this Contract such that the Owner can enjoy beneficial use and occupancy of the Work, can utilize the Work for its intended purpose, and a Certificate of Occupancy has been issued allowing full and complete occupancy of the entire Project. Additionally, the Work shall not be deemed to be Substantially Complete until all nonconforming Work specifically rejected by the Architect has been properly completed as required by the Contract and until all operational manuals, "marked-up" drawings, and similar required documents are delivered to the Architect for transmission to the Owner. However, the mere issuance of a Certificate of Occupancy will not, by itself, constitute Substantial Completion. Ordinary and customary punchlist items shall be completed after Substantial Completion as provided by Section 5.5. Partial use or occupancy of the Project shall not result in the Project being deemed

Substantially Complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

3.2.2 In addition to the requirements for Substantial Completion as set forth in Section 3.2.1, as an express condition for Substantial Completion, the Contractor shall furnish to the Owner and the Architect, in writing, a detailed list of all incomplete and deficient Work which must be completed and corrected prior to Final Completion of the Project. THIS LIST SHALL BE IN ADDITION TO ALL PUNCHLISTS REQUIRED ELSEWHERE BY THIS CONTRACT. Furthermore, notwithstanding any other provision of this Contract, an express condition for Substantial Completion is the submission by the Contractor to Owner and Architect of any warranties, manuals, drawings, forms, or other documents or things, of any kind or nature, as may be required for Substantial Completion by any of the Contract Documents. In the event the Contract Documents require the submission of any such documents or things in order for the Project to be considered Substantially Complete, receipt of same by Owner and Architect is an express condition precedent to any duty by Owner to make any payment otherwise due Contractor upon Substantial Completion.

3.3 Time is of the Essence

3.3.1 All limitations of time set forth in the Contract Documents are of the essence of this Contract.

ARTICLE 4. CONTRACT PRICE

4.1 The Contract Price

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the Work, the fixed sum of \$3,765,291.00. The sum set forth in this Section shall constitute the Contract Price and shall not be modified except by Change Order as provided in this Contract. The fixed sum includes the following:

Contractor's Lump Sum price: \$3,945,291.00

Deductive Alternate No.1: -\$45,000.00

Deductive Alternate No.2: -\$135,000.00

Deductive Alternates No. 3-7 not accepted.

ARTICLE 5. PAYMENT OF THE CONTRACT PRICE

5.1 Schedule of Values

5.1.1 Within ten (10) calendar days after the effective date hereof, the Contractor shall submit to the Owner and to the Architect a Schedule of Values allocating the Contract Price among the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Architect or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance the Schedule of Values or artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Architect and the Owner. Receipt of the Schedule of Values as required herein is a condition precedent to payment of any sums due the Contractor.

5.1.2 In the event any Work is to be performed under a unit-price agreement, the Contractor acknowledges and represents that it has not imbalanced or artificially inflated the unit prices, and if requested by the Owner or the Architect, the Contractor shall provide such data and supporting documentation as may be requested to support the reasonableness and accuracy of such unit prices. Unit prices establish the complete and total sum to be paid for the unit price work, and such unit prices include any and all applicable overhead, profit, and mark-up of every kind and nature.

5.2 Payment Procedure

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided in Section 5.2.

5.2.2 **Progress Payments.** Based upon the Contractor's Applications for Payment submitted to the Architect and upon Certificates for Payment subsequently issued to the Owner by the Architect, the Owner shall make progress payments to the Contractor on account of the Contract Price.

5.2.2.1 On or before the 5th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 30th day of the preceding month to the Architect in such form and manner, and with such supporting data and content, as the Owner or the Architect may require.

5.2.2.2 Each Application for Payment may request payment for ninety-five percent (95%) of that portion of the Contract Price properly allocable in the Schedule of Values to Contract requirements properly performed and labor, materials, and equipment properly incorporated in the Work plus ninety-five percent (95%) of that portion of the Contract Price properly allocable in the Schedule of Values to materials or equipment properly stored on-site for subsequent incorporation in the Work, less the total amount of previous payments. Payment for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment, and shall include proof of required insurance.

5.2.2.3 Each Application for Payment shall be signed by the Contractor, which shall constitute the Contractor's representation that the Work has progressed to the level for

which payment is requested in accordance with the Schedule of Values, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested.

5.2.2.4 The Architect will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. Based on the Architect's evaluations of the Contractor's Application for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment for such amounts.

5.2.2.5 The amount of each partial payment shall be the amount certified for payment by the Architect less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Architect's certification of an Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Section 5.3, and the Architect shall have the right to amend or withdraw any previously executed Certification of Payment if it determines that such amendment or withdrawal is necessary to protect the interest of the Owner under this Contract.

5.2.2.6 The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Architect's certification of the amount due thereunder.

5.2.2.7 When the Contractor reaches Substantial Completion, the Contractor may submit in writing to the Owner a request for release of retainage, and the Owner shall, within 30 days after submission of Contractor's pay application and other appropriate documentation as may be required by the Contract Documents are provided, pay the retainage to the Contractor. If at that time there are any remaining incomplete items of Work, an amount equal to 200 percent (200%) of the value of each item, as determined by the Architect, shall be withheld until such item or items are completed. The retainage shall be shared by the Contractor and Subcontractors as their interests may appear. At the discretion of the Owner, and with the approval of the Contractor, the retainage of any Subcontractor may be released separately as the Subcontractor completes its work. The rights of the Owner set forth herein to retainage are in addition to all the other rights and remedies of the Owner set forth in this Contract. Notwithstanding any other provisions herein, the Contractor shall not request, nor shall it be entitled to receive, any reduction in retainage, or any cessation in the withholding of retainage, so long as any Work has been rejected by the Architect and such Work has not been corrected or otherwise performed in accordance with all requirements of the Contract Documents.

5.2.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall be free and clear of liens, claims, security interest, or other encumbrances in favor of the Contractor or any other person or entity.

5.2.4 The Contractor shall promptly pay each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled and shall furnish proof of such payment to the Owner and Architect. The Contractor shall also procure and furnish to the Owner and Architect such affidavits of payment, proofs of payment, and lien waivers from Subcontractors, suppliers, laborers and materialmen as the Owner or Architect may require.

5.2.5 The submission of any Application for Payment by the Contractor to the Architect shall constitute a representation by the Contractor to both the Architect and the Owner that such Application includes any and all sums due the Contractor as of the date of such Application. Payment by the Owner to the Contractor of any sums certified by the Architect pursuant to an Application for Payment shall constitute full and complete payment to the Contractor, save and except for any unpaid retainage, of all sums due the Contractor from the Owner as of the date of such Application.

5.2.6 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any Work not in strict accordance with this Contract.

5.3 Withheld Payment

5.3.1 The Owner may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the Owner from loss because of:

- (a) Work rejected by the Architect or other defective Work not remedied by the Contractor or, in the opinion of the Owner, not likely to be remedied by the Contractor;
- (b) Work which requires further testing or inspection to verify that it has been installed in accordance with the requirements of the Contract Documents;
- (c) Claims of third parties against the Owner or the Owner's property;
- (d) Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (e) Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (f) Evidence that the Work will not be completed within the time required for Substantial Completion or Final Completion;
- (g) Persistent failure to carry out the Work in accordance with the Contract;
- (h) Damage to the Owner or a third party to whom the Owner is, or may be, liable.

5.3.2 If the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Section 5.3, the Contractor shall promptly comply with such demand within 10 days.

5.4 Unexcused Failure to Pay

5.4.1 If the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor within forty-five (45) days after the date established for payment, then the Contractor may after seven (7) additional days' written notice to the Owner and the Architect, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner have been received. Any payment not made within forty-five (45) days after the date due shall bear interest at the rate of four percent (4%) per annum. No other interest shall be due Contractor.

5.5 Process For Substantial Completion

5.5.1 When the Contractor believes that the Work is Substantially Complete, the Contractor shall submit in writing to the Architect a list of items to be completed or corrected. When the Architect, on the basis of an inspection, determines that the Work is in fact Substantially Complete, the Architect will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion and shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance. The Contractor shall have **30 Days** after the date of Substantial Completion to complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such certificate.

5.5.2 Upon Substantial Completion of the Work, and execution by both the Owner and the Contractor of the Certificate of Substantial Completion, and upon submission to the Owner of a complete set of record drawings illustrating the as-built condition of the Work (including the location of all utilities) along with all maintenance manuals and warranties required by the Contract Documents, the Owner shall pay the Contractor an amount sufficient to increase total payments to the Contractor to one hundred percent (100%) of the Contract Price less two hundred percent (200%) of the reasonable cost as determined by the Owner and the Architect for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims. No further payments shall be made until Final Completion is achieved.

5.5.3 In the event the Contractor fails or refuses to complete the incomplete Work, or correct and bring into conformance the defective Work, or resolve any unsettled claims, the Owner, without limitation on any of its other rights or remedies, may complete the Work, remedy any defects in the Work, and resolve any unsettled claims relating to the Work, and the Contractor shall be liable to the Owner's damages including the cost of same. If the Work is completed or corrected by employees of the Owner, the Contractor shall be liable for the reasonable value of the completion or correction based upon the reasonable commercial cost of such Work as if performed by an independent contractor.

To the extent the amount due the Owner hereunder exceeds the retainage held by the Owner, the balance due shall be paid by the Contractor within ten (10) days after receipt of an invoice or demand for payment from the Owner.

5.5.4 With respect to any and all Work performed by the Contractor after Substantial Completion of the Project or after any occupancy of the Project, in whole or in part, by the Owner, absent prior written consent of the Owner, such Work shall not be performed (a) during normal operating hours of the Owner's activities at the Project; (b) during the installation of any fixtures, furniture, or equipment by the Owner, or (c) during any cleaning, waxing, or other work by the Owner. Furthermore, any such Work shall only be performed in accordance with a detailed schedule indicating the proposed nature and area where the Work will be performed, the specific date and time of the Work, and, the identity of each Subcontractor who will be performing any of the Work. SUCH WORK SHALL NOT COMMENCE UNLESS THE OWNER FIRST APPROVES THE PROPOSED SCHEDULE. All such Work shall be under the supervision of the Contractor, and the Contractor shall be, and shall remain, on the Project site during the performance of the Work. If any such Work requires or necessitates the presence of the Owner or the Architect, the Contractor shall be responsible for the cost thus incurred by the Owner or Architect. Each day the area where such Work is located, and any adjacent area impacted by the Work, shall be carefully cleaned by the Contractor and any construction debris shall be properly removed. All such areas shall be left by the Contractor in full operating condition.

5.5.5 Notwithstanding any other provision of this Contract, a condition precedent for Substantial Completion of the Project is the successful performance of an operational test on each of the following Project systems: the electrical system; the mechanical system; the fire alarm system; the lighting control system; the sound system; and the energy management system. Each such test shall be conducted in strict accordance with all requirements of the Specifications, and each such system must operate in full conformity with all requirements of said Specifications for not less than fifteen (15) consecutive calendar days prior to the date of Substantial Completion. Before the initiation of the operational test for each such system, and before the commencement of such operational testing period, Contractor shall first give the Owner and the Architect not less than three (3) days' prior written notice.

5.6 Final Completion and Final Payment

5.6.1 When the Contractor believes that all of the Work has reached Finally Completion and the Contractor is ready for a final inspection, it shall notify the Owner and the Architect thereof in writing. Thereupon, the Architect will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the Architect will promptly declare the Work to have reached "Final Completion" and will issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. All warranties and guarantees required by the Contract shall commence on the date of Final Completion of the Work. If the Architect is unable to issue its final Certificate for Payment and is required to repeat

its final inspection of the Work, the Contractor shall bear the cost of repeat final inspections, which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve Final Completion within the time fixed therefor by the Architect in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum of \$200.00 per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Final Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to cover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages. Notwithstanding any other provision of this Section, the Owner and the Contractor expressly agree that the liquidated damages set forth herein do not contemplate, nor do they cover, any Funding Delay Damages as identified in Section 5.6.1.2. Any such Funding Delay Damages shall be in addition to the liquidated damages allowed pursuant to this Section.

5.6.1.2 The Contractor recognizes and acknowledges that delay in achieving Substantial Completion, Final Completion, or final close-out of the Project could jeopardize the Owner's state or federal funding or other financial support for the Project. Among other things, any such delay could cause the forfeiture of unspent funds; the cost and expense of premature bond redemption; or other cost, expense, liability, loss, or damage arising out of or relating to the impairment of Project funding (any and all such potential losses and damages are referred to as "Funding Delay Damages"). The Contractor and the Owner furthermore expressly recognize, acknowledge, and agree that the liquidated damages established in Sections 3.1.2 and 5.6.1.1 do not contemplate or cover Funding Delay Damages, and that in the event any such Funding Delay Damages are suffered or sustained by the Owner as the result of any Project delays caused by the Contractor, or for which the Contractor is otherwise responsible under this Contract, the Owner shall be entitled to recover such Funding Delay Damages from the Contractor, and the Contractor shall be liable to the Owner for same. Nothing contained herein shall preclude the recovery by the Owner of the liquidated damages set forth elsewhere in this Contract.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Architect and Owner all documents required by the Contract, including but not limited to its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the

Architect or the Owner; if Owner so elects in its sole discretion, consent of Surety, if any, to final payment; and all required warranties, maintenance and operation manuals, record and as-built drawings. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability. FULL AND COMPLETE COMPLIANCE WITH ALL TERMS AND CONDITIONS OF THIS SECTION IS A CONDITION PRECEDENT TO FINAL PAYMENT.

5.6.3 Subjection to the conditions precedent in Section 5.6.2, the Owner shall make final payment of all sums due the Contractor within thirty (30) days of the Architect's execution of a final Certificate for Payment.

5.6.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.6.5 The Owner and the Contractor expressly agree that the terms of payment, payment periods, and rates of interest herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1 *et seq.*, and the provisions of said Act are herein waived.

ARTICLE 6. THE OWNER

6.1 Information, Services and Things Required from Owner

6.1.1 If the Contractor requests in writing, the Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible documentation in its possession concerning conditions below ground at the site of the Project. Such documentation is furnished to the Contractor only to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy in whole or in part, implicitly or explicitly, or at all, and shall have no liability therefor. The Owner shall also furnish surveys, legal limitations, utility locations (if known), and a legal description of the Project site. To the extent the Owner furnishes any information concerning utility locations, the Owner makes no representations or warranties concerning same and shall have no liability to Contractor in the event such information contains discrepancies or is otherwise inaccurate. Nothing contained herein shall limit the Contractor's duties and representations as set forth in Section 1.2.3 hereinabove.

6.1.2 Excluding permits and fees normally the responsibility of the Contractor and those set forth in Section 7.2.2, the Owner shall obtain all approvals, easements, and the like required for construction and shall pay for necessary assessments and charges required for construction, use, or occupancy of permanent structures or for permanent changes in existing facilities.

6.2 Right to Stop Work

6.2.1 In the event of an emergency threatening injury to person or property, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately comply with such order.

6.3 Owner's Right to Perform Work

6.3.1 If the Contractor has installed defective or deficient Work which is not in conformity with the requirements of the Contract Documents, or if the Contractor fails or refuses to perform any portion of the Work, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, the Contract Price shall be reduced by the cost of performing the subject Work, plus compensation for the Architect's additional services and expenses necessitated thereby, if any. If such Work is performed by employees of the Owner, the Contract Price reduction shall reflect the reasonable value of such Work based upon the reasonable commercial cost of such Work as if performed by an independent contractor. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner within ten (10) days of receipt of demand from the Owner.

ARTICLE 7. THE CONTRACTOR

7.1 Contractor's General Duties.

7.1.1 The Contractor shall comply with the requirements of Sections 1.2.2 and 1.2.3. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved Shop Drawings, Product Data, or Samples for such portion of the Work. If the Contractor performs any of the Work for which it knows or should have known the Contract Documents contain an error, inconsistency, or omission without notice to the Architect, then the Contractor shall be responsible for such performance and shall pay the cost of correction.

7.1.2 The Contractor shall perform the Work strictly in accordance with this Contract.

7.1.3 The Contractor shall supervise and direct the Work using the Contractor's best skill, effort, and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees, its Subcontractors, and others engaged in the Work on behalf of the Contractor.

7.2 Warranty

7.2.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects, and in strict conformance with this

Contract for a period of one (1) year after Final Completion of the Work. All Work not conforming to these requirements may be considered defective.

7.2.2 The Contractor shall obtain and pay for all permits, inspections, fees, and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work, and shall give and maintain any notices required by applicable law, ordinance, or regulation pertaining to the Work. The duties and obligations of the Contractor arising hereunder include but are not limited to the full and strict compliance of the Contractor with all rules, regulations and legal mandates of the United States Department of Labor; the United States Immigration and Naturalization Service; the Georgia Department of Labor; the United States Department of Environmental Protection; and the Georgia Environmental Protection Division of the Department of Natural Resources. The Contractor shall furthermore comply with any and all applicable federal, state and local tax laws, unemployment compensation acts, and workers' compensation acts, and upon request of the Owner to the Contractor shall furnish written proof of such compliance. The Contractor shall defend, indemnify and hold the Owner harmless from any and all fines or citations issued against Owner, or any other damages, arising out of, or relating to, any violations by the Contractor of any law, rule, regulation or ordinance of any governmental authority. This duty of indemnification specifically includes, but is not limited to, the duty to indemnify and hold the Owner harmless from any and all attorneys' fees, court costs, expert witness fees, and other expenses arising out of any such fine or citation or otherwise resulting from any such violation by the Contractor.

7.3 Supervision

7.3.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Any supervisory or other personnel reasonably objectionable to the Owner shall be removed from the Project. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Architect. The Contractor shall attend any job site or other Project meetings as may be requested by the Owner or the Architect and shall have available in person such management personnel at any such meetings as the Owner or the Architect may require.

7.3.2 Key supervisory personnel assigned by the Contractor to this Project are as follows:

<u>Name</u>	<u>Function</u>
Kevin Jenny	Senior Project Manager
John W. Sconiers	Project Superintendent

All supervisory personnel are subject to approval by the Owner. So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in

writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Section as though such individuals had been listed above. Within ten (10) days after commencement of the Work, the Contractor shall furnish the Owner and the Architect with the current home and office address of each of the individuals listed above along with their home, office, mobile, pager, and facsimile telephone numbers and with their respective email addresses. Any change in such information shall be immediately furnished in writing to the Owner and the Architect.

7.4 Schedules

7.4.1 The Contractor, within ten (10) days of commencing the Work, shall submit to the Owner and the Architect for their information the Contractor's schedule for completing the Work. Said schedule shall be based on the required dates for Substantial Completion and Final Completion and shall include any milestone dates set forth in the Contract Documents. Additionally, within ten (10) days of commencing the Work, the Contractor shall submit to the Owner and the Architect a separate shop drawing and submittal schedule detailing the schedule for the submission to the Architect of all shop drawings, submittals, product data and other similar documents. Each of the schedules required herein shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to reflect conditions encountered from time-to-time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Architect. The schedules and all revisions shall be in such form, and shall contain such detail, as the Owner or the Architect may require. THE PARTIES SPECIFICALLY AGREE THAT ANY FLOAT CONTAINED IN THE SCHEDULES SHALL BELONG TO THE PROJECT AND IN NO EVENT SHALL THE CONTRACTOR MAKE CLAIM FOR ANY ALLEGED DELAY, ACCELERATION, OR EARLY COMPLETION SO LONG AS THE PROJECT IS COMPLETED WITHIN THE CONTRACT TIME. Strict compliance with the requirements of this Section is a condition precedent for payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

7.4.2 In addition to the schedules and revisions required in Section 7.4.1, with the submission of each Application for Payment, the Contractor shall submit a 30-day look-ahead schedule setting forth in detail the Work to be performed during the next 30 days and shall also submit a 30-day look-back schedule setting forth in detail the Work actually performed during the preceding 30 days, as compared to the Work scheduled during such period. The look-ahead and look-back schedules shall be in such form as the Owner may require, and the timely receipt of such schedules shall be a condition precedent to the Owner's duty to make payment to the Contractor.

7.4.3 Without limitation on any other rights or remedies of the Owner in the event Contractor fails or refuses to progress the Work, or any portion thereof, in accordance with the requirements of the Project schedule, the Owner or Architect may order or direct the Contractor to take one or more of the following actions:

- (a) Increase the labor force of Contractor and its Subcontractors;

- (b) Implement overtime operations;
- (c) Increase the number or duration of shifts;
- (d) Supplement its Project management;
- (e) Furnish additional equipment to its forces;
- (f) Accelerate delivery of material and supplies; or
- (g) Take such other action as the Owner reasonably believes necessary to increase the rate of progress.

7.4.4 The Contractor shall proceed with any action ordered or directed by Owner or Architect under Section 7.4.3 within forty-eight (48) hours of receipt of such order or direction. UNDER NO CIRCUMSTANCES SHALL CONTRACTOR MAKE CLAIM FOR, OR BE ENTITLED TO RECOVER, ANY COST, EXPENSE, LOSS OR DAMAGE ARISING OUT OF, OR RELATING TO, ANY SUCH ORDER OR DIRECTION OF OWNER OR ARCHITECT OR ANY ACTION TAKEN IN RESPONSE THERETO.

7.5 Shop Drawings, Product Data and Samples

7.5.1 Shop Drawings, Product Data, Samples, and other submittals from the Contractor do not constitute Contract Documents. Their purpose is merely to demonstrate the manner in which the Contractor intends to implement the Work in conformance with information received from the Contract Documents.

7.5.2 In no event shall the Contractor submit any Shop Drawings, Product Data, or Sample which is not in conformity with the requirements of the Contract Documents, and the Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings, Product Data, or Samples unless and until same shall have been approved by the Architect. Approval by the Architect, however, shall not be evidence that the Shop Drawings, Product Data, or Sample, or Work installed pursuant thereto, conforms to the requirements of this Contract.

7.5.3 The Contractor shall continuously maintain at the site, for the benefit of the Owner and the Architect, one record copy of this Contract marked to record on a current basis changes, selections, and modifications made during construction. Additionally, the Contractor shall maintain at the site for the Owner and Architect the approved Shop Drawings, Product Data, Samples, and other similar required submittals. Upon Final Completion of the Work, all of these record documents shall be delivered to the Owner.

7.6 Cleaning the Site and the Project

7.6.1 The Contractor shall keep the site reasonably clean to the satisfaction of the Owner and Architect during performance of the Work. Upon Final Completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

7.7 Access to Work

7.7.1 The Owner and the Architect shall have access to the Work at all times from commencement of the Work through Final Completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.8 Indemnity

7.8.1 The Contractor shall be responsible from the time of signing the Contract, or from the time of commencement of the Work, whichever shall first occur, for all injury or damage of any kind resulting from the Work to persons or property, including employees and property of the Owner. The Contractor shall indemnify, defend and hold harmless the Owner from and against all claims or actions, whether actual or threatened, and all attorney fees and cost of defense thereof, arising out of or relating to damage or injury (including death) to persons or property caused by or sustained in connection with the performance of this Contract or by conditions created thereby, arising out of or any way connected with the Work performed under this Contract or any act or omission of the Contractor, any Subcontractor, or anyone directly or indirectly employed by or under the supervision of any of them. At the option of the Owner, the Contractor expressly agrees to defend against any claims or actions indemnified by this Section, whether such claims or actions are rightfully or wrongfully brought or filed. In such event, legal counsel provided by the Contractor shall be subject to the Owner's approval.

7.8.2 To the extent the Owner suffers or sustains any fines, penalties, or assessments as the result of any act or omission of the Contractor, the Contractor shall indemnify and hold harmless the Owner from same and the Contractor shall reimburse the Owner for any and all legal cost and expense, including attorneys' fees, incurred in connection with any such fines, penalties or assessments.

7.8.3 In claims against any person or entity indemnified under this Section 7.8 by an employee of the Contractor, a Subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 7.8 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.8.4 Nothing in this Section 7.8 shall require the Contractor to indemnify the Owner in the circumstances described in O.C.G.A. §§ 13-8-2(b) or (c).

7.9 Means, Methods, Techniques, Sequences, Procedures and Safety

7.9.1 The Contractor is fully responsible for, and shall have control over, all construction means, methods, techniques, sequences, procedures and safety, and shall coordinate all portions of the work required by the Contract Documents. Nothing contained herein, however, shall in any manner whatsoever relieve, release or discharge the Architect from any of its duties, responsibilities, obligations, or liabilities as set forth in its contract with the Owner, or as provided by law.

7.10 Separate Contracts

7.10.1 The Owner reserves the right to perform work on the premises with its own forces or by the use of other contractors. In such event, the Contractor shall fully cooperate with the Owner and such other contractors and shall coordinate, schedule and manage its work so as not to hinder, delay or otherwise interfere with the separate work of the Owner or other contractors.

7.11 Notice of Commencement

7.11.1 The Contractor shall file a NOTICE OF COMMENCEMENT with the Clerk of the Superior Court of Whitfield County, Georgia no later than fifteen (15) days after the Contractor physically commences work on the site. The Contractor shall furnish a copy of the NOTICE OF COMMENCEMENT to the Architect and to anyone else making a written request.

The NOTICE OF COMMENCEMENT shall contain the following information:

- (a) The name, address, and telephone number of the Contractor.
- (b) The name and location of the project being constructed and the legal description of the property upon which the improvements are being made.
- (c) The name and address of the true owner.
- (d) The name and address of the surety for the performance and payment bonds.
- (e) Any other requirements called for in the Official Code of Georgia Annotated - Sections 36-91-72 and 44-14-361.5.

7.12 Compliance with Federal and State Immigration Laws

7.12.1 The Contractor shall register and participate in the electronic verification ("E-Verify") of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security.

7.12.2 The Contractor shall verify that all new employees of the Contractor are in compliance with the Immigration Reform and Control Act of 1986, as required by state law, as codified at O.C.G.A. § 13-10-91, *et seq.* The Contractor shall provide the Owner with all required affidavits verifying compliance with such applicable state and federal laws, including affidavits from Subcontractors and other performing the Work.

7.12.3 The Contractor agrees that, should it employ or contract with any Subcontractor(s) in connection with the physical performance of services pursuant to this Contract with the Owner, the Contractor will secure from such Subcontractor(s) an executed affidavit verifying the Subcontractor(s)'s compliance with O.C.G.A. § 13-10-91. The Contractor further agrees to maintain records of compliance by said Subcontractor(s) and their Tiers

and provide a copy of each such verification to the Owner at the time the Subcontractor(s) is retained to perform such service.

7.12.4 The Contractor agrees to provide records, in a Excel Format, to the Owner providing the following information:

(a) Contractor Legal Name

(b) Contractor Address

(c) Contractor Federal work authorization program user number (E-Verify Number)

(d) Date of Contract between contractor and public employer.

7.12.5 The contractor also agrees to provide records for Subcontractors and Tiers in the same format and requiring the same information. This information is to be provided which requested by Owner.

ARTICLE 8. CONTRACT ADMINISTRATION

8.1 The Architect

8.1.1 The Architect for this project is KRH Architects Inc. In the event the Owner should find it necessary or convenient to replace the Architect, the Owner shall retain a replacement Architect and the status of the replacement Architect shall be that of the former Architect.

8.2 Architect's Administration

8.2.1 The Architect shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

8.2.2 The Owner and the Contractor shall communicate with each other in the first instance through the Architect.

8.2.3 The Architect shall be the initial interpreter of the requirements of the Drawings and Specifications and the judge of the performance thereunder by the Contractor. The Owner shall cause the Architect to render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

8.2.4 The Owner shall cause the Architect to review the Contractor's Applications for Payment and certify to the Owner for payment to the Contractor, those amounts then due the Contractor as provided in this Contract.

8.2.5 The Architect shall have authority to reject Work which is defective or does not conform to the requirements of this Contract. If the Architect deems it necessary or advisable, the Architect shall have authority to require additional inspection or testing of the Work for compliance with Contract requirements.

8.2.6 The Owner shall cause the Architect to review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents. The Owner shall cause the Architect's action to be taken with such reasonable promptness as to cause no delay in the work or in the activities of the Owner, Contractor, or separate Contractor while allowing sufficient time in the Architect's professional judgment to permit adequate review.

8.2.7 The Owner shall cause the Architect to prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Owner shall cause the Architect, upon written request from the Contractor, to conduct inspections to determine the date of Substantial Completion and the date of Final Completion, to receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and to issue a final Certificate for Payment upon compliance with the requirements of this Contract. Written requests for interpretation (RFIs) required of the Architect received after noon on the last working day of the Architect's work week shall be acknowledged as received on the Architect's following normal working day.

8.2.9 The Architect's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Contract.

8.2.10 The Architect shall have the discretion and authority to specify the time within which the Contractor must correct or cure any defect or deficiency, or nonconformance with this Contract.

8.2.11 The Contractor shall make no claim for an extension of the Contract Time or for additional compensation arising out of or relating to any alleged failure by the Architect to timely take any action or render any decision unless and until the Contractor has first provided ten (10) days prior written notice to the Architect identifying therein the specific action or decision which the Contractor contends is necessary to avoid delay, or further delay, to the Project. In the event the Architect takes the requested action, or renders the requested decision, within ten (10) days of the receipt of such notice, no claim for an extension of the Contract Time or for additional compensation arising out of, or relating to, such action or decision shall be made by the Contractor and any such claim is expressly waived.

8.2.12 THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS CONTRACT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION,

OR RESPONSIBILITY OF THE ARCHITECT. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN THE OWNER AND THE ARCHITECT. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ARCHITECT TO THE OWNER.

8.3 Claims by the Contractor

8.3.1 All claims by Contractor shall be initiated by written notice and claim to the Owner and the Architect. The notice and claim shall be in such form as required by the Owner and same shall be signed by an officer of the Contractor under oath and under penalty of perjury. At a minimum, such notice and claim shall identify and describe the nature, scope, and location of the circumstance or condition giving rise to the claim; all items of Work impacted by the claim and an explanation of how the claim impacts such items of Work; applicable provisions of the Contract Documents; an estimate of any costs incurred and to be incurred as a result of the claim; and an estimate of any delays to the critical path of the Work resulting from the claim. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim. THE FAILURE BY THE CONTRACTOR TO PROVIDE THE WRITTEN NOTICE AND CLAIM AS PROVIDED IN THIS SECTION SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY SUCH CLAIM AGAINST THE OWNER.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Section 8.3 shall be reflected by a Change Order executed by the Owner, the Architect, and the Contractor.

8.3.3 Claims for Concealed and Unknown Conditions. If Contractor encounters (i) concealed and unknown conditions in the performance of the Work below the surface of the ground or in an existing structure at variance with the conditions indicated by this Contract, or (ii) unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, then the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Architect written notice of, and an opportunity to observe, the condition prior to disturbing it. THE FAILURE BY THE CONTRACTOR TO PROVIDE THE WRITTEN NOTICE AND CLAIM AS PROVIDED IN THIS SECTION SHALL CONSTITUTE A WAIVER BY THE CONTRACTOR OF ANY CLAIM ARISING OUT OF OR RELATING TO SUCH CONCEALED OR UNKNOWN CONDITION.

8.3.4 Claims for Additional Costs. If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefor, the Contractor shall give the Architect written notice of such claim within seven

(7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. THE FAILURE BY THE CONTRACTOR TO PROVIDE SUCH NOTICE AND TO GIVE SUCH NOTICE PRIOR TO EXECUTING THE WORK SHALL CONSTITUTE A WAIVER OF ANY CLAIM FOR ADDITIONAL COMPENSATION.

8.3.4.1 Limitations on Liability. In connection with any claim by the Contractor against the Owner, any liability of the Owner shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. Furthermore, in no event shall the Owner be liable to the Contractor for any claim for home-office overhead, loss of efficiency or productivity, loss of use of capital, loss of bonding capacity, or loss of business opportunity. Furthermore, the Owner shall have no liability for any claim for acceleration or compression of the schedule. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors. The Contractor shall not serve as a conduit for the claims of Subcontractors against the Owner, and any provision in any contract between the Contractor and any Subcontractor pursuant to which the Contractor is obligated to present to the Owner any claim of any Subcontractor shall be invalid.

8.3.5 Claims for Additional Time. If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial Completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Architect for such reasonable time as the Architect may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is a continuing one, only one notice and claim for additional time shall be necessary, provided such notice expressly states the Contractor expects the delay to be continuing and states the basis for such expectation. IF THE CONTRACTOR FAILS TO MAKE SUCH CLAIM AS REQUIRED IN THIS SECTION, ANY CLAIM FOR AN EXTENSION OF TIME SHALL BE WAIVED.

8.3.6 Extension of Contract Time for Unusually Adverse Weather Conditions Not Reasonably Anticipated

8.3.6.1 Pursuant to the provisions of Section 8.3.5, the Contract Time may be extended upon written notice and claim of the Contractor to the Owner and the Architect as set forth in such Section and as further set forth herein. It is, however, expressly agreed that the time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors. For purposes of this Contract, and for purposes of extensions of Contract Time, the Contractor agrees that it

anticipates adverse weather sufficient to prevent work in accordance with the schedule set forth below, and the Contractor further agrees that unless it encounters actual adverse weather in excess of those days set forth below, it shall not make, nor shall it be entitled to, any extension of the Contract Time:

Month	Days	Month	Days	Month	Days
January	12	May	8	September	7
February	10	June	8	October	9
March	9	July	11	November	9
April	8	August	9	December	10

8.3.6.1 Furthermore, in addition to the notice requirements set forth in the aforesaid Section 8.3.5, the Contractor agrees that it shall provide written notice to the Owner and the Architect on the day of any adverse weather not anticipated and for which a request for a time extension has been, or will be, made. Said notice shall state with particularity a description of the adverse weather as well as a description of the nature and extent of any delay caused by such weather. Receipt of this notice by the Owner and the Architect is a condition precedent to the submission of any claim for an extension of time as provided by Section 8.3.5. Furthermore, as required by Section 8.3.5, the Contractor shall submit a written claim for extension of time within seven (7) days after the occurrence of the adverse weather and such claim shall be supported by such documentation including, but not limited to, official weather reports, as the Owner or the Architect may require. To the extent that any of the terms and conditions set forth in Section 8.3.6 are in conflict with any of the terms and conditions of Section 8.3.5, the terms and conditions of Section 8.3.6 shall govern and control. THE FAILURE BY THE CONTRACTOR TO COMPLY WITH ALL REQUIREMENTS OF SECTION 8.3.6 SHALL PRECLUDE ANY EXTENSION OF THE CONTRACT TIME FOR ADVERSE WEATHER.

8.3.6.2 NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, THE PARTIES SPECIFICALLY AGREE THAT ANY AND ALL WEATHER DELAYS SHALL BE NONCOMPENSABLE AND THE SOLE AND EXCLUSIVE REMEDY OF THE CONTRACTOR IN THE EVENT OF ANY SUCH DELAY IS AN EXTENSION OF THE CONTRACT TIME AS PROVIDED IN THIS SECTION 8.3.6.

8.3.7 Legal Action by the Contractor: As a condition precedent to the filing of any legal action by the Contractor against the Owner arising out of or relating to this Contract, the Contractor shall first provide the Owner thirty (30) days prior written notice of its intent to file such action. Such notice shall include an identification of the anticipated parties to said action and a description of all anticipated claims and causes of action to be asserted in said action. Any legal action under this Contract filed by either the Contractor or the Owner shall be filed in the Superior Court of Whitfield County, Georgia, and said Court shall be the exclusive venue for any such action. The Contractor expressly agrees that it shall be subject to the jurisdiction and venue of said Court for any such action.

ARTICLE 9.

SUBCONTRACTORS

9.1 Definition

9.1.1 A Subcontractor is an entity which has a direct contract with the Contractor to perform a portion of the Work.

9.2 Award of Subcontracts

9.2.1 The Contractor shall employ and utilize the following designated Subcontractors for the elements of the work identified. In no event may the Contractor substitute Subcontractors identified herein after the execution hereof for convenience. Any substitution of Subcontractors must be for cause reasonably demonstrated to the Owner's satisfaction:

<u>Subcontractor</u>	<u>Work</u>

9.2.2 Upon execution of the Contract, the Contractor shall furnish the Owner, in writing, the names of persons or entities proposed by the Contractor to act as Subcontractors on the Project. The Owner shall promptly reply to the Contractor, in writing, stating any objections the Owner may have to any of the proposed Subcontractors. The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the Owner has made timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has objection.

9.2.3 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Section 12.2.1 below.

9.3 Verification of Subcontractor Payments

9.3.1 The Owner may in its discretion verify with any Subcontractor the status of payments received or due from the Contractor. Nothing contained herein shall in any manner limit or restrict any other right of the Owner to communicate with a Subcontractor.

**ARTICLE 10.
CHANGES IN THE WORK**

10.1 Changes Permitted

10.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order or by Field Order.

10.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

10.2 Change Order Defined

10.2.1 Change Order shall mean a written order to the Contractor executed by the Owner and the Architect, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time, or any combination thereof. The Contract Price and the Contract Time may be changed only by Change Order.

10.3 Changes in the Contract Price

10.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties, and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the Owner and the Contractor, then, as provided in Section 10.3.2.

10.3.2 If no mutual agreement occurs between the Owner and the Contractor as contemplated in Section 10.3.1, the change in the Contract Price, if any, shall then be determined by the Architect on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner or the Architect requires an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs, reasonable costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others, reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work, and reasonable cost of direct supervision and jobsite field office overhead directly attributable to the change. In the event the Contractor performs the Work required by Change Order with its own forces, and not the forces of a Subcontractor, the overhead and profit due the Contractor for such work shall be twenty (20) percent. In the event the Change Order Work is performed by one or more Subcontractors, the Contractor's overhead and profit shall be seven and one-half (7- ½) percent. In no event shall any expenditure or savings associated with the Contractor's home office or other non-jobsite overhead

expense be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the Owner, payments on account shall be made to the Contractor on the Architect's Certificate for Payment.

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

10.4 Effect of Executed Change Order

10.4.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.5 Notice to Surety; Consent

10.5.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders if such notice, consent or approval are required by the Contractor's surety or by law. The Contractor's execution of the Change Order shall constitute the Contractor's warranty to the Owner that the surety has been notified of and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

ARTICLE 11. UNCOVERING AND CORRECTING WORK

11.1 Uncovering Work

11.1.1 If any of the Work is covered contrary to the Architect's request or to any provisions of this Contract, it shall, if required by the Architect or the Owner, be uncovered for the Architect's inspection and shall be properly replaced at the Contractor's expense without change in the Contract Time.

11.1.2 If any of the Work is covered not in contradiction to the Architect's request or to any provisions of this Contract, nonetheless, it shall, if required by the Architect or Owner, be uncovered for the Architect's inspection. If such Work conforms strictly with this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform with this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 Correcting Work

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Architect as defective or failing to conform to this Contract. All such rejected Work shall

be corrected in sufficient time so as not to delay either Substantial Completion or Final Completion of the Project, and in any event such rejected Work shall be corrected within thirty (30) days after issuance of any written rejection notice by the Architect. In the event the Work is not fully corrected within three (3) days from the date of said rejection notice, the Contractor shall submit to the Owner and the Architect, within seven (7) days of said notice, a detailed written plan of remediation in such form, and in such detail, as the Owner may require. At a minimum, such plan of remediation shall include an identification and location of the Work to be remediated; a detailed description of the process and procedure proposed for the remediation; the name of each Subcontractor involved in performing any of the remediation Work; the proposed schedule for the remediation including start date, hours of operation, and finish date; and, the name of each individual responsible for the management of such Work. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for the Architect's services and expenses made necessary thereby.

11.2.2 If within one (1) year after Final Completion of the Work, any of the Work is found to be defective or not in accordance with this Contract, the Contractor shall correct it promptly upon receipt of written notice from the Owner. This obligation shall survive final payment by the Owner and termination of this Contract. With respect to Work first performed and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Section shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one-year time period in Section 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 Owner May Accept Defective or Nonconforming Work

11.3.1 If the Owner chooses to accept defective or nonconforming Work, the Owner may do so, but only if such acceptance is in writing and executed by Owner. In such event, the Contract Price shall be reduced by the greater of (a) the reasonable cost of removing and correcting the defective or nonconforming Work, and (b) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming Work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for its acceptance of defective or nonconforming Work, the Contractor shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming Work.

ARTICLE 12. CONTRACT TERMINATION

12.1 Termination by the Contractor

12.1.1 If the Work is stopped for a period of ninety (90) days by an order of any court or other public authority, or as a result of an act of the Government (other than Owner), through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor may, upon ten (10) days' written notice to the Owner and the Architect, terminate performance under this Contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor (as limited in Section 10.3.2 above) for all Work executed and for materials, equipment, tools, construction equipment and machinery actually purchased or rented solely for the Work, less any salvage value of any such items.

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of thirty (30) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Architect and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Section 12.2.1 hereunder.

12.2 Termination by the Owner

12.2.1 For Convenience

12.2.1.1 The Owner may for any reason whatsoever, or for no reason, terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop Work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the Owner or its designee.

12.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed Work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

12.2.1.4 Within sixty (60) days after its termination for convenience, the Contractor shall submit a termination claim to the Owner and the Architect specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Architect. The claim shall be signed by an officer of the Contractor under oath and under penalty of perjury. IF THE CONTRACTOR FAILS TO FILE A COMPLETE AND PROPER TERMINATION CLAIM WITHIN THE TIME REQUIRED HEREIN ANY CLAIM FOR TERMINATION SHALL BE DEEMED WAIVED AND NO FURTHER SUMS SHALL BE DUE THE CONTRACTOR.

12.2.1.5 The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

12.2.1.6 Absent agreement to the amount due to the Contractor, and provided Contractor has submitted its claim in accordance with the requirements set forth hereinabove, the Owner shall pay the Contractor the following amounts:

- (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
- (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;
- (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section 12.2.1.2. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Section 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

12.2.2 For Cause

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work in a timely manner, supply enough properly skilled workers, supervisory personnel or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

12.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the work, including compensation for the Architect's additional services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to Section 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Section 12.2.1 and the provisions of Section 12.2.1 shall apply.

ARTICLE 13. OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

13.1 The Owner shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to sixty (60) calendar days. If any such suspension is directed by the Owner, the Contractor shall immediately comply with same.

13.2 In the event the Owner directs a suspension of performance under this ARTICLE 13, through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of:

- (a) demobilization and remobilization, including such costs paid to Subcontractors;
- (b) preserving and protecting work in place;
- (c) storage of materials or equipment purchased for the Project, including insurance thereon;
- (d) performing in a later, or during a longer, time frame than that contemplated by this Contract.

ARTICLE 14. INSURANCE

The Contractor shall not commence work until it has obtained all the insurance required in this Article, and such insurance has been approved by the Owner.

14.1 Policies and Coverage

14.1.1 The Contractor shall obtain and maintain for the term of the Contract the following policies and coverage:

- (a) Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and contractual liability. The aggregate limit shall apply separately to the Project.

- (b) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists.
- (c) Worker's Compensation including Employers Liability Insurance
- (d) Except as otherwise provided in Section 14.1.2, Course of Construction Insurance covering all risk of loss, maintained at one hundred percent of the completed value based on the insurable portion of the work, including materials at the project site, stored off the project site, and in transit.
- (e) Any other insurance as required by law.

14.1.2 Within ten (10) calendar days after the effective date hereof, the Contractor shall provide the Owner a quote for Course of Construction Insurance required hereunder. Thereafter, Owner shall have the right, but not the obligation, to procure its own insurance covering the same or similar risks. If Owner so elects, it will notify the Contractor in writing of its decision, the Contractor shall not be required to procure such insurance hereunder, and the parties will execute a deductive Change Order for the amount of Contractor's quote for such insurance.

14.1.3 The Contractor shall obtain the following policies and coverage should the work involve hazardous materials: Environmental Impairment Liability Insurance

14.2 Verification of Coverage

14.2.1 The Contractor shall submit certificates of insurance and separate letters of endorsements to the policies of insurance required by the Contract to the Owner as evidence of the insurance coverage, naming the Owner's officers, directors, employees, agents, volunteers and assigns as additional insured.

14.2.1.1 The scope of coverage and deductible shall be shown on the certificate of insurance. The certificates of insurance and endorsements shall provide for no cancellation or modification of coverage without thirty days written notice to the Owner. Renewal certifications and endorsements shall be timely filed by the Contractor for all coverage until the work is accepted as complete. The Owner's review of any certificate of insurance shall not relieve the Contractor of its obligation to procure the insurance required hereunder. The Owner reserves the right to require the Contractor to furnish complete, certified copies of all required insurance policies.

14.3 Waiver of Subrogation

14.3.1 The Owner and Contractor waive all rights against (1) each other and any of their Subcontractors, Sub-Subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors provided by the Owner, if any, and any of their Subcontractors, Sub-Subcontractors, agents and employees, for

damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Article, or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors provided herein, if any, and the Subcontractors, Sub-Subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policy shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

14.4 Insurance Provisions

14.4.1 The insurance policies shall contain, or be endorsed to contain, the following provisions:

- (a) For the general and automobile liability policies, the Owner, its officers, employees, representatives, volunteers, and agents are to be covered as additional insureds.
- (b) For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance as respects to the Owner, its officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the Owner, its officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.
- (c) Each insurance policy required by this Article shall state that coverage shall not be canceled by either the Contractor or the insurance carrier, except after thirty days prior written notice by certified mail, return receipt requested, has been given to the Owner.
- (d) The Owner, its officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.
- (e) Course of construction coverage shall contain the following provisions:
 - 1 The Owner shall be named as loss payee;
 - 2 The insurer shall waive all rights of subrogation against the Owner; and

- 3 If required in writing by a party in interest, the Contactor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Contractor shall deposit in a separate account proceeds so received, which the Contractor shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Change Order.

14.4.2 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

14.5 Amount of Insurance

14.5.1 For all projects, other than those involving hazardous materials, the insurance furnished by the Contractor under this Article shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions.

(a) Comprehensive or Commercial form General Liability Insurance - Limits of Liability

(i) \$2,000,000.00 General Aggregate

(ii) \$1,000,000.00 Each Occurrence - combined single limit for bodily injury and property damage.

(b) Business Automobile Liability Insurance - Limits of Liability

(i) \$1,000,000.00 Each Accident- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.

(c) Workers' Compensation limits as required by law with Employers Liability limits of \$1,000,000.00.

(d) Course of Construction Insurance - 100% of the completed value of the work

14.5.2 For projects involving hazardous materials, only the Contractor and its hazardous materials Subcontractors shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:

(a) Comprehensive or Commercial form General Liability Insurance - Limits of Liability

(i) \$10,000,000.00 General Aggregate

(ii) \$5,000,000.00 Each Occurrence - combined single limit for bodily injury and property damage.

(b) Business Automobile Liability Insurance - Limits of Liability

(i) \$1,000,000.00 Each Accident- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.

(c) Hazardous material transporter services must also have:

(i) MCS-90 endorsement

(ii) Sudden & Accidental Pollution endorsement-Limits of Liability*

1 \$2,000,000.00 Each Occurrence

2 \$2,000,000.00 General Aggregate

*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

(d) Workers' Compensation limits as required by law with employers Liability limits of \$1,000,000.00.

(e) Course of Construction Insurance-100% of the completed value of the work

(f) Environmental Impairment (pollution) Liability Insurance - Limits of Liability:

(i) \$10,000,000.00 General Aggregate

(ii) \$5,000,000.00 Each Occurrence-combined single limit for bodily injury and property damage, including clean-up costs.

14.6 Acceptability of Insurers

14.6.1 Insurers shall be licensed by the State of Georgia to transact insurance and shall hold a current A.M. Best's rating of A:VII; or shall be a carrier otherwise acceptable to the Owner.

14.7 Subcontractor's Insurance

14.7.1 The Contractor shall ensure that its Subcontractors are covered by insurance of the type and the amounts required by this Article. Contractor shall not allow any

Subcontractor to commence work on its subcontract until the insurance has been obtained.

14.8 Miscellaneous

14.8.1 Any deductible under any policy of insurance required in this Article shall be Contractor's liability.

14.8.2 Acceptance of certificates of insurance by the Owner shall not limit the Contractor's liability under the Contract.

14.8.3 In the event the Contractor does not comply with these insurance requirements, the Owner may, at its option, provide insurance coverage to protect the Owner. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.

14.8.4 If the Owner is damaged by the failure of the Contractor to provide or maintain the required insurance, the Contractor shall pay the Owner for all such damages.

14.8.5 The Contractor's obligations to obtain and maintain all required insurance are not delegable duties under this Contract.

ARTICLE 15. MISCELLANEOUS

15.1 Special Stipulations

15.1.1 Governing Law; Venue. The Contract shall be governed by the law of the State of Georgia. The exclusive jurisdiction and venue for any action arising out of this Agreement shall be the Superior Court of Whitfield County Georgia, and the parties hereby waive any and all objections or defenses thereto.

15.1.2 Independent Contractor. Each of the Contractor and Architect shall perform the services under this Contract as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Contract shall be interpreted or construed to constitute Contractor or Architect or any of their respective agents or employees to be the agent, employee, or representative of Owner.

15.2 Conflicts of Interest

15.2.1 The Contractor certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the services required by this Contract, that no employee of Owner, nor any member thereof, nor any public agency or official affected by this Contract, has any pecuniary interest in the business of the Contractor or its Subcontractors and that no person associated with the Contractor or its Subcontractors has any interest that would conflict in any manner or degree with the performance of this Contract.

15.2.2 Should Contractor become aware of any circumstances which may cause a conflict of interest during the term of this Contract, Contractor shall immediately notify Owner. If Owner determines that a conflict of interest exists, Owner may require that Contractor take action to remedy the conflict of interest or terminate the Contract without liability. Owner shall have the right to recover any fees paid for services rendered by Contractor which were performed while a conflict of interest existed if Contractor had knowledge of the conflict of interest and did not notify Owner within one week of becoming aware of the existence of the conflict of interest.

15.2.3 Contractor warrants that Contractor and Contractor's Subcontractors have not employed or retained any company or person other than a bona fide employee, working solely for Contractor or its Subcontractor(s) to solicit or secure this Contract and that Contractor and Contractor's Subcontractor(s) have not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for Contractor or its Subcontractor(s) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of this Contract. For any breach or violation of this provision, Owner shall have the right to terminate the Contract without liability and, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment or consideration.

15.2.4 Contractor shall include the terms and conditions of Section 15.2 in all Subcontractor agreements for work to be performed under this Contract.

15.2.5 Equal Employment Opportunity. During the performance of this Contract, Contractor agrees as follows: (i) Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin; (ii) 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; (iii) Contractor will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Contract 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.

15.3 Successors and Assigns

15.3.1 The Owner and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in this Contract. The Contractor shall not assign this Contract without written consent of the Owner.

15.4 Surety Bonds

15.4.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event

the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner. At the delivery of such bonds to the Owner, the Contractor shall also furnish in writing to the Owner the name, address, telephone number, email address, and facsimile number of the person employed by the surety to whom any claims, notices, requests, or other communications from the Owner are to be submitted. If requested by the Owner or the Architect, the Contractor shall procure and furnish to the Owner and Architect the written consent of surety to any proposed Change Order, contract payment or other contemplated action under this Contract. The Contractor shall provide a contact name, phone number and address at signing of this contract.

15.5 Entire Agreement

15.5.1 This Contract, together with the Contractor's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and the Contractor. No representations either oral or written not incorporated herein shall be binding on the parties. No amendment or modification of this Contract shall be enforceable unless same is in writing duly executed by the parties. In the event any term, condition, clause or provision of this Contract is held or determined to be invalid by any Court of competent jurisdiction, any and all remaining terms, conditions, clauses and provisions of the Contract shall remain in full force and effect.

15.6 No Privity with Others

15.6.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the Owner and any person or entity other than the Contractor.

15.7 Intent and Interpretation

15.7.1 The intent of this Contract is to require complete, correct, and timely execution of the Work. Any Work that may be required, implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.

15.7.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

15.7.3 When a word, term or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage.

15.7.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

15.7.5 The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract.

15.7.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

This Contract is executed under seal on the date set forth hereinbelow.

OWNER:
City of Dalton, GA

By:
(Signature)

Annalee Sams – Mayor
300 W. Waugh Street
Dalton, GA 30720

(Printed Name, Title and Address)

(Date of Execution)
Approved as to Form:

CONTRACTOR:
R W Smith Company
Marty E. Thomas

(Typed Name)

By: 
(Signature)

Marty E. Thomas – President
610 Village Trace 22-200
Marietta, GA 30067

(Printed Name, Title and Address)

05/1/2024
(Date of Execution)
