

CONSTRUCTION SERVICES AGREEMENT
AUDIO-VISUAL FOR ALCOVY JUDICIAL CIRCUIT

This Construction Services Agreement (the "Agreement") is made and entered into this 9th day of January, 2024 (the "Effective Date"), by and between **NEWTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia ("Newton"), **WALTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia ("Walton"), and **CONFERENCE TECHNOLOGIES, INC**, a Missouri corporation with principal office address of 11653 Adie Road, Maryland Heights, Missouri, 63043 (hereinafter referred to as the "Contractor"), collectively referred to herein as the "Parties".

W I T N E S S E T H:

WHEREAS, the Alcovy Judicial Circuit (the "Alcovy Circuit") desires to retain a contractor to perform services for the construction of a Project (defined below); and

WHEREAS, the Alcovy Circuit consists of Newton and Walton Counties;

WHEREAS, the Alcovy Circuit received ARPA funds to upgrade the audio-visual in the Superior Court Rooms and Sheriff's Offices of both Newton and Walton Counties (the "ARPA Funds");

WHEREAS, this underlying Agreement will be fully funded by said ARPA Funds;

WHEREAS, the Alcovy Circuit solicited proposals for construction of the Project pursuant to the Request for Proposal, 24-01, dated July 19, 2023, attached hereto as "**Exhibit A**" and incorporated herein by reference; and

WHEREAS, the Contractor submitted a complete and timely proposal, attached hereto as "**Exhibit B**" and incorporated herein by reference, and met all proposal requirements such that the Alcovy Circuit awarded Project Number 24-01 to the Contractor; and

WHEREAS, the Alcovy Circuit finds that specialized knowledge, skills, and training are necessary to perform the Work (defined below) contemplated under this Agreement; and

WHEREAS, the Contractor has represented that it is qualified by training and experience to perform the Work (defined below) and desires to perform the Work under the terms and conditions provided in the Contract Documents (defined below); and

WHEREAS, the public interest will be served by this Agreement;

NOW THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein and other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

Section 1. Contract Documents

This Agreement along with the following documents, attached hereto (except as expressly noted otherwise below) and incorporated herein by reference, constitute the “Contract Documents”:

- A. Request for Proposal, attached hereto as “**Exhibit A**”;
- B. Proposal Documents from Contractor, attached hereto as “**Exhibit B**”;
- C. Scope of Work, attached hereto as “**Exhibit C**”;
- D. Any required Performance Bond and/or Payment Bond, attached hereto collectively as “**Exhibits D.1 and D.2**”;
- E. Noncollusion Affidavit of Contractor, attached hereto as “**Exhibit E**”;
- F. Final Affidavit, attached hereto as “**Exhibit F**”;
- G. Alien Employment Affidavits, attached hereto as “**Exhibits G.1 and G.2**”;
- H. Plans, drawings and specifications, attached hereto collectively as “**Exhibit H**”;
- I. Additional Payment/Retainage Requirements, attached hereto as “**Exhibit I**”;
- J. Key Personnel, attached hereto as “**Exhibit J**”;
- K. Contract Administration provisions (if issued), attached hereto as “**Exhibit K**”;
- L. The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Change Orders (defined in Section 6 below), other written amendments, and other documents amending, modifying, or supplementing the Contract Documents if properly adopted in writing and executed by the Parties.

In the event of any discrepancy among the terms of the various Contract Documents, the provision most beneficial to the Alcovy Circuit, as determined by the Alcovy Circuit in its sole discretion, shall govern.

Section 2. Project Description; Architect; Engineer; Contract Administrator

- A. Project. A general description of the Project is as follows: update audio-visual in the Superior Court rooms and Sheriff’s Offices of both Walton and Newton County, as well as (the “Project”). A third-party Architect or Engineer (as identified below) **has/ x has not** been retained related to this Project.
- B. Architect/Engineer (if any).

- (i) Architect [if applicable]. The Project has been designed by N/A (hereinafter referred to as the “Architect”). The Architect will have authority to act on behalf of the County only to the extent provided in the Contract Documents, unless otherwise modified in accordance with the provisions of this Agreement.
 - (ii) Engineer [if applicable]. The Project has been designed by N/A (hereinafter referred to as the “Engineer”). The Engineer will have authority to act on behalf of the County only to the extent provided in the Contract Documents, unless otherwise modified in accordance with the provisions of this Agreement.
- C. Contract Administrator. The Contract Administrator for this Agreement shall be: Randi Fincher.

Section 3. The Work

- A. The Work. The Work to be completed under this Agreement (the “Work”) includes, but shall not be limited to, the work described in the Scope of Work provided in “**Exhibit C**”, attached hereto and incorporated herein by reference. The Work includes all material, labor, insurance, tools, equipment, machinery, water, heat, utilities, transportation, facilities, services and any other miscellaneous items and work reasonably inferable from the Contract Documents. The term “reasonably inferable” takes into consideration the understanding of the Parties that some details necessary for proper execution and completion of the Work may not be shown on the drawings or included in the specifications or Scope of Work, but they are a requirement of the Work if they are a usual and customary component of the Work or are otherwise necessary for proper and complete installation and operation of the Work. Contractor shall complete the Work in strict accordance with the Contract Documents.
- B. Notice to Proceed. Newton and Walton will issue a Notice to Proceed, which Notice to Proceed shall state the dates for beginning Work (“Commencement Date”) and the Expected Date of Final Completion (defined in Section 4(A) below). Unless otherwise approved, the Contractor shall perform its obligations under this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.
- C. Plans; Drawings and Specifications. The plans, drawings and specifications provided in “**Exhibit H**”, attached hereto, are hereby acknowledged by the Parties and incorporated herein by reference.
- D. Shop Drawings, Product Data, and Samples. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents, but must be in conformity therewith. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the

Contract Documents.

- (i) “Shop Drawings” are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- (ii) “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (iii) “Samples” are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

The Contractor shall review for compliance with the Contract Documents and shall approve and submit to the Contract Administrator Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Alcovy Circuit or of separate contractors. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Contract Administrator without action. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved in writing by the Contract Administrator, provided that submittals that are not required by the Contract Documents may be returned without action.

The Work shall be completed in accordance with approved submittals, provided that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Contract Administrator’s approval of Shop Drawings, Product Data, Samples or similar submittals, unless the Contractor has specifically informed the Contract Administrator in writing of such deviation at the time of submittal and (1) the Contract Administrator has given written approval to the specific deviation as a minor change in the Work, or (2) a written Change Order has been issued and approved to authorize the deviation. The Contract Administrator’s approval of the Shop Drawings, Product Data, Samples or similar submittals shall not relieve the Contractor of responsibility for errors or omissions therein.

The Contractor shall, in writing or on resubmitted Shop Drawings, Product Data,

Samples or similar submittals, direct the Contract Administrator's attention to any additional revisions included other than those requested by the Contract Administrator on previous submittals. In the absence of such written notice drawing the Contract Administrator's attention to such additional revisions, the Contract Administrator's approval of a resubmission shall not apply to such additional revisions.

The Contractor shall maintain at the Project site(s) one record copy of the Contract Documents in good order and marked currently to record field changes and selections made during construction and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Alcovy Circuit and Contract Administrator and shall be delivered to the Contract Administrator or Alcovy Circuit upon completion of the Work.

Section 4. Contract Term; Liquidated Damages; Expedited Completion; Partial Occupancy or Use

- A. Contract Term. The term of this Agreement ("Term") shall commence on the Effective Date and shall be completed by **December 31, 2026** ("Expected Date of Final Completion"). Contractor warrants and represents that it will perform its Work in a prompt and timely manner, which shall not impose delays on the progress of the Work. Every effort will be made by Contractor to shorten this period.
- B. Time is of the Essence; Liquidated Damages. Contractor specifically acknowledges that TIME IS OF THE ESSENCE of this Agreement and that Alcovy Circuit will suffer financial loss if the Work is not completed in accordance with the deadlines specified in Section 4(A) above and within the Contract Documents. The Alcovy Circuit and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Alcovy Circuit if the Work is not completed within the specified times. Accordingly, instead of requiring any such proof, the Alcovy Circuit and Contractor agree that, as liquidated damages for delay (but not as a penalty), the Contractor shall pay to the Alcovy Circuit **One Hundred and 00/100 Dollars (\$100.00)** for each and every calendar day that expires after a deadline provided in the Contract Documents.
- C. Expediting Completion. The Contractor is accountable for completing the Work within the time period provided in the Contract Documents. If, in the judgment of the Alcovy Circuit, the Work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to ensure timely completion of the entire Work or a separable portion thereof, the Contractor, when so informed by the Alcovy Circuit, shall immediately take action to increase the rate of work placement by:
- (1) An increase in working forces;
 - (2) An increase in equipment or tools;

- (3) An increase in hours of work or number of shifts;
- (4) Expediting delivery of materials; and/or
- (5) Other action proposed if acceptable to the Alcovy Circuit.

Within five (5) calendar days after such notice from the Alcovy Circuit that the Work is behind schedule, the Contractor shall notify the Alcovy Circuit in writing of the specific measures taken and/or planned to increase the rate of progress. The Contractor shall include an estimate as to the date of scheduled progress recovery. Should the Alcovy Circuit deem the plan of action inadequate, the Contractor shall take additional steps to make adjustments as necessary to its plan of action until it meets with the Alcovy Circuit's approval and such approval is provided in writing by the Alcovy Circuit.

- D. Partial Occupancy or Use. The Alcovy Circuit may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement between the Alcovy Circuit and Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Alcovy Circuit and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. Immediately prior to such partial occupancy or use, the Alcovy Circuit, Contractor and Contract Administrator shall jointly inspect the area to be occupied, or portion of the Work to be used, in order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

Section 5. Contractor's Compensation; Time and Method of Payment

- A. Maximum Contract Price. The total amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed **\$610,987.87** (the "Maximum Contract Price"), comprising of cost solution price of \$564,903.00 and two additional years of Contractor's complete service agreement, except as outlined in Section 6 below. The compensation for Work performed shall be based upon flat fee and Contractor represents that the Maximum Contract Price is sufficient to perform all of the Work set forth in and contemplated by this Agreement.
- B. Additional Payment Requirements. Additional payment requirements are included as "**Exhibit I**", attached hereto and incorporated herein by reference.

- C. Material Deviations. Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and like deviations from the Work described in this Agreement shall be clearly communicated to the Alcovy Circuit *before* charges are incurred and shall be handled through written Change Orders, as described in Section 6 below. Whenever the Contract Administrator considers it necessary or advisable, it shall have authority to require inspection or testing of the Work. However, neither this authority of the Contract Administrator nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Contract Administrator to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- D. Taxes. The Alcovy Circuit and Newton and Walton Counties are governmental tax-exempt entities and shall not be responsible for paying any taxes on any materials or services provided for herein. At Contractor's request, the Alcovy Circuit and Newton and Walton Counties shall provide evidence of its tax-exempt status. To the extent, if any, that the Alcovy Circuit furnishes tangible personal property to Contractor for incorporation into the Project, Contractor shall be responsible for paying the amount of tax owed for such tangible personal property.

Section 6. Change Orders

- A. Change Order Defined. A "Change Order" means a written modification of the Contract Documents, signed by representatives of the Alcovy Circuit and the Contractor with appropriate authorization.
- B. Right to Order Changes. The Alcovy Circuit reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written Change Orders and executed by the Contractor and the Alcovy Circuit. Such Change Orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by the Alcovy Circuit in its sole discretion, the Alcovy Circuit shall have the right to determine reasonable terms, and the Contractor shall proceed with the changed work.
- C. Change Order Requirement. Any work added to the scope of this Agreement by a Change Order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written Change Order duly executed on behalf of the Alcovy Circuit and the Contractor.
- D. Authority to Execute Change Order. The Chairman of the County Board of Commissioners has authority to execute, without further action of the full Board of Commissioners, any number of Change Orders so long as their total effect does not

materially alter the terms of this Agreement or materially increase the Maximum Contract Price, as set forth in Section 5(A) above. Any such Change Orders materially altering the terms of this Agreement, or any Change Order affecting the price where the Maximum Contract Price (as amended) is in excess of \$50,000, must be approved by resolution of both the Newton County Board of Commissioners and Walton County Board of Commissioners.

- E. Minor Changes in the Work. The Contract Administrator will have the authority to order minor changes in the Work not involving adjustment in the Maximum Contract Price or extension of the Term and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order signed by the Contract Administrator. The Contractor shall carry out such written orders promptly. If the minor changes subsequently may affect adjustments in the Maximum Contract Price or the Term, the changes shall then be converted to a written Change Order by the requesting Party.

Section 7. Covenants of Contractor

- A. Ethics Code; Conflict of Interest. Contractor agrees that it shall not engage in any activity or conduct that would result in a violation of the Newton or Walton County Code of Ethics or any other similar law or regulation. Contractor certifies that to the best of his/her knowledge no circumstances exist which will cause a conflict of interest in performing the Work. Should Contractor become aware of any circumstances that may cause a conflict of interest during the Term of this Agreement, Contractor shall immediately notify the Alcovy Circuit. If the Alcovy Circuit determines that a conflict of interest exists, the Alcovy Circuit may require that Contractor take action to remedy the conflict of interest or terminate the Agreement without liability. The Alcovy Circuit shall have the right to recover any fees paid for services rendered by Contractor when such services were performed while a conflict of interest existed if Contractor had knowledge of the conflict of interest and did not notify the Alcovy Circuit within five (5) business days of becoming aware of the existence of the conflict of interest.
- B. Meetings. The Contractor is required to meet with the Alcovy Circuit's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the Term of this Agreement at no additional cost to the Alcovy Circuit. Meetings will occur as problems arise and will be coordinated by the Alcovy Circuit or the Contract Administrator. The Contractor will be given a minimum of three (3) full business days' notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the contract for cause.
- C. Expertise of Contractor. Contractor accepts the relationship of trust and confidence established between it and the Alcovy Circuit, recognizing that the Alcovy Circuit's

intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Contractor under this Agreement. The Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of Alcovy Circuit and the Project in accordance with Alcovy Circuit's requirements and procedures, and Contractor shall employ only persons duly qualified in the appropriate area of expertise to perform the Work described in this Agreement.

- D. Proper Execution by Contractor. Contractor agrees that it will perform its services in accordance with the usual and customary standards of the Contractor's profession or business and in compliance with all federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project, including, but not limited to, O.C.G.A. § 50-5-63, any applicable records retention requirements, and Georgia's Open Records Act (O.C.G.A. § 50-18-70, *et seq.*). Any additional work or costs incurred as a result of error and/or omission by Contractor as a result of not complying with the Contract Documents or not meeting the applicable standard of care or quality, including but not limited to those of repeated procedures and compensation for the Contract Administrator's services or expenses, will be provided at Contractor's expense and at no additional cost to the Alcovy Circuit. This provision shall survive termination of this Agreement.

It is the Contractor's responsibility to be reasonably aware of all applicable laws, statutes, ordinances, building codes, and rules and regulations. If the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Contract Administrator and the Alcovy Circuit in writing of any portions of the Contract Documents that are at variance with the applicable laws, statutes, ordinances, building codes, and rules and regulations.

The Contractor's duties shall not be diminished by any approval by the Alcovy Circuit or Contract Administrator of Work completed or produced; nor shall any approval by the Alcovy Circuit or Contract Administrator of Work completed or produced release the Contractor from any liability therefor, it being understood that the Alcovy Circuit is ultimately relying upon the Contractor's skill and knowledge in performing the Work required under the Contract Documents.

Organization of the specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

- E. Familiarity with the Work.

- (i) *Contractor Familiarity with Work.* Contractor represents that it has familiarized itself with the nature and extent of the Contract Documents, the Work, work site(s), locality, and all local conditions, laws and

regulations that in any manner may affect cost, progress, performance, or furnishing of the Work. Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Contract Documents, site conditions, authorities, tests, reports and studies relative to that portion of the Work, as well as the information furnished by the Alcovy Circuit, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project site(s) affecting it. Contractor represents and agrees that it has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, inconsistencies, or ambiguities in the Contract Documents; however, any errors, inconsistencies, omissions, or ambiguities discovered by the Contractor shall be reported promptly to the Contract Administrator and Alcovy Circuit in writing. Contractor represents that it has given the Alcovy Circuit written notice of all errors, omissions, inconsistencies, or ambiguities that the Contractor has discovered in the Contract Documents so far, and the written resolution thereof by the Alcovy Circuit is acceptable to the Contractor. Further, Contractor acknowledges that its obligation to give notice of all such errors, omissions, inconsistencies, or ambiguities shall be continuing during the Term of this Agreement. Any failure on the part of the Contractor to notify the Contract Administrator and Alcovy Circuit in writing of any errors, omissions, inconsistencies, or ambiguities in the Contract Documents that Contractor discovered or reasonably should have discovered shall result in a waiver and full release by the Contractor of any future arguments or defenses based on such errors, omissions, inconsistencies, or ambiguities against the Alcovy Circuit. Further, if the Contractor fails to perform its obligations pursuant to this paragraph, the Contractor shall pay such costs and damages to the Alcovy Circuit as would have been avoided if the Contractor had performed such obligations.

- (ii) *Inspection of Prior Work.* If part of the Contractor's Work depends for proper execution or results upon construction or operations by a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Contract Administrator apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Alcovy Circuit's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable, and Contractor shall be responsible for all costs and damages resulting from its failure to report reasonably discoverable defects.

(iii) *Contractor Requests for Information.* If, with undue frequency (as determined by the Alcovy Circuit in its sole discretion), the Contractor requests information that is obtainable through reasonable examination and comparison of the Contract Documents, site conditions, and previous correspondence, interpretations or clarifications, the Contractor shall be liable to the Alcovy Circuit for reasonable charges from the Contract Administrator for the additional services required to review, research and respond to such requests for information.

F. Supervision, Inspection and Construction Procedures. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety therefor and, except as stated below, shall be fully and solely responsible for the jobsite safety for such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Alcovy Circuit and Contract Administrator and shall not proceed with that portion of the Work without further written instructions from the Alcovy Circuit or Contract Administrator as approved in writing by the Alcovy Circuit.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees and other persons who may be affected, (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site(s), under care, custody or control of the Contractor or Contractor's subcontractors or sub-subcontractors, and (c) other property at the Project site(s) or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB),

encountered on the Project site(s) by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Alcovy Circuit and Contract Administrator in writing.

- G. Tests and Inspections. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, or ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made promptly at an appropriate time to avoid unreasonable delay in the Work. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Alcovy Circuit, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Contract Administrator timely notice of when and where tests and inspections are to be made so that the Contract Administrator may be present for such procedures. Required permits or certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and delivered to the Contract Administrator within ten (10) calendar days of issuance.
- H. Budgetary Limitations. Contractor agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Contractor's profession and industry. Contractor shall take no calculated risk in the performance of the Work. Specifically, Contractor agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principals of Contractor's profession and industry, Contractor will give written notice immediately to the Alcovy Circuit.
- I. Alcovy Circuit's Reliance on the Work. The Contractor acknowledges and agrees that the Alcovy Circuit does not undertake to approve or pass upon matters of expertise of the Contractor and that therefore, the Alcovy Circuit bears no responsibility for Contractor's Work performed under this Agreement. The Contractor acknowledges and agrees that the acceptance of Work by the Alcovy Circuit is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. The Alcovy Circuit will not, and need not, inquire into adequacy, fitness, suitability or correctness of Contractor's performance. Contractor further agrees that no approval of designs, plans, or specifications by any person, body, or agency shall relieve Contractor of the responsibility for adequacy, fitness, suitability, and correctness of Contractor's Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principles.
- J. Contractor's Reliance on Submissions by the Alcovy Circuit. Contractor must have timely information and input from the Alcovy Circuit in order to perform the Work required under this Agreement. Contractor is entitled to rely upon information provided by the Alcovy Circuit, but Contractor shall be required to provide immediate written notice to the Alcovy Circuit if Contractor knows or reasonably

should know that any information provided by the Alcovy Circuit is erroneous, inconsistent, or otherwise problematic.

- K. Uncovering and Correction of Work. If a portion of the Work is covered contrary to the Contract Administrator's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Contract Administrator, be uncovered for examination by the Contract Administrator and be replaced at the Contractor's expense without change in the Agreement Term.

If a portion of the Work has been covered which the Contract Administrator has not specifically requested to examine prior to its being covered or which the Contract Documents did not require to remain uncovered until examined, the Contract Administrator may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Alcovy Circuit's expense, which expense shall be agreed upon in writing prior to being incurred. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense, unless the condition was caused by the Alcovy Circuit, in which event the Alcovy Circuit shall be responsible for payment of such costs including reasonable charges, if any, by the Contract Administrator for additional service, which expense shall be agreed upon in writing prior to being incurred.

If the Alcovy Circuit prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Alcovy Circuit may do so instead of requiring its removal and correction, in which case the Maximum Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

- L. Clean Up. Contractor shall keep the Project site(s) and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up as provided in the Contract Documents, the Alcovy Circuit may do so, and the cost thereof shall be charged to the Contractor.
- M. Contractor's Representative. Andrew Pearson shall be authorized to act on Contractor's behalf with respect to the Work as Contractor's designated representative.
- N. Independent Contractor. Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of the Alcovy Circuit. Nothing contained in this Agreement shall be construed to make the Contractor, or any of its employees, servants or subcontractors, an employee, servant or agent of

the Alcovy Circuit for any purpose. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; the instrumentalities, tools, supplies, and/or materials necessary to complete the Work; hiring of subcontractors, agents, or employees to complete the Work; and the payment of employees, including benefits and compliance with Social Security, withholding, and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. There shall be no contractual relationship between any subcontractor or supplier and the Alcovy Circuit by virtue of this Agreement with the Contractor. Any provisions of this Agreement that may appear to give the Alcovy Circuit the right to direct Contractor as to the details of the services to be performed by Contractor or to exercise a measure of control over such services will be deemed to mean that Contractor shall follow the directions of the Alcovy Circuit with regard to the results of such services only. It is further understood that this Agreement is not exclusive, and the Alcovy Circuit may hire additional entities to perform Work related to this Agreement.

Inasmuch as the Alcovy Circuit and the Contractor are independent of each other, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both Parties hereto. The Contractor agrees not to represent itself as the Alcovy Circuit's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the Alcovy Circuit without the express knowledge and prior written consent of the Alcovy Circuit.

- O. Responsibility of Contractor and Indemnification of Alcovy Circuit. The Contractor covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. The Contractor shall bear all losses and damages directly or indirectly resulting to it and/or the Alcovy Circuit on account of the performance or character of the Work rendered pursuant to this Agreement. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the Alcovy Circuit and the Alcovy Circuit's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers (individually an "Indemnified Party" and collectively "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including, but not limited to, attorney's fees and costs of defense ("Liabilities"), which may arise from or be the result of alleged willful, negligent, or tortious act or omission arising out of the Work, performance of contracted services, or operations by the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable, regardless of whether or

not the act or omission is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified Party. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

In any and all claims against an Indemnified Party, by any employee of the Contractor, its subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

P. Insurance.

- (1) Requirements: The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the Alcovy Circuit as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Newton County Manager and Walton County Manager.
- (2) Minimum Limits of Insurance: Contractor shall maintain the following insurance policies with coverage and limits no less than:
 - (a) *Commercial General Liability:* \$1,000,000 (one million dollars) combined single limit per occurrence \$2,000,000 (two million dollars) aggregate comprehensive/extended/enhanced Commercial General Liability policy with coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage to premises/operations, products/completed operations, independent consultants and contractual liability (specifically covering the indemnity), broad-form property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on "an occurrence" basis ("claims made" coverage is not acceptable).

- (b) *Commercial Automobile Liability (owned, non-owned, hired):* \$1,000,000 (one million dollars) combined single limit per occurrence \$1,000,000 (one million dollars) aggregate for comprehensive Commercial Automobile liability coverage (owned, non-owned, hired) including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

 - (d) *Workers' Compensation and Employers' Liability:* Workers' Compensation policy with limits as required by the State of Georgia and Employers' Liability limits of \$1,000,000 (one million dollars) per occurrence or disease. (If Contractor is a sole proprietor, who is otherwise not entitled to coverage under Georgia's Workers' Compensation Act, Contractor must secure Workers' Compensation coverage approved by both the State Board of Workers' Compensation and the Commissioner of Insurance. The amount of such coverage shall be the same as what is otherwise required of employers entitled to coverage under the Georgia Workers' Compensation Act. Further, the Contractor shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)
- (3) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the Alcovy Circuit in writing so that the Alcovy Circuit may ensure the financial solvency of the Contractor; self-insured retentions should be included on the certificate of insurance.
- (4) Other Insurance Provisions: Each policy shall contain, or be endorsed to contain, the following provisions respectively:
- (a) General Liability, Automobile Liability and (if applicable) Umbrella Liability Coverage.
 - (i) *Additional Insured Requirement.* The Alcovy Circuit and Alcovy Circuit's elected and appointed officials, officers, boards, commissioners, employees, representatives, consultants, servants, agents and volunteers (individually "Insured Party" and collectively "Insured Parties") shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties.

Nothing contained in this section shall be construed to require the Contractor to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.

- (ii) *Primary Insurance Requirement.* The Contractor's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Contractor's insurance and shall not contribute with it.
 - (iii) *Reporting Requirement.* Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.
 - (iv) *Separate Coverage.* Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of insurance provided.
 - (v) *Defense Costs/Cross Liability.* Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
 - (vi) *Subrogation.* The insurer shall agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Contractor for the Alcovy Circuit.
- (b) Workers' Compensation Coverage: The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Contractor for the Alcovy Circuit.
- (c) All Coverages:
- (i) *Notice Requirement.* Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, or canceled except after thirty (30) calendar days prior written notice (or 10 calendar days if due to non-payment) has been given to the Alcovy Circuit. The Alcovy Circuit reserves the right to accept alternate notice

terms and provisions, provided they meet the minimum requirements under Georgia law.

- (ii) *Starting and Ending Dates.* Policies shall have concurrent starting and ending dates.
 - (iii) *Incorporation of Indemnification Obligations.* Policies shall include an endorsement incorporating the indemnification obligations assumed by the Contractor under the terms of this Agreement, including but not limited to Section 7(O) of this Agreement.
- (5) Acceptability of Insurers: The insurance to be maintained by Contractor must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurer(s) with an A.M. Best Policyholder's rating of no less than "A-" and with a financial rate of Class VII or greater. The Contractor shall be responsible for any delay resulting from the failure of its insurer to provide proof of coverage in the proscribed form.
- (6) Verification of Coverage: Contractor shall furnish to the Alcovy Circuit for Alcovy Circuit approval certificates of insurance and endorsements to the policies evidencing all coverage required by this Agreement prior to the start of work. Without limiting the general scope of this requirement, Contractor is specifically required to provide an endorsement naming the Alcovy Circuit as an additional insured when required. The certificates of insurance and endorsements for each insurance policy are to be on a form utilized by Contractor's insurer in its normal course of business and are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. The Alcovy Circuit reserves the right to require complete, certified copies of all required insurance policies at any time. The Contractor shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.
- (7) Subcontractors: Contractor shall either (1) ensure that its insurance policies (as described herein) cover all subcontractors and the Work performed by such subcontractors or (2) ensure that any subcontractor secures separate policies covering that subcontractor and its Work. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the Insured Parties as additional insureds.
- (8) Claims-Made Policies: Contractor shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the

Agreement, whichever is later, and have an effective date which is on or prior to the Effective Date.

- (9) Progress Payments: The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its subcontractor or insurance carriers from providing the coverage required in this Agreement.
- Q. Bonds. In public works construction contracts valued at more than one hundred thousand dollars (\$100,000.00) or road construction/maintenance contracts valued at five thousand dollars (\$5,000.00) or more, or in any other instance where either Newton or Walton County has elected to include such bond requirements as exhibits to this Agreement, the Contractor shall provide Performance and Payment bonds on the forms attached hereto as “**Exhibits D.1 and D.2**” and with a surety licensed to do business in Georgia and listed on the Treasury Department’s most current list (Circular 570 as amended). Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- R. Assignment of Agreement. The Contractor covenants and agrees not to assign or transfer any interest in, or delegate any duties of this Agreement, without the prior express written consent of the Alcovy Circuit. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them, and the Alcovy Circuit shall have no obligation to them.
- S. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit. Pursuant to O.C.G.A. § 13-10-91, the Alcovy Circuit shall not enter into a contract for the physical performance of services unless:
- (1) the Contractor shall provide evidence on Newton and Walton County-provided forms, attached hereto as “**Exhibits G.1 and G.2**” (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and its subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, **or**
 - (2) the Contractor provides evidence that it is not required to provide an affidavit because it is an *individual* licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

The Contractor hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in “**Exhibit G.1**”, and submitted such affidavit to the Alcovy Circuit or provided the Alcovy Circuit with

evidence that it is an individual not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. Further, Contractor hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event the Contractor employs or contracts with any subcontractor(s) in connection with the covered contract, the Contractor agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the subcontractor affidavit, the form of which is attached hereto as "Exhibit G.2", which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above. If a subcontractor affidavit is obtained, Contractor agrees to provide a completed copy to the Alcovy Circuit within five (5) business days of receipt from any subcontractor.

Where Contractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, either Newton or Walton County Manager or his/her designee shall be authorized to conduct an inspection of the Contractor's and Contractor's subcontractors' verification process at any time to determine that the verification was correct and complete. The Contractor and Contractor's subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract. Further, where Contractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, Newton or Walton County Manager or his/her designee shall further be authorized to conduct periodic inspections to ensure that no County Contractor or Contractor's subcontractors employ unauthorized aliens on County contracts. By entering into a contract with the counties, the Contractor and Contractor's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where a Contractor or Contractor's subcontractors are found to have employed an unauthorized alien, the Newton or Walton County Manager or his/her designee may report same to the Department of Homeland Security. The Contractor's failure to cooperate with the investigation may be sanctioned by termination of the contract, and the Contractor shall be liable for all damages and delays occasioned by the Alcovy Circuit thereby.

Contractor agrees that the employee-number category designated below is applicable to the Contractor. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.]

- 500 or more employees.
- 100 or more employees.
- Fewer than 100 employees.

Contractor hereby agrees that, in the event Contractor employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Contractor will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

The above requirements shall be in addition to the requirements of State and federal law and shall be construed to be in conformity with those laws.

T. Records, Reports and Audits.

(1) Records:

- (a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for the Alcovy Circuit under this Agreement ("Records") shall be established and maintained by the Contractor in accordance with applicable law and requirements prescribed by the Alcovy Circuit with respect to all matters covered by this Agreement. Except as otherwise authorized or required, such Records shall be maintained for at least three (3) years from the date that final payment is made to Contractor by Alcovy Circuit under this Agreement. Furthermore, Records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.
- (b) All costs claimed or anticipated to be incurred in the performance of this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

(2) Reports and Information: Upon request, the Contractor shall furnish to the Alcovy Circuit any and all Records in the form requested by the Alcovy Circuit. All Records stored on a computer database must be of a format compatible with the Alcovy Circuit's computer systems and software.

(3) Audits and Inspections: At any time during normal business hours and as often as the Alcovy Circuit may deem necessary, Contractor shall make available to the Alcovy Circuit or Alcovy Circuit's representative(s) for examination all Records. The Contractor will permit the Alcovy Circuit or Alcovy Circuit's representative(s) to audit, examine, and make excerpts or transcripts from such Records. Contractor shall provide proper facilities for

Alcovy Circuit or Alcovy Circuit's representative(s) to access and inspect the Records, or, at the request of the Alcovy Circuit, shall make the Records available for inspection at the Alcovy Circuit's office. Further, Contractor shall permit the Alcovy Circuit or Alcovy Circuit's representative(s) to observe and inspect any or all of Contractor's facilities and activities during normal hours of business for the purpose of evaluating Contractor's compliance with the terms of this Agreement. In such instances, the Alcovy Circuit or Alcovy Circuit's representative(s) shall not interfere with or disrupt such activities.

- U. Confidentiality. Contractor acknowledges that it may receive confidential information of the Alcovy Circuit and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, contractors, and/or staff to likewise protect such confidential information. The Contractor agrees that confidential information it receives or such reports, information, opinions, or conclusions that Contractor creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the Alcovy Circuit. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of Alcovy Circuit information whether specifically deemed confidential or not.

Contractor acknowledges that the Alcovy Circuit's disclosure of documentation is governed by Georgia's Open Records Act, and Contractor further acknowledges that, if Contractor submits records containing trade secret information and if Contractor wishes to keep such records confidential, Contractor must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

- V. Licenses, Certifications and Permits. The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits, or the like required of the Contractor by any and all national, state, regional, county or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement; provided that some permits or licenses related to the Project may be obtained as part of the Work and shall be obtained as required. The Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work, which are customarily secured after execution of the Agreement and which are legally required. Contractor shall furnish copies of such permits, licenses, etc. to the Alcovy Circuit within ten (10) days after issuance.
- W. Key Personnel. All of the individuals identified in "**Exhibit J**", attached hereto, are necessary for the successful completion of the Work due to their unique

expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the Project team, as listed in "**Exhibit J**", without written approval of the Alcovy Circuit. Contractor recognizes that the composition of this team was instrumental in the Alcovy Circuit's decision to award the Work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the Alcovy Circuit's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this paragraph shall constitute a material breach of Contractor's obligations under this Agreement and shall be grounds for termination.

- X. Authority to Contract. The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners, or similar authorities to simultaneously execute and bind Contractor to the terms of this Agreement, if applicable.
- Y. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product, and other materials, including those in electronic form, prepared or in the process of being prepared for the Work to be performed by the Contractor ("Materials") shall be the property of the Alcovy Circuit, and the Alcovy Circuit shall be entitled to full access and copies of all Materials in the form prescribed by the Alcovy Circuit. Any Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the Work shall be delivered immediately to the Alcovy Circuit whether or not the Project or Work is commenced or completed, provided, however, that Contractor may retain a copy of any deliverables for its records. The Contractor assumes all risk of loss, damage or destruction of or to Materials. If any Materials are lost, damaged, or destroyed before final delivery to the Alcovy Circuit, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to the Alcovy Circuit, and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.
- Z. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Contractor agrees that, during performance of this Agreement, Contractor, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Contractor agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

Section 8. Covenants of the Alcovy Circuit

- A. Right of Entry. The Alcovy Circuit shall provide for right of entry for Contractor and Contractor's equipment as required for Contractor to complete the Work; provided that Contractor shall not unreasonably encumber the Project site(s) with materials or equipment.
- B. Newton County Representative. T.J. BeMent shall be authorized to act on Newton County's behalf with respect to the Work as Newton County's designated representative on this Project; provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section 6 above.
- C. Walton County Representative. T. J BeMent shall be authorized to act on Walton County's behalf with respect to the Work as Walton County's designated representative on this Project; provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section 6 above.

Section 9. Final Project Documents; Warranty

- A. Final Project Documents. Prior to final payment, Contractor shall deliver to Alcovy Circuit a written assignment of all warranties, guaranties, certificates, permits, and other documents, including without limitation, all contractors' and manufacturers' warranties. At such time, Contractor shall also deliver to the Alcovy Circuit copies of all as-built drawings, operations, and maintenance manuals, and any other pertinent documents relating to the construction and operation of the Work that is not otherwise in the possession of the Alcovy Circuit.
- B. Warranty. The Contractor warrants to the Alcovy Circuit and the Contract Administrator that materials and equipment furnished under the Agreement will be of good quality and new, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, is considered defective. This warranty excludes remedy for damage or defect caused by abuse by the Alcovy Circuit or modifications to the Work not executed by the Contractor or an employee/subcontractor/sub-subcontractor thereof.

Except as may be otherwise specified or agreed, the Contractor shall repair or replace all defects in materials, equipment, or workmanship appearing within one year (the "Warranty Period") from the date of Final Completion (as defined in "Exhibit I", attached hereto and incorporated herein by reference) at no additional cost to the Alcovy Circuit. Further, Contractor shall provide a manufactured material warranty of twenty-five years (the "Maintenance Period") from the date of Final Completion at no additional cost to the Alcovy Circuit. An inspection shall be conducted by the Alcovy Circuit or its representative(s) near the completion of the respective Warranty Period/Maintenance Period to identify any issues that must

be resolved by the Contractor. After the expiration of the Maintenance Period, Alcovy Circuit shall be responsible for repairing issues resulting from normal wear and tear and shall be responsible for general maintenance of the equipment; however, expiration of any Warranty Period or Maintenance Period shall not affect the Contractor's continued liability under an implied warranty of merchantability and fitness. All warranties implied by law, including fitness for a particular purpose and suitability, are hereby preserved and shall apply in full force and effect beyond any Warranty Period or Maintenance Period. Alcovy Circuit may purchase additional maintenance services from the Contractor upon a written proposal for such services being executed by authorized representatives of both Parties, and upon execution, such proposal for additional services shall be incorporated herein by this reference.

Section 10. Termination

- A. For Convenience. The Alcovy Circuit may terminate this Agreement for convenience at any time upon providing written notice thereof to Contractor at least seven (7) calendar days in advance of the termination date.
- B. For Cause. The Contractor shall have no right to terminate this Agreement prior to completion of the Work, except in the event of Alcovy Circuit's failure to pay the Contractor within thirty (30) calendar days of Contractor providing the Alcovy Circuit with notice of a delinquent payment and an opportunity to cure. The Alcovy Circuit may terminate this Agreement for cause as provided in Section 11 of this Agreement. The Alcovy Circuit shall give Contractor at least seven (7) calendar days' written notice of its intent to terminate the Agreement for cause and the reasons therefor, and if Contractor, or its Surety, fails to cure the default within that period, the termination shall take place without further notice. The Alcovy Circuit shall then make alternative arrangements for completion of the Project.
- D. Statutory Termination. In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed terminated as provided in Section 4(A) of this Agreement. Further, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of the Alcovy Circuit.
- E. Payment. Provided that no damages are due to the Alcovy Circuit for Contractor's failure to perform in accordance with this Agreement, and except as otherwise provided herein, the Alcovy Circuit shall, upon termination for convenience or statutory termination, pay Contractor for Work performed prior to the date of termination in accordance with Section 5 herein. The Alcovy Circuit shall have no further liability to Contractor for such termination. At its sole discretion, the Alcovy Circuit may pay Contractor for additional value received as a result of Contractor's efforts, but in no case shall said payment exceed any remaining unpaid portion of the Maximum Contract Price.

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If this Agreement is terminated for cause, the Alcovy Circuit will make no further payment to the Contractor or its Surety until the Project is completed and all costs of completing the Project are paid. If the unpaid balance of the amount due the Contractor, according to this Agreement, exceeds the cost of finishing the Project, Alcovy Circuit shall provide payment to the Contractor (or its Surety) for services rendered and expenses incurred prior to the termination date, provided that such payment shall not exceed the unpaid balance of the amount otherwise payable under this Agreement minus the cost of completing the Project. If the costs of completing the Project exceed the unpaid balance, the Contractor or its Surety shall pay the difference to the Alcovy Circuit.

- F. Assumption of Contracts. The Alcovy Circuit reserves the right in termination for cause to take assignment of all contracts between the Contractor and its subcontractors, vendors, and suppliers. The Alcovy Circuit will promptly notify the Contractor of the contracts the Alcovy Circuit elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.

- F. Conversion to Termination for Convenience. If the Alcovy Circuit terminates this Agreement for cause and it is later determined that the Alcovy Circuit did not have grounds to do so, the termination will be converted to and treated as a termination for convenience under the terms of Section 10(A) above.

- G. Requirements Upon Termination. Upon termination, the Contractor shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible if requested to do so by the Alcovy Circuit, and not incur any new obligations, unless the Alcovy Circuit directs otherwise; and (2) promptly deliver to the Alcovy Circuit all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the Alcovy Circuit.

- H. Reservation of Rights and Remedies. The rights and remedies of the Alcovy Circuit and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

Section 11. Alcovy Circuit Rights; Contractor Default

- A. Alcovy Circuit Rights Related to the Work.
 - (i) *Alcovy Circuit's Right to Stop the Work.* If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, as required by the Contract Administrator, or persistently fails to carry out Work in accordance with the Contract Documents, the Alcovy Circuit may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Alcovy Circuit to stop the

Work shall not give rise to a duty on the part of the Alcovy Circuit to exercise this right for the benefit of the Contractor or any other person or entity. Such a stoppage of Work shall not extend the Expected Date of Final Completion of the Work.

(ii) *Alcovy Circuit's Right to Carry Out the Work.* If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) calendar day period after receipt of written notice from the Alcovy Circuit to commence and/or continue correction of such default or neglect with diligence and promptness, the Alcovy Circuit may, without prejudice to other remedies the Alcovy Circuit may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Alcovy Circuit's expenses and compensation for the Architect/Engineer's and/or Contract Administrator's additional services (if any) made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Alcovy Circuit.

B. Contractor Default. For the purposes of this Agreement, Contractor shall be in default if any of the following occur during the Term of this Agreement: (a) a failure to fulfill in a timely and proper manner Contractor's obligations under this Agreement; (b) Contractor violates any of the material provisions, agreements, representations or covenants of this Agreement or any applicable city, state, or federal laws, which do not fall within the force majeure provisions of this Agreement; (c) the Contractor becomes insolvent or unable to pay its debts as they mature, or makes an assignment for the benefit of creditors, or files a bankruptcy petition under the United States Bankruptcy Code; or (d) Contractor is the subject of a judgment or order for payment of money, which judgment or order exceeds \$100,000 and is no longer subject to appeal or, in the opinion of the Alcovy Circuit, would be fruitless to appeal and where (i) such judgment or order shall continue un-discharged or unpaid for a period of thirty (30) calendar days, (ii) an insurer acceptable to the Alcovy Circuit has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance, or (iii) the Alcovy Circuit is otherwise reasonably satisfied that such judgment or order is not likely to be satisfied or complied with within sixty (60) calendar days of its issuance.

In the event of Contractor's default under this Agreement, the Alcovy Circuit shall send written notice to the Contractor setting forth the specific instances of the default and providing the Contractor with at least seven (7) calendar days to cure or otherwise remedy the default to the reasonable satisfaction of the Alcovy Circuit. If the default is not remedied during the stated cure period, then the Alcovy Circuit may, at its election: (a) in writing terminate the Agreement in whole or in part; (b) cure such default itself and charge the Contractor for the costs of curing the default against any sums due or which become due to the Contractor under this Agreement; and/or (c) pursue any other remedy then available, at law or in equity, to the Alcovy Circuit for such default.

Section 12. Construction Administration

If a Contract Administrator other than the Alcovy Circuit has been hired in relation to the Project, the Contract Administrator's administration of the construction of the Project shall be as described in "**Exhibit K**", attached hereto. The Contractor agrees to the construction administration provisions contained in "**Exhibit K.**"

Section 13. Miscellaneous

- A. Complete Agreement. This Agreement, including all of the Contract Documents, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement, or promise relating to the subject matter of this Agreement not contained in this Agreement or the Contract Documents shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.
- B. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to choice of law principles. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Newton County, Georgia or the U.S. District Court for the Northern District of Georgia – Atlanta Division, and Contractor submits to the jurisdiction and venue of such court.
- C. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- D. Invalidity of Provisions; Severability. Should any article(s) or section(s) of this Agreement, or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions that may for any reason be hereafter declared invalid.
- E. Business License. Prior to commencement of the Work to be provided hereunder, Contractor shall apply to the Alcovy Circuit for a business license, pay the applicable business license fee, and maintain said business license during the Term of this Agreement, unless Contractor provides evidence that no such license is required.

F. Notices.

(1) *Communications Relating to Day-to-Day Activities.*

All communications relating to the day-to-day activities of the Work shall be exchanged between Ken Wynne for Newton County, Ken Wynne for Walton County, and Andrew Pearson for the Contractor, between the hours of 8:00 a.m and 5:00 p.m., Monday through Friday.

(2) *Official Notices.*

All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when (1) personally delivered, or (2) on the third calendar day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent *via* national overnight commercial carrier to the Party at the addresses given below, or at a substitute address previously furnished to the other Party by written notice in accordance herewith:

NOTICE TO COUNTIES shall be sent to:

Newton County
Attn: County Manager
1113 Usher Street – Suite 203
Covington, GA 30014

Walton County
Attn: County Manager
303 South Hammond Drive – Suite 330
Monroe, GA 30655

NOTICE TO CONTRACTOR shall be sent to:

Conference Technologies, Inc.
Attn: Dan Bunyard
11653 Adie Road
Maryland Heights, MO 63043

G. Waiver of Agreement. No failure by the Alcovy Circuit to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Contractor with this Agreement, and no custom or practice of the Alcovy Circuit at variance with the terms and conditions of this Agreement shall constitute a general

waiver of any future breach or default or affect the Alcovy Circuit's right to demand exact and strict compliance by Contractor with the terms and conditions of this Agreement. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

- H. Survival. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations, warranties, and insurance maintenance requirements.
- I. Sovereign Immunity. Nothing contained in this Agreement shall be construed to be a waiver of the either Newton or Walton County's sovereign immunity or any individual's qualified good faith or official immunities.
- J. No Personal Liability. Nothing herein shall be construed as creating any individual or personal liability on the part of any of Alcovy Circuit's elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. No such individual shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the Alcovy Circuit or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Agreement. Likewise, Contractor's performance of services under this Agreement shall not subject Contractor's individual employees, officers, or directors to any personal liability, except where Contractor is a sole proprietor. The Parties agree that their sole and exclusive remedy, claim, demand, or suit shall be directed and/or asserted only against Contractor or the Alcovy Circuit, respectively, and not against any elected or appointed official, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.
- K. Force Majeure. Neither the Alcovy Circuit nor Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond their respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion, or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of Contractor; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection, or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.
- L. Headings. All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement.

- M. No Third Party Rights. This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.
- N. Successors and Assigns. Subject to the provision of this Agreement regarding assignment, each Party binds itself, its partners, successors, assigns, and legal representatives to the other Party hereto, its partners, successors, assigns, and legal representatives with respect to all covenants, agreements, and obligations contained in the Contract Documents.
- O. Agreement Construction and Interpretation. Contractor represents that it has reviewed and become familiar with this Agreement and has notified the Alcovy Circuit of any discrepancies, conflicts or errors in the Contract Documents. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement. In the interest of brevity, the Contract Documents may omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.
- P. Material Condition. Each term of this Agreement is material, and Contractor’s breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to the Alcovy Circuit at law or in equity.
- Q. Use of Singular and Plural. Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires contrary meaning.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date first above written.


CONTRACTOR:

CONFERENCE TECHNOLOGIES, INC.



Dan Bunyard, CFO

Attest/Witness:

Signature: 

Print Name: Andrew Pearson
VP System Integration

NEWTON COUNTY, GEORGIA



By: Marcello Banes, Chairman

Attest:

Signature: 

Jackie Smith, County Clerk



Approved as to form:

County Attorney

WALTON COUNTY, GEORGIA

By: David Thompson, Chairman

[COUNTY SEAL]

Attest:

Signature: _____
_____, County Clerk

Approved as to form:

County Attorney

“EXHIBIT A”

Request for Proposal

“EXHIBIT B”

Contractor’s Proposal Documents

“EXHIBIT C”

See Exhibit “A”

“EXHIBITS D.1 AND D.2”

“EXHIBIT D.1”

PERFORMANCE BOND

NEWTON COUNTY AND WALTON COUNTY, GEORGIA

KNOW ALL MEN BY THESE PRESENTS THAT CONFERENCE TECHNOLOGIES, INC. (as CONTRACTOR, hereinafter referred to as the “Principal”), and _____ (as SURETY COMPANY, hereinafter referred to as the “CONTRACTOR’S SURETY”), are held and firmly bound unto Newton County and Walton County, Georgia (as OWNERS, hereinafter referred to as the “Counties”), for the use and benefit of the Counties, in the sum of Five Hundred Sixty-Four Thousand Nine Hundred and Three Dollars (\$564,903.00) lawful money of the United States of America, for the payment of which the Principal and the Contractor’s Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the Counties for the upgrade of audio visual system (hereinafter referred to as “the PROJECT”), which agreement is incorporated herein by reference in its entirety (hereinafter referred to as the “CONTRACT”).

NOW THEREFORE, the conditions of this obligation are as follows:

1. That if the Principal shall fully and completely perform each and all of the terms, provisions and requirements of the Contract, including and during the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and if the Principal and the Contractor’s Surety shall indemnify and hold harmless the Counties from any and all

losses, liability and damages, claims, judgments, liens, costs and fees of every description, including but not limited to, any damages for delay, which the Counties may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any and all of the terms, provisions, and requirements of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto, and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise to remain in full force and effect;

2. In the event of a failure of performance of the Contract by the Principal, which shall include, but not be limited to, any breach or default of the Contract:
 - a. The Contractor's Surety shall commence performance of its obligations and undertakings under this Bond no later than thirty (30) calendar days after written notice from the Counties to the Contractor's Surety; and
 - b. The means, method or procedure by which the Contractor's Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the Counties.

The Contractor's Surety hereby waives notice of any and all modifications, omissions, additions, changes, and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

IN WITNESS WHEREOF, the Principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys-in-fact, as set forth below.

CONTRACTOR ("Principal"):

CONFERENCE TECHNOLOGIES, INC.

By: _____ (signature)

_____ (print)

Title: _____ (SEAL)

Date: _____

Attest:

_____ (signature)

_____ (print)

Title: _____

Date: _____

CONTRACTOR'S SURETY:

By: _____ (signature)

_____ (print)

Title: _____ (SEAL)

Date: _____

Attest:

_____ (signature)

_____ (print)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)

“EXHIBIT D.2”

PAYMENT BOND

NEWTON COUNTY AND WALTON COUNTY, GEORGIA

KNOW ALL MEN BY THESE PRESENTS THAT CONFERENCE TECHNOLOGIES, INC. (as CONTRACTOR, hereinafter referred to as the “Principal”), and _____ (as SURETY COMPANY, hereinafter referred to as the “CONTRACTOR’S SURETY”), are held and firmly bound unto Newton County and Walton County, Georgia (as OWNERS, hereinafter referred to as the “Counties”), for the use and benefit of any “Claimant,” as hereinafter defined Five Hundred Sixty-Four Thousand Nine Hundred and Three Dollars (\$564,903.00), lawful money of the United States of America, for the payment of which the Principal and the Contractor’s Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the Counties for upgrading of audio visual system (hereinafter referred to as “the PROJECT”), which agreement is incorporated herein by reference in its entirety (hereinafter referred to as the “CONTRACT”).

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor, services, and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

A “Claimant” shall be defined herein as any Subcontractor, person, Party, partnership, corporation, or other entity furnishing labor, services, or materials used or reasonably required for

use in the performance of the Contract, without regard to whether such labor, services, or materials were sold, leased, or rented, and without regard to whether such Claimant is or is not in privity of the Contract with the Principal or any Subcontractor performing Work on the Project.

In the event of any claim made by the Claimant against the Counties, or the filing of a Lien against the property of the Counties affected by the Contract, the Contractor's Surety shall either settle or resolve the Claim and shall remove any such Lien by bond or otherwise as provided in the Contract.

The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

IN WITNESS WHEREOF, the Principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers, as set forth below.

[SIGNATURES ON FOLLOWING PAGE]

CONTRACTOR:

CONFERENCE TECHNOLOGIES, INC.

By: _____ (signature)

_____ (printed)

Title: _____ (SEAL)

Date: _____

Attest:

_____ (signature)

_____ (printed)

Title: _____

Date: _____

CONTRACTOR'S SURETY:

By: _____ (signature)

_____ (printed)

Title: _____ (SEAL)

Date: _____

Attest:

_____ (signature)

_____ (printed)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)

“EXHIBIT E”

“EXHIBIT F”

FINAL AFFIDAVIT

**STATE OF GEORGIA
COUNTY OF NEWTON**

TO NEWTON COUNTY, GEORGIA

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

Signature

Title

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

Notary Public

[NOTARY SEAL]

My Commission Expires

FINAL AFFIDAVIT

**STATE OF GEORGIA
COUNTY OF WALTON**

TO WALTON COUNTY, GEORGIA

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

Signature

Title

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

Notary Public

[NOTARY SEAL]

My Commission Expires

"EXHIBIT G.1"

CONTRACTOR AFFIDAVIT AND AGREEMENT

STATE OF GEORGIA
COUNTY OF _____

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

Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period, and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

499696
Federal Work Authorization User Identification
Number
2/3/2012
Date of Authorization
Conference Technologies, Inc.
Name of Contractor
Alcovy Judicial Circuit Audio
Visual
Name of Project
Newton County, Georgia /Walton County, Georgia
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.
Executed on Jan 10, 20 24 in St. Louis
(city), MO (state).

Kathleen O'Donnell
Signature of Authorized Officer or Agent
Kathleen O'Donnell, Accounting Director
Printed Name and Title of Authorized Officer or
Agent

SUBSCRIBED AND SWORN BEFORE ME ON
THIS THE 10 DAY OF January, 20 24.

[Signature]
Notary Public

[NOTARY SEAL]

My Commission Expires: 9/29/2027



“EXHIBIT G.2”

SUBCONTRACTOR AFFIDAVIT

STATE OF GEORGIA
COUNTY OF _____

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with Conference Technologies, Inc., on behalf of Newton County has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Subcontractor

Alcovy Judicial Circuit Audio
Visual
Name of Project

Newton County, Georgia
Name of Public Employer

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

Executed on _____, 20__ in ____ (city),
____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____, 20__.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires: _____

“EXHIBIT H”

Reserved

“EXHIBIT I”

ADDITIONAL PAYMENT TERMS

A. Defined Terms. Terms used in this Agreement shall have their ordinary meaning, unless otherwise defined below or elsewhere in the Contract Documents.

- (i) “Substantial Completion” means when the Work or designated portion thereof is complete in accordance with the Contract Documents so that any remaining Work includes only (1) Minor Items that can be completed or corrected within the following thirty (30) calendar days, (2) Permitted Incomplete Work that will be completed by the date agreed upon by the Parties, and (3) any Warranty Work. Substantial Completion shall require complete operation of all applicable building systems including, but not limited to, mechanical, electrical, plumbing, fire protection, fire alarm, telecom, data, security, elevators, life safety, and accessibility (if any).
- (ii) “Minor Item” means a portion or element of the Work that can be totally complete within thirty (30) calendar days.
- (iii) “Permitted Incomplete Work” means Work that is incomplete through no fault of the Contractor, as determined by the County in its sole discretion.
- (iv) “Final Completion” means when the Work has been completed in accordance with terms and conditions of the Contract Documents.

B. Payment for Work Completed and Costs Incurred. Alcovy Circuit agrees to pay the Contractor for the Work performed and costs incurred by Contractor upon certification by the Contract Administrator and the Alcovy Circuit that the Work was actually performed and costs actually incurred in accordance with this Agreement. Payment shall be based on the value of the Work completed, as provided in the Contract Documents, plus the value of materials and equipment suitably stored, insured, and protected at the construction site, and, only if approved in writing by the Alcovy Circuit (which approval shall be given at the sole discretion of the Alcovy Circuit), such materials and equipment suitably stored, insured, and protected off site at a location approved by the Alcovy Circuit in writing, less retainage (as described below). Compensation for Work performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the County of invoices setting forth in detail the Work performed and costs incurred, along with all supporting documents required by the Contract Documents or requested by the Alcovy Circuit to process the invoice. Invoices shall be submitted on a monthly basis, and such invoices shall reflect costs incurred versus costs budgeted. Each invoice shall be accompanied by an Interim Waiver and Release upon Payment (or a Waiver and Release upon final payment in the case of the invoice for final payment) procured by the Contractor from all subcontractors in accordance with O.C.G.A. § 44-14-366.

The Alcovy Circuit shall pay the Contractor within thirty (30) calendar days after approval of the invoice by Alcovy Circuit staff, less any retainage as described in Section D below.

No payments will be made for unauthorized work. Payment will be sent to the designated address by U. S. Mail only; payment will not be hand-delivered, though the Contractor may arrange to pick up payments directly from the Alcovy Circuit or may make written requests for the Alcovy Circuit to deliver payments to the Contractor by Federal Express delivery at the Contractor's expense.

- C. Evaluation of Payment Requests. The Contract Administrator will evaluate the Contractor's applications for payment and will either issue to the Alcovy Circuit a Certificate for Payment (with a copy of the Contractor's application for payment) for such amount as the Contract Administrator determines is properly due, or notify the Contractor and Alcovy Circuit in writing of the Contract Administrator's reasons for withholding certification in whole or in part. The Contract Administrator may reject Work that does not conform to the Contract Documents and may withhold a Certificate of Payment in whole or in part, to the extent reasonably necessary to protect the Alcovy Circuit. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

Even following a Certificate of Payment, the Alcovy Circuit shall have the right to refuse payment of any invoice or part thereof that is not properly supported, or where requests for payment for Work or costs are in excess of the actual Work performed or costs incurred, or where the Work product provided is unacceptable or not in conformity with the Contract Documents, as determined by the Alcovy Circuit in its sole discretion. The Alcovy Circuit shall pay each such invoice or portion thereof as approved, provided that neither the approval or payment of any such invoice, nor partial or entire use or occupancy of the Project by the Alcovy Circuit, shall be considered to be evidence of performance by the Contractor to the point indicated by such invoice, or of receipt or acceptance by the Alcovy Circuit of Work covered by such invoice, where such work is not in accordance with the Contract Documents.

- D. Final Payment and Retainage. The Alcovy Circuit and Contractor shall comply with the provisions of O.C.G.A. § 13-10-80. The Contractor through each invoice may request payment of no more than ninety-five percent (95%) of that portion of the Work completed during the term covered by such invoice. Payment for the remaining five percent (5%) of Work completed and covered by such invoices shall be retained by the County until Substantial Completion. At the discretion of the Alcovy Circuit and with the written approval of the Contractor, the retainage of each subcontractor may be released separately as the subcontractor completes his or her work.

At Substantial Completion of the Work and as the Contract Administrator determines the Work to be reasonably satisfactory, the Alcovy Circuit shall, within thirty (30) days after the invoice and other appropriate documentation as may be required by the Contract Documents are provided to the Alcovy Circuit, pay the retainage to the Contractor. If at that time there are any remaining incomplete Minor Items or Permitted Incomplete Work, an amount equal to 200 percent of the value of each Minor Item or Permitted Incomplete Work, as determined by the Contract Administrator in its sole discretion, shall be withheld until such item, items or work are completed. The reduced retainage shall be shared by the

Contractor and subcontractors as their interests may appear.

The Contractor shall, within ten (10) days from its receipt of retainage from the Alcovy Circuit, pass through payments to subcontractors and shall reduce each subcontractor's retainage by the same percentage amount as the Contractor's retainage is reduced by the Alcovy Circuit; provided, however, that the work of the subcontractor is proceeding satisfactorily and the subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his or her work, including any warranty work as the Contractor in his or her reasonable discretion may require, including, but not limited to, a payment and performance bond.

The subcontractor shall, within ten (10) days from the subcontractor's receipt of retainage from the Contractor, pass through payments to lower tier subcontractors and shall reduce each lower tier subcontractor's retainage in the same manner as the subcontractor's retainage is reduced by the Contractor; provided, however, that the work of the lower tier subcontractor is proceeding satisfactorily and the lower tier subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his or her work, including any warranty work as the subcontractor in his or her reasonable discretion may require, including, but not limited to, a payment and performance bond.

Final payment of any retained amounts to the Contractor shall be made after certification by the Contract Administrator that the Work has been satisfactorily completed and is accepted in accordance with the Agreement and Contract Documents.

Neither final payment nor any remaining retainage shall become due until the Contractor submits to the Contract Administrator (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Alcovy Circuit or Alcovy Circuit property might be responsible or encumbered (less amounts withheld by Alcovy Circuit) have been paid or otherwise satisfied, as shown in "Exhibit F", attached to this Agreement, (2) a certificate evidencing that insurance, required by the Contract Documents to remain in force after final payment, is currently in effect and will not be canceled or allowed to expire until at least thirty (30) calendar days prior written notice has been given to the Alcovy Circuit; (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) a release or waiver of liens, claims, security interests, and encumbrances by all subcontractors and material suppliers, and (6), if required by the Alcovy Circuit, other data establishing payment or satisfaction of obligations, such as receipts, to the extent and in such form as may be designated by the Alcovy Circuit. If a subcontractor or material supplier refuses to furnish a release or waiver as required by the County, the Contractor may furnish a bond satisfactory to the Alcovy Circuit to indemnify the Alcovy Circuit against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Alcovy Circuit all money that the Alcovy Circuit may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee, except those claims previously made in writing and identified by that payee as unsettled at the time of final application for payment.

“EXHIBIT J”
KEY PERSONNEL

The following individuals are designated as Key Personnel under this Agreement and, as such, are necessary for the successful prosecution of the Work:

<u>Individual</u>	<u>Position</u>
Andrew Pearson	

“EXHIBIT K”