

**GENERAL CONDITIONS  
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# GENERAL CONDITIONS

## GC-1 AGREEMENT AND AGREEMENT DOCUMENTS

The General Conditions, Special Conditions, Technical Provisions, Drawings, Changes, and all other parts of the Agreement Documents are complementary, and a requirement occurring in one shall be as binding as though occurring in all. The parts of the Agreement are complementary and describe and provide for completion of the Work. The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Agreement Documents and in no way affect, and shall not be considered in the interpretation of the provisions to which they refer.

Execution of the Agreement by Contractor is a representation that Contractor has visited the Site, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Agreement Documents.

The intent of the Agreement Documents is to include all items necessary for the proper execution and completion of the Work. Work not specifically covered in the Agreement Documents shall be required if it is consistent therewith and reasonably inferable therefrom as being necessary to produce the intended results. Words and abbreviations that have well-known technical or trade meanings are used in the Agreement Documents in accordance with such recognized meanings.

If and to the extent of any inconsistency, ambiguity, conflict, discrepancy or error in the Agreement Documents (a “discrepancy”), Contractor shall immediately notify the Owner in writing and seek clarification from the Owner (within 24 hours of discovery). In the event that the Owner fails to clarify such discrepancy within a reasonable time under the circumstances, Contractor shall proceed with the Work and give precedence to the Agreement Documents in the following order of priority:

- (1) Written modifications (including without limitation Change Orders and Change Directives) issued after execution of the Agreement;
- (2) Addenda issued in writing prior to the execution of the Agreement;
- (3) the Agreement;
- (4) Addendum, if any, to the General Conditions and Special Conditions;
- (5) Special Conditions;
- (6) the General Conditions;
- (7) the Specifications; and
- (8) the Plans and Drawings.

If the application of the foregoing procedure fails to resolve the discrepancy, then unless Contractor sought and obtained the clarification of the discrepancy prior to entering into this Agreement, then the discrepancy shall be resolved by construing the provision in favor of the Owner and in such a manner as will further the Owner's best interests and which may impose the more expensive or greater obligation upon Contractor. When Contractor fails to provide this notice and seek clarification, Contractor assumes full responsibility to correct or adjust work performed pursuant to Agreement Documents known, or which should have been known, to contain such a discrepancy.

## **GC-2 ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS**

During the progress of the Work, the Engineer may issue additional instructions and Drawings supplemental to those listed in the Special Conditions showing additional details required for the performance of the Work, and may issue revised Drawings pursuant to Change Orders or Change Directives, or for correction of errors in the Plans. The additional instructions and Drawings thus supplied will become a part of the Agreement Documents. Contractor shall carry out the Work in accordance with the additional instructions and Drawings.

## **GC-3 DEFINITIONS**

The following terms as used in this Agreement are respectively defined, as follows:

Abandonment - Shall mean the permanent termination of the use of, or of service from in or on, a facility.

Approved, Directed, Ordered, Or Their Derivatives - Approved, as directed, or ordered by the Engineer or the City, unless otherwise clearly indicated.

Acceptance - The formal written acceptance by the City of the fully and finally completed Work.

Addenda - Revisions to the Proposal Documents issued by the City prior to opening of the Bid.

Agreement - The written agreement for the performance of and payment for the Work, which includes by reference and is a part of the Agreement Documents, executed on behalf of the City and the Contactor, also called City-Contractor Agreement.

Agreement Documents - The Agreement Documents are defined in other portions of the Agreement, but include, at least, the following, if applicable to this Project:

Agreement (Part 1);  
Addenda (Part 2);  
Required License (Part 3);  
Illegal Immigration Reform and Enforcement Act Forms (Part 4);  
Supplemental Federal Terms and Conditions (Part 5); (If Applicable)  
Authorizing Legislation (Part 6);  
General Conditions (Exhibit A);

Technical Specifications (Exhibit B);  
Bid Tab Sheet (Exhibit C);  
Special Condition (Exhibit D);  
Drawings (Exhibit E);  
Security Policies (Exhibit F);  
Contractor Disclosure Forms (Exhibit G);  
Additional Required Submittals (Exhibit H);  
Contract Compliance Requirements (Appendix A);  
Insurance & Bonding Requirements (Appendix B);

The Agreement Documents may also be referred to from time to time as the “Contract Documents.”

Agreement Price - The price or prices for the Work or items of Work set forth in the Bid.

Agreement Time - The number of calendar days stated in the Agreement Documents for the Substantial Completion of the Work or Final Completion of the Work, or the achievement of a specific interim milestone, as the context may require.

Applicant - Shall mean any person, company or corporation who intends or plans to request for water services for a new development.

Application for Payment - The form approved by the City that is to be used by Contractor in requesting progress payments or final payment, together with such supporting documentation as is required in the Agreement Documents. The Application for Payment may also be called Payment Application or Progress Payment.

Bid - The offer or bid of the Bidder submitted in the prescribed manner on the prescribed form setting forth the prices for the Work to be performed together with supplemental information as required by the Agreement Documents.

Bidder - Any person, firm, partnership, corporation or any combination thereof submitting a Bid for the Work.

Bonds - Bid, Performance Bonds, Payment Bonds, and other instruments of security furnished by Contractor and its surety in accordance with the Agreement Documents.

Bond means a written instrument of surety approved by the City with a valid Certificate of Authority issued by the United States Department of Treasury under Sections 9304 to 9308 of Title One of the United States Code as security to the City, on behalf of a Bidder or the Contractor, to guaranty faithful performance of acts, duties or obligations under the Contract Documents and includes the following.

- Bid Bond means the security instrument furnished with a Bid to guaranty that, if the Bidder is awarded the Contract, the Bidder will execute the Agreement within the time specified in the Bidding Documents.

- Maintenance Bond, if required on the Project, means the security instrument furnished by the Contractor and its surety on the approved form as a guaranty, in addition to other warranties and guaranties, to remedy any defects in the Work of the Contractor which may develop during the warranty period after Completion of the Contract.
- Payment Bond means the security instrument furnished by the Contractor and its surety on the Payment Bond Form as a guaranty that Contractor will pay in full all bills and accounts for materials and labor used in the Work.
- Performance Bond means the security instrument furnished by the Contractor and its surety on the Performance Bond Form as a guaranty that the Contractor will complete the Work in accordance with the terms of the Contract.

Change - Any change in the Work authorized by the Engineer, including Field Changes, Work Authorizations or Change Orders.

Change Directive – A written order prepared by the Owner and signed by the Owner directing a Change in the Work prior to or absent an agreement or adjustment, if any, in the Agreement Price or Agreement Time, or both.

Change Order - A written agreement signed by the Owner and Contractor, stating their agreement upon all of the following: (1) change in the Work that includes the addition or reduction of Work; (2) the amount of the adjustment, if any, in the Agreement Price; and (3) the extent of the adjustment, if any, in the Agreement Time and includes at least one of the above Changes. A Change Order does not include a Field Change, Work Authorization or Change Directive.

City - Shall mean the City of Atlanta, Georgia, and shall include all agencies, establishments or officials of the government of the City. The City may also be referred to from time to time as the “Owner.”

City-Contractor Agreement - The written agreement for the performance of and payment for the Work executed on behalf of the City and the Contractor, which is both a part of the Agreement Documents and includes all Agreement Documents by reference. The City-Contractor Agreement may also be called “Agreement.”

City’s Contractor - Shall mean the legally authorized representative of the City, a private contractor, or other concerned agency performing Work under a direct Agreement with the City.

Construction - Shall mean the actual site preparation, building and all related Work, including facility relocation and adjustments.

Construction Easement/Temporary Easement - Any space or area dedicated to the City or other entity for the purpose of utilities or location of utilities for a specific period of time.

Construction Equipment - Equipment used in the performance of the Work but not incorporated therein.

Contract Documents - The Agreement Documents referenced above.

Contractor - Any firm, partnership, corporation, joint venture, LLC or any combination thereof who enters into a contractual Agreement with the City. This excludes Subcontractors/Sub-consultants.

CPM Schedule – A logic tied computerized network schedule incorporating all elements of the Work, prepared and updated in accordance with the requirements of the Special Conditions, subject to approval of the City.

Day - A calendar day of twenty-four (24) hours lasting from midnight one day to midnight the next day.

Department - Shall mean the Department of Watershed Management.

Designer - Shall refer to the firm licensed to practice engineering in the State of Georgia that seals the plans and specifications prior to bid.

Drawings - That part of the Agreement Documents which show the shape, outlines, dimensions, characteristics, scope of and other similar requirements governing the Work, or portions thereof, prepared by the Designer and including revisions thereto. The term is used interchangeably with the word "Plans" and includes without limitation Standard Details and Drawings.

Engineer - City of Atlanta or duly authorized representative assigned to administer the technical aspects of the Agreement. The terms Resident Engineer, Contract Administrator, or Contract Manager may be used interchangeably to denote the person designated expressly by the City with authority to administer the Agreement.

Equipment - Equipment incorporated or to be incorporated in the Work.

Field Change – A Change in Work that includes changes or adjustments to quantities or budget items but does not include a Change in the overall Agreement Price, overall Agreement Time or use of allowance items, which is required as a result of field conditions that require such adjustments. A Field Change does not include a Work Authorization, a Change Order or a Change Directive and is agreed upon and executed by an authorized City representative and the Contractor.

Force Account - A method of payment, other than lump sum or unit price, for Work ordered by Change Order and paid for in accordance with force account procedures indicated in “Force Account” Section of the General Conditions.

General Conditions - The General Conditions of the Agreement for construction that govern the rights, duties, and obligations of the parties.

GDOT - The Georgia Department of Transportation.

Inspector - The authorized representative of the Engineer or the City assigned to make detailed inspection of any or all portions of the Work or Materials thereof.

MARTA - Shall mean the Metropolitan Atlanta Rapid Transit Authority, or its designated legal representatives.

Materials - Materials incorporated or to be incorporated in the Work unless otherwise clearly indicated.

Modifications – Binding changes, addenda, revisions, or the like, to the Work or the Agreement Documents, including Changes to Work made by Change Order, Work Authorization, Field Change or Change Directive as required by GC-41.

Notice of Intent or Letter of Intent to Award - The written notice of the acceptance of the Bid from the City to a Bidder.

Notice to Proceed - (“NTP”) Written communication issued by the City to Contractor authorizing it to proceed with the Work and establishing the date of commencement of the Agreement time and on which Contractor shall start to perform its obligations in accordance with the Agreement Documents.

Owner - Same as “City” above.

Permanent Easement - Any space or area dedicated to the City or other entity for the purpose of constructing and/or maintain existing or future utilities.

Plans - That portion of the Agreement Documents describing in drawings, the shapes, outlines, dimensions, characteristics, scope and other similar requirements governing the Work, or portions thereof, prepared by the Designer and including revisions thereto. The term is used interchangeably with the word "Drawings" and includes without limitation Standard Details and Drawings.

Project - The Project is identified in the City-Contractor Agreement and is the total construction of which the Work performed under the Agreement Documents is a part.

Public Space/Public Right-of-Way - Shall mean the area between private property lines under the jurisdiction of the City, county, state or federal government, including, but not limited to, an alley, roadway, median, sidewalk, public way, or any combination thereof.

Punch List - Shall mean the lists prepared by the City's Representative or Design Consultant prior to Substantial Completion and through Final Completion indicating items of Work not in accordance with the requirements of the Contract Documents and which must be performed, corrected and accomplished prior to acceptance of the Work.

Replacement Facility - Shall mean that facility, meeting the Department’s current standards, which will be constructed or provided, as a consequence of the rearrangement of an existing facility or portion thereof.



Resident Engineer - The City's Engineer who is assigned to the Site or any part thereof.

Responsive Bid - A Bid which is accurate and complete with respect to Bid schedules and information submitted relative to the technical qualifications and financial responsibility and is able to comply with Equal Opportunity and other requirements of the Agreement Documents.

Samples - Shall mean physical examples furnished by Contractor, which illustrate materials, equipment or workmanship. Approved Samples in conformance with the Contract Documents establish the standards of the Work.

Shop Drawings - Shall mean drawings, diagrams, illustrations, schedules or other data illustrating the Work, and all illustrations, brochures, standard schedules, performance charts, specifications, instructions, diagrams, and other information prepared by a Subcontractor, Supplier, vendor or manufacturer and submitted by Contractor as required in the Contract Documents.

Scope of Services - See "Work."

Sidewalk Area - Shall mean that portion of a street between the curb lines and the adjacent property lines intended primarily for the use of pedestrians whether paved or in use.

Site - The areas required for the performance of the Work.

Special Conditions - Terms which supplement items covered in General Conditions.

Specifications, Technical Specifications - Shall mean those portions of the Contract Documents consisting of written technical descriptions, provisions or requirements of the Work to be performed under the Contract Documents, including, but not limited to, the quantities or quality of materials, equipment, construction systems or applications. Standards for specifying materials or testing that are cited in the Specifications are part of the Contract Documents.

Standards - Shall mean those current Standards of Engineering analysis and design, including Installation and Material Specifications, which the City utilizes in the design and construction of its own projects.

State - The State of Georgia.

Subcontractor - An individual, firm, corporation or any combination thereof having a direct contract with Contractor for the performance of a part of the Work at the site.

Substantial Completion - The date certified by the Engineer when all or a part of the Work, identified in the Engineer's certification, is sufficiently completed in accordance with the requirements of the Agreement Documents so that the identified portion of the Work can be utilized for the purposes for which it is intended.

Supplier - Any individual, firm, or corporation who supplies Material or Equipment for the Work (including that fabricated to a special design) but who does not perform or provide significant labor at the Site.

Temporary Facility - Shall mean a facility constructed for whatever purpose and not intended to be permanent.

Utility - Shall mean and include all public, private, or cooperatively owned lines, facilities and systems for producing, transmitting or distributing communications, power, electricity, heat, gas, oil, crude products, water, steam, waste, storm water, and other similar commodities, such as public owned fire and police signal systems, which directly or indirectly serve the public or any part thereof.

Work - All the services specified, indicated, shown, or contemplated by the Agreement Documents and the furnishing by Contractor of all Materials, Equipment, labor, methods, processes, construction and manufacturing materials and equipment, tools, plants, supplies, power, water, transportation and other things necessary to complete such services in accordance with the Agreement Documents and that will ensure a functional and complete facility.

Work Authorization – A Change in Work that adds, changes or removes scope of work from the Agreement but does not include a change in Agreement Time or Agreement Price; or the utilization of an allowance or contingency item, as permitted and defined by the Agreement documents. A Work Authorization does not include a Change Order, a Field Change or a Change Directive and is agreed upon and executed by an authorized City representative and the Contractor.

Working Days - Generally, Monday, Tuesday, Wednesday, Thursday, and Friday; however, on some projects, Saturday and/or Sunday may be considered working days, if specified as working days by the City or Engineer. Holidays are not considered Working Days.

Written Notice - A written statement transmitted from one party to an authorized representative of another party.

#### **GC-4 APPLICABLE CODES, SPECIFICATIONS, AND STANDARDS**

##### GC-4.1 General

All codes, Specifications, regulations, laws, ordinances, and standards referred to in the Agreement Documents shall mean, and are intended to be, the latest editions, amendment, and revisions of such reference standard in effect as of the date of the Invitation to bid for this Agreement, and as may be updated or amended to be applicable to the Project.

##### GC-4.2 Standards

Reference to a technical society, institution, association, or governmental authority, or pronoun in place of them, is made in the Agreement Documents in accordance with the following abbreviations:

ANSI	American National Standards Institute;
ASTM	American Society for Testing and Materials;
AWS	American Welding Society;

AASHTO	American Association of State Highway and Transportation Officials;
ACI	American Concrete Institute;
AFBMA	Anti-Friction Bearing Manufacturer's Association;
AI	Asphalt Institute;
AISI	American Iron and Steel Institute;
AISC	American Institute of Steel Construction;
AMCA	Air Moving and Conditioning Association;
API	American Petroleum Institute;
ASME	American Society of Mechanical Engineers;
ASTM	American Society for Testing and Materials;
AWG	American (Brown and Sharpe) Wire Gauge;
AWS	American Welding Society;
AWWA	American Water Works Association;
CRSI	Concrete Reinforcing Steel Institute;
EPA	Environmental Protection Agency (Federal);
EPD	Environmental Protection Division (Georgia State);
GDOT	Georgia Department of Transportation (“GDOT”);
MARTA	Metropolitan Atlanta Rapid Transit Authority;
NACE	National Association of Corrosion Engineers;
NFPA	National Fire Protection Association;
NSF	National Sanitary Foundation;
OSHA	Occupational Safety and Health Administration; and
UL	Underwriter’s Laboratories Incorporated.

### **GC-5 ADEQUACY OF DESIGN**

Before placing its Bid to the City, and continuously after the execution of the Agreement, Contractor shall carefully study and compare the Agreement Documents and shall at once report any error, ambiguity, inconsistency or omission that may be discovered, including any requirement which may be contrary to any law, ordinance, rule, regulation, or order of any public authority bearing on the performance of the Work. By submitting its Bid for the Agreement and the Work under it, Contractor agrees that the Agreement Documents, along with any supplementary written instructions issued by or through the Engineer that have become a part of the Agreement Documents, appear accurate, consistent, and complete. Contractor shall perform no portion of the Work at any time without Agreement Documents or, where required, approved shop Drawings, product data, or samples for such portion of the Work.

No claims shall be made by Contractor based on claims of defects, errors, omissions, ambiguities or inconsistencies in the Agreement Documents which were reasonably discoverable by a review of the Agreement Documents and correlation thereof with the actual conditions at the Project Site. No observation of the Engineer or City, and no inspections, tests or approval shall relieve Contractor from its obligation to perform the Work in strict conformity with the Agreement Documents.

Contractor has determined, by its own investigation and research, all the conditions affecting the work to be done and materials to be furnished and does not rely upon any representation by the City in connection therewith.

THE CITY, ITS AGENTS AND EMPLOYEES MAKE NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO CONTRACTOR CONCERNING THE AGREEMENT DOCUMENTS. By the execution hereof, Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that Contractor has not, does not, and will not rely upon any representations or warranties by the City concerning such documents as no such representations or warranties have been or are hereby made.

Prior to execution of the Contract, Contractor has evaluated and satisfied itself as to the condition and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project Site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools and equipment, and (v) other similar issues. With the exception of any differing site conditions clause, if any, that may be included in the Agreement Documents, the City assumes no responsibility or liability for the physical condition of the Project Site, or any improvements located on the Project Site. Contractor shall be solely responsible for providing a safe place for the performance of the Work.

Contractor acknowledges and agrees that its obligation to construct the Work in accordance with the Agreement Documents is not in any way altered or affected by the observations or inspections of the City or the Designer. Further, Contractor acknowledges and agrees that any warranty periods included herein merely set forth the time period during which Contractor is contractually required to specifically perform corrective work and that these warranty periods are not and shall not be construed to be exclusive remedies of the City. Instead, Contractor acknowledges and agrees that it shall be liable to the City for the cost of correcting Work not performed in accordance with the Agreement Documents for the full period of the applicable statute of limitations.

#### **GC-6 CITY OF ATLANTA ORDINANCES**

Contractor shall be bound by the provisions of all City of Atlanta Ordinances. It is Contractor's responsibility to be aware of and adhere to all existing or future ordinances that are in effect during the performance of the Agreement.

#### **GC-7 PERMITS AND REGULATIONS**

All applicable federal laws, state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Agreement throughout to the extent that such requirements do not conflict with federal laws or regulations and in the event of a conflict, federal laws shall govern. All Work performed within the right of way of GDOT shall be in accordance with GDOT regulations, policies, and procedures.

Except as expressly stated in the Contract Documents, Contractor shall secure and will provide all building permits, licenses, and other applicable legal documents required for Contractor's performance of the Project.

Contractor shall give all notices and comply with all permits, laws, ordinances, rules and regulations bearing on the conduct of the Work as drawn and specified.

If any permit, license or certificate expires or is revoked, terminated or suspended as a result of any action on the part of Contractor or any person or entity for which Contractor is responsible, it shall neither be entitled to any additional compensation, nor to an extension of Agreement Time.

### **GC-8 TAXES**

Contractor shall pay all sales, retail, occupational, service, excise, old age benefit and unemployment compensation taxes, consumer, use and other similar taxes as well as any other taxes or duties on the Material, Equipment and labor for the Work or portions thereof provided by Contractor which are legally enacted by any municipal, county, federal or state authority or department or agency thereof at the time Bids are received, whether or not yet effective.

All records maintained by Contractor pertaining to such taxes and levies and payment thereof shall be made available to the City at reasonable times for inspection, audit and copying.

### **GC-9 ARREARS TO OFFSET DEBT AGAINST CITY**

No money shall be paid by the City upon any claim, debt, demand or account whatsoever, to any person, firm, or corporation who is in arrears to the City for taxes, or any other debt or claim, and the City shall be entitled to counterclaim and/or offset any such debt, claim, demand or account in the amount of taxes so in arrears or other debts or claims of the City, and no assignment or transfer of such debt, claim, demand, or account after the said taxes are due or after any such debt or claim is asserted by the City, shall affect the right of the City to so offset the said taxes, debts, or other obligations against the same.

Contractor agrees that the City shall be allowed to setoff and recoup any claim or demand that it may have against Contractor (or any of its constituent members if Contractor is a joint venture) whether such claim or demand is liquidated or unliquidated. Contractor further agrees that in the event it assigns or sells any amounts due or to become due under this Agreement, notice to the City of such assignment or sale shall not affect the City's rights of setoff or recoupment against Contractor for claims subsequently arising on this or any other project. Any assignee or purchaser of any amounts due Contractor under this Agreement shall be bound to these provisions and shall assume the risk of subsequently arising claims of setoff or recoupment.

### **GC-10 LIENS**

Contractor acknowledges that neither it nor any of its Subcontractors or Suppliers have lien rights on public property. Contractor will furnish the City with evidence, satisfactory to the City

that all persons who have done Work or furnished materials in performance of this Agreement have been fully paid before it shall demand final payment due or unpaid under this Agreement. In case such evidence is not furnished, an amount necessary to meet the lawful claims of the persons aforesaid may be retained from any monies due or that may become due the said Contractor under this Agreement until the lawful claims aforesaid shall be fully discharged, and it is understood and agreed that the City assumes no obligation nor in any way undertakes to pay such lawful claim out of any funds due or that may become due the said Contractor out of the City's own funds.

If, in its sole discretion, the City wishes to make joint payment to Contractor and any of its Subcontractors or Suppliers, Contractor agrees that the City may do so, and Contractor agrees to cooperate with the City in identifying the amounts due Subcontractors and Suppliers to facilitate the making of said joint payment.

### **GC-11 ASSIGNMENTS**

Contractor shall retain personal control and shall give personal attention to the fulfillment of this Agreement. Contractor shall not assign the whole or any part of this Agreement or any monies due or to become due hereunder without the written consent of the City. In case Contractor assigns all or any part of any monies due or to become due under this Agreement, the instrument of assignment shall contain, or shall be deemed to contain, a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to Contractor shall be subject to claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement and to setoffs and recoupments by the City as set forth in GC-9 above. Any assignment of this Agreement in whole or in part or any assignment of monies due or to become due hereunder must bind the assignee to all terms and conditions of this Agreement and protect and preserve all rights and remedies of the City as against Contractor and extend to the City the same rights and remedies against assignee. In the event that any person or entity should claim entitlement to all or any part of any monies due or to become due under this Agreement under the doctrine of subrogation, it further agrees that its rights shall be subject to claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Work called for in this Agreement and to setoffs and recoupments by the City as set forth in GC-9 above.

### **GC-12 PATENTS AND ROYALTIES**

Contractor shall indemnify and hold harmless the City and its officers, agents, servants, and employees from liability or all claims of any nature or kind, including costs, attorneys' fees, and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Agreement, including its use by the City, unless otherwise specifically stipulated in the Agreement Documents.

If Contractor uses any design, device or Materials covered by letters, trademarks, patent or copyright, it shall provide for such use by suitable agreement between the City and the holder of such design, device or Material. It is mutually agreed and understood that, without exception, the Agreement Price shall include all royalties or costs arising from the use of such design,

device, or Materials in any way involved in the Work. Contractor or its sureties or both shall indemnify and hold harmless the City, its officers and employees from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or Materials or any trademark or copyright in connection with Work agreed to be performed under this Agreement and Contractor shall indemnify the City for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the Work or after completion of the Work, including any costs or expenses for experts and attorneys' fees.

### **GC-13 OUT-OF-STATE CONTRACTORS**

If the lowest responsive Bidder is a foreign corporation, partnership, or sole proprietorship, the Bidder hereby irrevocably appoints the Secretary of State of Georgia as its agent for services of all legal process for the purpose of this Agreement only and shall obtain all required certificates and licenses required by the Georgia Law.

### **GC-14 CONTRACTOR'S OBLIGATIONS**

#### **GC-14.1 Supervision and Construction Procedures**

##### **GC-14.1.1**

Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and shall coordinate all portions of the Work under the Agreement. All Work under the Agreement shall be performed in a skillful and workmanlike manner. Contractor shall exercise its control over all means, methods, techniques, and procedures so as to carefully and diligently coordinate the work of all Subcontractors and Suppliers or anyone working by, through, or under Contractor or a Subcontractor or Supplier.

##### **GC-14.1.2**

Contractor shall be responsible to the City for the acts and omissions of Contractor's employees, Subcontractors, Suppliers, and their agents and employees, and any other persons performing any of the Work under a contract with Contractor or a Subcontractor or Supplier.

##### **GC-14.1.3**

Contractor shall not be relieved from Contractor's obligations to perform the Work in accordance with the Agreement Documents by the activities or duties of the Engineer in the administration of the Agreement or by inspections, tests, or approvals required or performed by persons other than Contractor.

##### **GC-14.1.4**

Contractor shall carefully study and compare the Agreement Documents with each other and with the site conditions and other information furnished by the Owner and shall at once report in writing to the Owner alleged errors, inconsistencies or omissions. If Contractor performs any construction activity involving an error, inconsistency or omission in the Agreement Documents that Contractor recognized or reasonably should have recognized and without having given written notice to the Owner, Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction.

#### GC-14.1.5

Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information available to Contractor with the Agreement Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported in writing to the Owner at once and shall be subject to the provisions of the last sentence of GC-14.1.4 above.

### GC-14.2 Labor and Materials

#### GC-14.2.1

Unless otherwise provided in the Agreement Documents, Contractor shall provide and pay for all labor, Materials, Equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

#### GC-14.2.2

Contractor shall, at all times, enforce strict discipline and good order among Contractor's employees and Subcontractors, and shall not employ on the Work any Subcontractor, unfit person or anyone not skilled in the task assigned them. The City may, after Written Notice, require Contractor to remove from the Work any employee the City deems incompetent, careless, or otherwise objectionable, including any employee of a Subcontractor or Supplier.

#### GC-14.2.3

All Work at the site shall be performed during regular working hours, except upon the City's written consent given after prior Written Notice.

### GC-14.3 Contractor's Construction Schedule

Contractor shall comply with all scheduling requirements set forth in the Agreement Documents, including but not limited to the Special Conditions requirements for a CPM Schedule for performance of the Work.



GC-14.4 Conditions Affecting the Work

Contractor shall be responsible for having taken all steps necessary to ascertain the nature and location of the Work and the general and local conditions that can affect the Work or the cost thereof. Failure by Contractor to fully acquaint itself with conditions that may affect the Work, including but not limited to conditions relating to transportation, handling, storage of Materials, availability of labor, water, roads, weather, topographic and subsurface conditions, as-built conditions, other separate contracts to be entered into by the City relating to this Project that may affect the Work of Contractor, applicable provisions of law, and the character and availability of equipment and facilities needed prior to and during the prosecution of the Work, shall not relieve Contractor of its responsibilities under the Agreement Documents and shall not constitute a basis for an equitable adjustment or additional compensation under any circumstances. The City assumes no responsibility for any understanding or representations concerning conditions made by any of its officers, agents, or employees prior to the execution of the Agreement, unless such understanding or representations are expressly stated in the Agreement Documents.

**GC-15 RIGHT OF ENTRY**

The City reserves the right to enter the Site of the Work herein contracted for, by such agent or agents as they may elect, for the purpose of inspecting the Work, or for the purpose of installing such collateral Work as the City may desire. Contractor shall cooperate and coordinate with other contractors prosecuting other phases of the construction. Furthermore, if deemed necessary by the Engineer, Contractor will incorporate work activities of other City contractors directly into the schedule such that no phase of the Project(s) is delayed or impacted.

**GC-16 NOTICES**

Any notice, consent, approval, or other communication which is provided for or required by the Agreement Documents must be in writing and may be delivered in person to any party or may be sent by a facsimile transmission or by registered or certified U.S. mail, with postage prepaid, return receipt requested. Copies of all facsimiles shall also be sent via first class mail. Any such notice or other written communication shall be deemed received by the party to whom it is sent (i) in the case of delivery by hand or delivery by reputable national or local courier (such as United Parcel Service or Federal Express), on the date of delivery to the party to whom such notice is addressed, (ii) in the case of facsimile transmission, one working day after the date of successful transmission (provided that an additional first class mail copy of such notice is subsequently received within five (5) days of the facsimile transmission), and (iii) in the case of registered or certified mail, the date receipt is acknowledged on the return receipt for such notice. All such notices and other written communications shall be sent to the persons and addresses listed below

If to Owner:

Contract Administrator  
Department of Watershed Management  
City Hall

55 Trinity Avenue, Suite 4700  
Atlanta, Georgia 30303

and

Chief Procurement Officer  
Department of Procurement  
55 Trinity Avenue, Suite 1900  
Atlanta, Georgia 30303

If to Contractor:

Representative  
Contractor  
Address  
City, State, Zip\_\_\_\_\_

The addresses and persons listed may be changed at any time by giving Written Notice in accordance with this Article GC-16.

### **GC-17 SAFETY PRECAUTIONS AND PROGRAMS**

The City, the Engineer, or their agents, employees or representatives are not responsible for the means, methods, techniques, sequences or procedures utilized by Contractor, or for the safety precautions and programs in connection with the Work. Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work and for complying with all applicable rules, ordinances, state and federal laws and regulations.

### **GC-18 SAFETY OF PERSONS AND PROPERTY**

#### **GC-18.1 Damage, Injury, or Loss**

Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to:

- (1) All employees on the Work and all other persons who may be affected thereby;
- (2) All the Work and all Materials and Equipment to be incorporated therein, whether in storage on or off the site, under the care, custody, or control of Contractor or any of Contractor's Subcontractors;
- (3) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

- (4) The Work of the City or other separate contractors.

#### GC-18.2 Notice

Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury, or loss.

#### GC-18.3 Warning, Signage

Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

#### GC-18.4 Hazardous Materials

When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

#### GC-18.5 Remedy

Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by Contractor, any Subcontractor, Supplier or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, except damage or loss attributable solely to the acts or omissions of the City, the Engineer or anyone directly or indirectly employed by any of them in any way, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under the Insurance Section of the General Conditions or other provisions of the General Conditions.

#### GC-18.6 Project Safety Coordinator

Contractor shall provide a project safety coordinator who shall be devoted full time toward accident prevention during construction. The qualifications of the project safety coordinator shall be submitted to the Department of Watershed Management Office of Security and Safety (OSS) for approval. If the candidate meets the qualifications, the candidate will be interviewed by OSS to confirm the candidate's experience. Individuals must meet the requirements outlined below to be qualified for the position.

- (1) (a) Four (4) year Bachelor's degree and Five (5) years of construction loss control or construction safety experience; OR  
(b) Ten (10) years of construction loss control or construction safety experience, AND
- (2) Current certifications as listed below in a, b, and c:

- (a) OSHA 510 or equivalent 30 hours of construction safety training.
  - Trenching and Excavation (Standards- 29 CFR- 1926.651)
  - Confined Space Entry (Standards- 29 CFR- 1910.146 App. E), AND
- (b) Traffic Control/flagging (Certified GDOT flagger), AND
- (c) First Aide/CPR/AED (Standards- 29 CFR- 1910.266 (App. B)).

#### GC-18.7 Loads

Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

#### GC-18.8 Emergencies

In any emergency affecting the safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by Contractor on account of emergency Work shall be determined as provided in the Agreement Documents, including GC-26 and GC-41.

#### GC-18.9 Miscellaneous

##### GC-18.9.1

Contractor acknowledges that it is fully aware of appropriate and safe procedures regarding blasting, including the contents and requirements of Official Code of Georgia Annotated § 25-9-1 through § 25-9-12, Blasting or Excavating Near Underground Gas Pipes and Facilities, any amendments thereto and rules and regulations issued pursuant thereto, and Contractor shall fully comply therewith. Contractor agrees and acknowledges that any failure on its part to adhere to appropriate procedures and said laws, rules and regulations shall not only be a violation of law but shall also be a breach of Agreement.

##### GC-18.9.2

Contractor acknowledges that it is fully aware of appropriate and safe procedures regarding high voltage lines, including the contents and requirements of Official Code of Georgia Annotated § 46-3-30 through § 46-3-39, Safeguards Against Contact with High Voltage Lines, any amendments thereto and rules and regulations issued pursuant thereto, and Contractor shall fully comply therewith. Contractor also confirms that representatives of Contractor have visited the site of the Work and have taken into consideration the location of all electric power lines on and adjacent to all areas onto which the Agreement Documents require or permit Contractor to Work, to store materials or to stage operations, and that Contractor has obtained from the owner or owners of the aforesaid electric power lines advice in writing as to the amount of voltage carried by the aforesaid lines. Contractor agrees that any failure on its part to adhere to appropriate

procedures and said laws, rules and regulations shall not only be a violation of the law but shall also be a breach of Agreement.

### GC-18.9.3

Contractor acknowledges and agrees that he is the person responsible under the law and that he is the person employing or directing others to perform labor within the meaning of Official Code of Georgia Annotated § 34-1-1, Labor and Industrial Relations. He acknowledges and agrees likewise that he will comply with said law.

### GC-18.9.4

Contractor shall protect all Work, including but not limited to, excavations and trenches, from rain water, surface water, and backup of drains and sewers. Contractor shall furnish all labor, pumps, shoring, enclosures, and Equipment necessary to protect and keep the Work free of water.

### GC-18.9.5

The provisions, terms and conditions of this Section, although very specific, are in no way intended to limit the general requirements hereof or the applicability of laws relating to Work conditions, safety or accident prevention and no specific provision or combination of specific provisions in any of said subsections or in any other parts or sections of the Agreement Documents shall be deemed to limit the obligations or responsibility of Contractor contained in general provisions with respect thereto or in laws, statutes, acts, rules or regulations which are applicable thereto but which are not specifically referred to in any part of the Agreement Documents.

## **GC-19 USE OF PREMISES AND CLEAN UP**

### GC-19.1 Storage, Cleanup and Cutting

Contractor expressly undertakes at no additional cost to the City:

- (1) To store its Materials, Supplies and Equipment at the Site of the Work in such orderly fashion and in such locations as approved by the Engineer that will not unduly interfere with the progress of the Work, or the Work of any other contractors or the activities of City personnel.
- (2) To clean up all refuse, rubbish, scrap materials, and debris caused by its operations to the end that at all times the Site of the Work shall present a neat orderly and workmanlike appearance. No items shall be left or discarded elsewhere on the Site, or any other City sites. Items that are to be discarded shall be removed to approved dump areas.
- (3) To remove all surplus material, false work, temporary structures, including foundations thereof, temporary plants of any description and debris of every

nature resulting from its operations, and to put the Site in a neat, orderly condition before final payment. Such final cleanup Work shall be performed within the time specified for completion of Work, with such exceptions as may be approved in writing by the City. Unless otherwise provided in the Specifications, Contractor shall clean any portion of Work for which a separate time for completion is specified and the Site thereof to the above standards within the specified time, with such exceptions as may be approved in writing by the City.

- (4) To effect all cutting, fitting or patching of its Work required to make the same to conform to the Plans and Specifications and except with the consent of the City, not to cut or otherwise alter the Work of any other contractor.

#### GC-19.2 Protection and Use of Site

Contractor shall, at no additional cost to the City:

- (1) Coordinate all of Contractor's operations with, and secure approval from, the City before using any portion of the Site. Contractor shall assume full responsibility for any damage to any such land or area, or to the City or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work.
- (2) Cause its agents and employees to park their vehicles only at locations directed by the City. Contractor's agents and employees shall clean vehicles leaving the Site so as not to muddy roads in the vicinity of the Site. Vehicles shall be brought to the Site only in connection with necessary Work on the Project. In no event shall vehicles be brought to the Site outside normal working hours unless the City gives specific written permission in advance.
- (3) In connection with Contractor's operations, provide for the free flow of traffic over roads or streets in or adjacent to the Site. Contractor shall keep roads and streets free from obstructions of any character that might present a hazard or interference with traffic and in such condition that traffic can be adequately accommodated. When operations in connection with the Work necessitates the closing of traffic lanes, Contractor shall arrange in advance with the City, any adjacent property owners affected, and appropriate local authorities for such closing and shall provide as necessary appropriate barricades, signs, markers, flares and other devices and flagmen as may be required by the Engineer or the local authorities for traffic guides and public safety.
- (4) Provide facilities for its use and only at locations approved or directed by the City. Unless otherwise specified in the Agreement Documents, Contractor shall provide all power and lighting necessary for its Work, complying in all cases with local and national electrical codes, OSHA regulations, and any other applicable laws. The City shall direct the point or points to be used for service connection. Contractor shall provide telephone facilities for its own use and only at locations approved or directed by the City.

- (5) Unless otherwise specifically provided in the Agreement Documents, Contractor shall provide its own temporary facilities, including an office and a watertight, closed area for storage and protection of Materials and Equipment to be used for, or incorporated in, the Work, except as specifically agreed in the Agreement Documents. Contractor's shanties, material storage rooms, field offices and the like will be approved by the City and placed in locations designated by the City. If it becomes necessary during the course of the Work for Contractor to relocate its field operations, it will do so in an expeditious manner and at no additional cost.
- (6) Contractor shall take measures to control the blowing or spreading of dust, smoke, dirt, mud and refuse from its Work to avoid nuisance and inconvenience to others whether on or off the Site. These measures shall be in compliance with, without being limited to, all applicable laws, and shall be subject to the City's approval. Contractor shall furnish all necessary labor and Materials such as water, approved chemicals, and Equipment.
- (7) Contractor shall be responsible for the removal or drainage of all water interfering with the proper prosecution of its Work. It shall, at all times, assure such drainage and shall not be a nuisance or inconvenience to the City, other contractors or their Work, or the occupants or users of any other public or private area on or off the Site. This Article supplements, and does not supersede, any drainage or dewatering called for elsewhere in the Agreement Documents.
- (8) Contractor shall not use permanent installed systems or equipment without permission of the City. If such permission is granted prior to completion of the Work, Contractor shall restore all parts of the system or equipment used by replacing materials, traps, valves, filters, motors, lamps, and the like to the extent that the City considers them to have been damaged or if their usefulness has been impaired or diminished by their temporary use by Contractor.
- (9) No part of any surface shall be loaded during construction with more weight than it can safely bear at the time. Should damage occur through violation of this requirement by Contractor, it shall be solely liable for such damage and any consequence.
- (10) It shall be Contractor's responsibility to receive and unload its Materials and pay all charges therefor, including, without limitation, demurrage or charges for delays in loading. Contractor shall instruct vendors or Suppliers making such deliveries exactly where they shall go. Contractor shall constantly keep the City advised of its Material delivery schedule and shall update it as required by the City so that Materials will be available to complete the Work on time. Contractor shall schedule Material deliveries so as to interfere as little as possible with anyone else's Work on the Project but within the normal Work hours. Contractor shall require that Materials and Equipment delivered shall be identified with Contractor's name, purchase order, and identification numbers. Contractor shall sign for all Materials delivered and shall be responsible for their safekeeping.

## **GC-20 PROTECTION OF AGREEMENT WORK**

Contractor shall be responsible for:

- (1) Maintenance and protection of Work until final completion and acceptance, including, but not limited to, the storage of Materials and Equipment, erection of temporary structures and provisions for drainage as necessary to protect Work from injury, damage or loss;
- (2) Any injury, damage, or loss to Work resulting from the action of the elements or any other cause, irrespective of fault or negligence, excepting only such injury, damage, or loss as is caused solely by the negligence or willful misconduct of the City;
- (3) Protection of its Work and materials and the Work and materials of its Subcontractors or Suppliers from damage or injury from the weather; and
- (4) Exercising due care to avoid injury or damage to the Work of other contractors on site.

Any portion of Work suffering injury, damage, or loss for which Contractor is responsible under 1, 2, 3 or 4, above, will be considered defective and shall be corrected or replaced without additional cost to City.

## **GC-21 DEFECTS IN THE WORK AND UNAUTHORIZED WORK**

Contractor shall promptly remove from the premises all Work rejected by the City for failure to comply with Agreement Documents, whether incorporated in the construction or not, and Contractor shall promptly replace and re-execute the Work in accordance with the Agreement Documents and without expense to City and shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal, or replacement. All removal and replacement Work shall be done at Contractor's expense.

If Contractor defaults or neglects to carry out all or any part of the Work in accordance with the Agreement Documents, and fails within three (3) working days after receipt of Written Notice from the City to commence and continue correction and cure of such default, noncompliance, or neglect with diligence and promptness, the City may, after twenty-four (24) hours following receipt by Contractor of an additional Written Notice and without prejudice to any other remedy the City may have, make good such deficiencies and may further elect to perform and to complete all or any part of Work thereafter through such means as the City may select, including the use of a new or supplemental contractor. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due Contractor, the cost of correcting such deficiencies. If the payments then or thereafter due Contractor are not sufficient to cover such amount, Contractor shall pay the difference to the City on demand.



Minor, inconsequential defects may be waived in writing by the City, but the City's failure or refusal to exercise such authority shall not be subject to claim by Contractor. If a waiver (whether minor or major, consequential or inconsequential) will result in an appreciable saving of costs to Contractor, including costs of Work in place and savings when compared to potential costs of rejection and replacement under this clause, it will be made only upon an equivalent adjustment in compensation.

## **GC-22 GUARANTEE OF WORK AND MATERIALS**

### **GC-22.1 Warranty of Materials, Equipment and Work**

Contractor warrants to the City and the Engineer that all Materials and Equipment furnished under this Agreement will be new and of workmanlike quality unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Agreement Documents. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. If required by the Engineer, Contractor shall furnish satisfactory evidence as to the kind and quality of Materials and Equipment. This warranty is not limited by any other provision of the Agreement Documents. The Warranties set forth in this Article and elsewhere in the Agreement Documents shall survive final acceptance of the Work. All warranties are in addition to the rights, remedies, and redress that the City has at law or in equity, and none of Contractor's warranties shall be deemed a sole or exclusive remedy to the City.

### **GC-22.2 Warranty of Continued Liability of Electronics**

Contractor shall warrant to Owner that all goods or equipment which Contractor is required to purchase under the Agreement and which contain embedded codes, chips, microprocessors, microcontrollers, clock circuits (including integrated circuits), computer operating systems, computer software, custom application programming, or other similar systems/technologies that calculate date or time data shall correctly and without failure, malfunction, or need for operator intervention, display, calculate, compute, and process date or time data before, during, and beyond any changes in the date, including leap year, and including changes at year end, decade end, and century end, as needed.

### GC-22.3 Guarantee and Repair

If within one (1) year after the Date of Final Completion and Final Acceptance of the Work by the City, or within such longer period of time as may be prescribed by law or by the term of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Agreement Documents, Contractor shall correct it promptly after receipt of a Written Notice from the City to do so. This obligation shall survive both final payment for the Work or designated portion thereof and termination of the Agreement. The City shall give such notice promptly after discovery of the condition. Contractor acknowledges that this one (1) year period provides a period during which Contractor has a duty to repair and does not in any way limit Contractor's liability for Work that is not in accordance with the Agreement Documents, including any that may be discovered more than one (1) year after the Date of Final Completion and Final Acceptance.

### GC-22.4 Manufacturer Warranties

Without limiting the responsibility or liability of Contractor under the Agreement, all warranties given by manufacturers on Materials or Equipment incorporated in the Work are hereby assigned by Contractor to the City at no additional cost to the City. If requested, Contractor shall execute enforceable formal assignments of said manufacturer's warranties to the City at no additional cost to the City. Contractor shall not obtain any Materials or Equipment under warranties, which do not run directly to the benefit of the City, and all such warranties shall be directly enforceable by the City, but Contractor understands and agrees that it is jointly and severally liable with the manufacturers for any warranties provided.

### GC-22.5 Non-Exclusive Nature of Warranties

The foregoing warranties, and those contained elsewhere in the Agreement Documents or implied by law, shall be deemed cumulative and not alternative or exclusive. No one or more of them shall be deemed to alter or limit any other.

## **GC-23 TERMINATION OF AGREEMENT**

### GC-23.1 Termination for Contractor Default

If Contractor becomes insolvent, or makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of Contractor's insolvency, or if Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper Materials, or fails to make prompt payment to Subcontractors or for Materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise is guilty of a material violation of a provision of the Agreement Documents so as to be in material breach and default of the Agreement, then City may terminate the Agreement for default, either in whole or in part, without prejudice to any other right or remedy the City may have after giving Contractor and its surety seven (7) days to cure the default. For purposes of this Article, a material violation shall include, without limitation, any violation of or failure to comply with any obligation of the Agreement which the City, in its sole

discretion, determines is likely to result in any damage to the City, the Work, or any public or private interest.

If the surety and/or Contractor does not cure the default within seven (7) days from the date of the mailing to Contractor and the surety of notice of default, City may, without further notice, terminate for default and may take over Work and prosecute the same to completion by contract or by Force Account or by whatever means it deems appropriate for the account and the expense of Contractor and Contractor and its surety shall be liable to City for any excess cost incurred thereby, and in such event City may take possession of and utilize in completing Work, such materials, appliances, and plant as may be on the Site of Work and necessary therefore. Upon such termination Contractor shall:

- (1) Preserve all Materials, Drawings and records and Plans at Site of the Work until notified in writing of those items that will be used in completing Work.
- (2) Remove from Site of the Work all construction materials, equipment and plant not designated for use in such notice.
- (3) Assist the City in making an inventory of all Materials and Equipment in storage at the Site of Work, in route to the Site of Work, in storage or manufactured at other locations, and on order from Suppliers.

The City shall further have the right to declare a default without terminating the Agreement for default in whole or in part. In such event, the City shall have the right, at its sole discretion, to supplement Contractor's forces if the City so chooses and deduct the cost of same from the amounts otherwise due Contractor. The City's failure to declare a default or terminate the Agreement in whole or in part shall not determine whether Contractor is, in fact, in material breach of the Agreement because the City shall also have the option to allow Contractor's defective performance to continue and collect such damages as the City may incur from Contractor and its surety.

In the event that the City incurs costs or expenses in performing or completing any portion of Contractor's scope of Work, the City's actual damages shall, at the City's discretion, include a fee up to 15% of such actual costs for performing such work. Such fee shall be computed on the actual costs incurred by the City for labor, materials, equipment, services, administrative and personnel costs and additional design and professional consulting fees, incurred as a result of Contractor's default.

Contractor acknowledges and agrees that an appropriate termination for default is adequate grounds for Contractor's disqualification from future City contracts. This provision shall survive the expiration or termination of this Agreement and any amendments to this Agreement.

In the event any termination for default is found to be wrongful or improper, Contractor agrees that its sole and exclusive remedy is to have the termination treated as a termination for convenience in accordance with the provisions of this Agreement.

### GC-23.2 City's Right to Stop the Work

If Contractor fails to correct defective Work as required by the Agreement Documents, or fails to carry out the Work or supply labor or Materials in accordance with the Agreement Documents, or otherwise fails to meet or satisfactorily complete any of its obligations under this Agreement, the City, in writing, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of the City and the Engineer to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of Contractor or any other person or entity. Contractor shall not be entitled to any extension of time or for compensation of any sort in the event that the City stops work pursuant to this provision.

### GC-23.3 Intentionally Omitted

### GC-23.4 Termination for Convenience of City

#### GC-23.4.1

The City may, at any time upon ten (10) days Written Notice to Contractor, terminate (without prejudice to any right or remedy of the City) the whole or any portion of the Work for the convenience of the City.

#### GC-23.4.2

If, after Contractor has been terminated for default, it is determined that Contractor was not in default or that the termination for default was improper for any reason, then such termination shall be considered a termination for convenience.

#### GC-23.4.3

If the City terminates the whole or any portion of the Work for convenience, then the City shall only be liable to Contractor for those costs reimbursable to Contractor in accordance with Article 23.4.4; provided, however, that if it reasonably appears to the City that Contractor would have sustained a loss on the entire Agreement had it been completed, no profit shall be included or allowed hereunder and an appropriate adjustment shall be made reducing the amount of settlement so that Contractor's loss on the portion of the Agreement it did perform is proportioned, from a percentage completion basis, to the loss Contractor would have sustained on the entire Agreement. In no event shall Contractor be entitled to anticipated profit on work not performed. Contractor shall, however, be entitled to any profit earned on the work performed to date, but Contractor acknowledges (1) that unit rates may be subject to adjustment, either upward or downward, based upon the variation in estimated quantity provisions of this Agreement, and (2) if the City determines that Contractor's schedule of values was materially unbalanced (or "front-end loaded"), payments previously made to Contractor shall be refunded to the City or withheld from amounts otherwise due Contractor. The intent of this Article is to avoid any Contractor windfall at the City's expense while at the same time preserving the benefit of the bargain, either positive or negative, for Contractor.

#### GC-23.4.4

If the City terminates the whole or any portion of the Work for convenience, the City shall pay Contractor the amounts determined by the Engineer as follows:

- (1) To the extent not previously paid for, Contractor shall be paid on a percentage completion basis in accordance with any approved schedule of values for the value of the work completed to date, including items such as mobilization and general conditions costs (based on percent complete).
- (2) To the extent not previously paid for and to the extent that the Agreement Documents call for payment on the basis of unit rates, Contractor shall be paid for all work actually performed at the unit rate established in the Agreement Documents, with such adjustment, if any, as may be required either upward or downward by the variation in estimated quantity provisions applicable to unit rates under the Agreement.
- (3) The reasonable costs of settlement, including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Agreement and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this Agreement. This amount shall not include any attorneys' fees or other legal costs or claim preparation costs or expert or consulting fees, and Contractor shall not be entitled to recovery or compensation of any such costs or fees under any circumstances.

#### GC-23.4.5

Contractor shall specifically require its Subcontractors and suppliers and those with whom they contract to agree to the provisions of this Article governing termination for convenience. In no event shall the City be responsible for anticipated profit on work not performed or "restocking charges." The City's potential liability for convenience termination costs shall be based on work actually performed and costs actually incurred, provided that the termination shall not in any event transform a Contractor or Subcontractor's probable net loss position into a profitable or "cost plus" recovery.

### GC-23.5 General Termination Provisions

#### GC-23.5.1

If the City terminates the whole or any part of the Work for default, then the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated, and Contractor shall be liable to the City for any excess costs for such similar supplies or services. Contractor shall continue the performance of this Agreement to the extent not terminated hereunder.

#### GC-23.5.2

In the event of a Contractor default under any of the provisions of the Agreement, after written notice and a failure to cure within seven (7) days of that notice, Contractor and its surety shall be responsible to pay to the City such reasonable attorneys' fees as the City may expend as a result of the default, including all costs, expenses and filing fees incidental thereto, including, without limitation, expert fees, consultants' fees, arbitrator fees (if any), and prejudgment interest at the commercial account rate on all sums due, whether liquidated or unliquidated. Any judgment or arbitration award entered in favor of the City against Contractor or its surety shall bear interest from the time of entry of the judgment or the date of the arbitration award at the commercial account rate.

### GC-23.5.3

After receipt of a notice of termination from the City, whether for default or for convenience, and except as otherwise directed by the City, Contractor shall:

- (1) Stop Work under the Agreement on the date and to the extent specified in the notice of termination;
- (2) Place no further orders or subcontracts for Materials, services, or facilities, except as may be necessary for completion of such portion of the Work under the Agreement as is not terminated;
- (3) Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination and are not assigned as set forth below;
- (4) If so requested by the City, assign to the City in the manner, at the times and to the extent directed by the City, all of the rights, title, and interest of Contractor under the orders and subcontracts so selected and requested for assignment;
- (5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the City to the extent the Engineer may require, in accordance with the provisions of this Agreement;
- (6) Transfer title and deliver to the entity or entities designated by the City, in the manner, at the times and to the extent, if any, directed by the City, and to the extent specifically produced or specifically acquired by Contractor for the performance of such portion of the Work as has been terminated:
  - (a) The fabricated or unfabricated parts, Work in progress, partially completed supplies, and Equipment, Materials, parts, tools, dies, jigs, and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of the Work terminated by the notice of termination; and
  - (b) The completed or partially completed Plans, Drawings, information, and other property related to the Work, including as-built information;

- (7) If so requested by the City, use best efforts to sell for the benefit of the City, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the City, any property of the types referred to in Article GC-23.5.3(6); provided, however, that Contractor:
  - (a) Shall not be required to extend credit to any buyer; and
  - (b) May re-acquire any such property under the conditions prescribed by and at a price or prices approved by the City; and, provided, further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to Contractor under this Agreement or shall otherwise be credited to the price or cost of the Work covered by this Agreement or paid in such other manner as the City may direct;
- (8) Complete performance of such part of the Work as shall not have been terminated by the notice of termination; and
- (9) Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to the Agreement, which is in the possession of Contractor and in which the City has or may acquire an interest.

#### GC-23.5.4

Contractor shall preserve and make available to the City, at all reasonable times at the office of Contractor, but without direct charge to the City, all its books, records, documents and other evidence bearing on the costs and expenses of Contractor and any Subcontractor or Supplier under the Agreement, and any photographs, microphotographs, or other authentic reproductions thereof and Owner shall have the right at any time to audit the same.

#### GC-23.5.5

In arriving at any amount due Contractor for any termination for default or convenience, there shall be deducted:

- (1) All unliquidated advance or other payments on account theretofore made to Contractor applicable to the termination portion of this Agreement;
- (2) Any claim which the City may have against Contractor;
- (3) Such claim as the Engineer determines to be necessary to protect the City against loss because of outstanding or potential claims of any type or nature; and
- (4) The agreed price for, or the proceeds of sale of, any Materials, supplies, or other things acquired by Contractor or sold, pursuant to the provisions of Article GC-23.5.3(7) and not otherwise recovered by or credited to the City.

GC-23.5.6

Contractor shall refund to the City any amounts paid by the City to Contractor in excess of Contractor's entitlement specified hereunder.

GC-23.5.7

The City may, at its option, have costs audited and certified by independent certified public accountants selected by the City.

GC-23.5.8

Contractor shall be entitled to only those damages and that relief from termination by the City as specifically provided hereunder.

**GC-24 SUSPENSION OF WORK**

GC-24.1 Right to Suspend Work

The City may order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for such period of time as the City may determine to be appropriate for the convenience of the City.

GC-24.2 Rights Upon Certain Unreasonable Suspensions

If the performance of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the City or Engineer in the administration of the Agreement, or by failure of any one of them to act within the time specified in the Agreement (or if no time is specified, within a reasonable time), or by any act of either of them which is attributable to their fault or neglect, adjustment shall be made in the Agreement Time only for any extension in the time required for performance of the Work necessarily caused by such unreasonable suspension, delay, or interruption and the Agreement modified in writing accordingly. However, no adjustment shall be made under this Article for any suspension, delay, or interruption for which an adjustment is provided or excluded under any other provision of the Agreement Documents, and no adjustment shall be made to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor or excusable delays that are unforeseeable and not attributable to the fault or neglect of the City or Contractor and beyond the control of each of them. No claim for a time adjustment under this Article shall be allowed unless it is presented in accordance with the provisions of the Agreement governing Claims and compliance with the claims provision shall be a condition precedent to the right to a time adjustment.

GC-24.3 Damages Upon Suspension

Nothing contained in this Article authorizes the recovery of delay or impact damages, except as expressly authorized in this Agreement; and compliance by Contractor with the claims provision



shall be a condition precedent to the right to any Contract adjustment on account of a suspension of the Work. Contractor expressly agrees that it shall not be entitled to any increase in the Agreement Price or to any monetary damages on account of a suspension, delay, interruption, interference or impact, unless the notice, documentation, and pricing requirements of this Agreement have been met.

#### GC-24.4 Time Extension Upon Suspension

Under the terms of this Agreement, in order for Contractor to receive extensions of time for excusable delays, the delays must (i) be on the critical path, (ii) be beyond the reasonable control of Contractor and those for whom it is responsible including its Subcontractors and Suppliers and others working by or through them, (iii) not be attributable to any factor for which Contractor has assumed the risk of performance (such as labor availability), (iv) not be attributable in whole or in part to Contractor's fault or neglect or the fault or neglect of those for whom Contractor is responsible, including Subcontractors and Suppliers and others working by or through them, and (v) not be concurrent with non-excusable delays that are on the critical path. If Contractor meets these five (5) requirements, then Contractor's sole remedy for such delay shall be an extension of the Agreement Time for the period of time during which all five (5) elements continue to be met, which shall be implemented by Change Order; provided, however, Contractor shall not be entitled to any extension of the Agreement Time (i) if Contractor fails to comply with notice requirements in the Contract, (ii) if such delays do not cause Contractor to achieve Substantial Completion of the entire Work later than the then current Substantial Completion Date, or (iii) if Contractor fails to work around such delay where such work around was available to Contractor. In all events, Contractor must comply with the notice and claim provisions set forth in this and other provisions of the Agreement in order to be entitled to any extension of the Agreement Time.

#### GC-24.5 Damages for Non-Excusable Delays

Under the terms of this Agreement, liquidated or actual damages (as specified in the Agreement and as appropriate) shall be assessed for all non-excusable delays. Unless and until Contractor satisfies its obligations under and satisfies all criteria set forth in GC-24.4, delays shall be deemed non-excusable. The burden of proof shall be upon Contractor to establish that delays and untimely completion are attributable to excusable delays.

#### GC-24.6 Abnormal Weather

Abnormal weather may constitute an excusable delay if other requirements for excusable delays are met (for example, weather-sensitive work must be on the critical path.) The Agreement Time will not, however, be extended due to normal inclement weather. Unless Contractor can substantiate that there was greater than normal inclement weather using a ten (10) year average of accumulated record mean values from climatological data compiled by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration for Atlanta, Georgia, and that such alleged greater than normal inclement weather qualifies as excusable delay as set forth above, Contractor shall not be entitled to an extension of time. In no event will "dry-out" delay days be allowed. Any time extension shall be based on the number of additional days of adverse weather and not upon the time required to recover from said weather.

GC-24.7 Impacts From Adjacent Property

Contractor acknowledges and agrees that it will be interacting with numerous citizens and residents of the City and will be working in close proximity to their homes, businesses, and private property. Contractor warrants that it has made due allowance for dealing with the concerns and complaints of these citizens and residents and any delays, interruptions, interferences, disruptions, or other impacts resulting therefrom. Contractor further warrants and agrees that it will fully cooperate with the City to minimize the adverse affects of the Project on the City's residents by resequencing work or adjusting its means, methods, techniques, and procedures to minimize and mitigate the effect upon the City's residents and that the cost of these mitigation efforts has been included in Contractor's price to the City.

**GC-25 COMMENCEMENT AND PROSECUTION OF THE WORK**

Contractor shall, within ten (10) days after receipt from the City of a written Notice to Proceed, commence Work to be done under this Agreement. Contractor shall diligently prosecute Work and all portions thereof to completion within the times specified therefor. The capacity of Contractor's construction and manufacturing equipment and plans, sequence and methods of operations, and forces employed, including management and supervisory personnel, shall be such as to ensure completion of Work within the specified time.

It is expressly understood and agreed by and between Contractor and City that Agreement Time for the completion of Work described herein is a reasonable time, taking into consideration the unique requirements of the Work (including performance of the Work in close proximity to the private property of the citizens and residents of the City), the average climate and economic conditions in the area, and other factors prevailing in the locality of the Work (such as, without limitation, the availability of labor, equipment and materials).

**GC-26 TIME**

GC-26.1 Progress and Completion

GC-26.1.1

All time limits stated in the Agreement Documents are of the essence of the Agreement.

GC-26.1.2

Contractor shall begin the Work within ten (10) days after the issuance of written Notice to Proceed. Contractor shall carry the Work forward expeditiously with adequate forces and shall achieve Substantial Completion of the Work and Final Completion within the times stated in the Agreement Documents.

GC-26.2 Delay, Damages, and Extensions of Time

GC-26.2.1

Contractor shall not be entitled to payment or compensation of any kind from the City for direct, indirect, impact, or delay damages, including but not limited to costs of delay, disruption, interference, impact or hindrance from any cause whatsoever, whether such delay, disruption, interference, impact or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable, except as expressly provided in this Agreement.

In any and all events, the City's liability for damages for delay, disruption, interference, impact or hindrance shall be limited to the following actual direct job site related costs that are solely incurred as a function of time: (1) costs of job site supervision, (2) direct cost of general conditions items, including job site office expenses for trailer rental, telephone, electricity, heat, and water, (3) except for tunnel boring machines which shall be governed by the terms of GC-41.6, equipment expenses at the Force Account rates specified in the provisions of this Agreement governing changes; and (4) a markup for profit and overhead on actual direct costs, in accordance with the Force Account rates specified in the provisions of this Agreement governing changes.

GC-26.2.2

The Agreement Time shall be adjusted only for excusable delays. In the event Contractor requests an extension of the Agreement Time, it shall furnish such justification and supporting evidence as the City may deem necessary for a determination as to whether Contractor is entitled to an extension of time under the provisions of the Agreement. The City, after receipt of such justification and supporting evidence, shall make a decision thereon and shall advise Contractor in writing thereof. If the City finds that Contractor is entitled to any extension of the Agreement Time, the City's determination as to the total number of days' extension shall be based upon the current CPM and on all data relevant to the extension as described in the Agreement Documents. Contractor acknowledges and agrees that delays in activities that according to the approved and current CPM Schedule do not affect the critical path do not have any effect upon the Agreement Time and therefore will not be the basis for a change thereof.

GC-26.2.3 [Intentionally Omitted]

GC-26.2.4 [Intentionally Omitted]

GC-26.2.5 [Intentionally Omitted]

GC-26.2.6 [Intentionally Omitted]

GC-26.2.7

In order for Contractor to be entitled to any extension of the Agreement Time, Contractor must comply with the Claim provisions of GC-41 and GC-26. Such statement of the claim, in addition to complying with all other provisions of the Agreement relating to

Claims and delays, must provide all information required by the scheduling requirements of the Agreement Documents and further provide the following specific information:

- (1) Nature of the delay;
- (2) Date (or anticipated date) of commencement of delay;
- (3) Activities on the approved current CPM Schedule affected by the delay, and/or new activities created by the delay and their relationship with existing activities;
- (4) Identification of person(s) or organization(s) or event(s) responsible for the delay;
- (5) Anticipated extent of delay; and
- (6) Recommended action to avoid or minimize the delay.

#### GC-26.2.8

The City shall receive and process such claims for extensions of time in accordance with the procedures set forth in Article GC-41, except that any Change Order issued shall only amend the time for completion.

#### GC-26.2.9

The failure of Contractor to file any claims for extension of time within the time limits prescribed and in the form and manner required shall be deemed a material prejudice to the interests of the City in canceling and mitigating such impacts, and shall constitute an absolute waiver of the claim and the right to file or thereafter prosecute the same. The purpose of the time limits, notice and form and manner requirements are, in part, to eliminate disputes over the existence, scope, and nature of events giving rise to claims, and the failure to abide by same will result in material prejudices to the City, even if the City were otherwise on notice of facts giving rise to the claim because, in part of the impact to the City's ability to document, dispute, or resolve issues as they arise, and also because of the impact to the City's efforts to entirely avoid disputes over claims not asserted in accordance with the Agreement Documents.

#### GC-26.2.10

If no schedule or agreement is made stating the date upon which written interpretations as set forth in the Agreement Documents shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after demand is made for them, and not then unless such claim is reasonable.

## **GC-27 RESPONSIBILITY FOR COMPLETION**

### **GC-27.1 Duty to Accelerate**

Subject to the other provisions of the Agreement Documents, Contractor shall furnish such manpower, Materials, facilities, and Equipment and shall work such hours, including night shifts, overtime operations and Sundays and holidays, as may be necessary to ensure the prosecution and completion of the Work in accordance with the approved and currently-updated CPM Schedule. If Work actually in place falls behind the currently updated and approved CPM Schedule, and it becomes apparent from the current approved CPM Schedule that the Work will not be completed within the Agreement Time, Contractor agrees that it will, as necessary or as directed by the City, take some or all of the following actions at no additional cost to the City to improve its progress:

- (1) Increase manpower in such quantities and crafts as will eliminate, in the judgment of the City, the delay and backlog of Work;
- (2) Increase the number of working hours per shift, shifts per working day, working days per week, the amount of equipment or any combination of the foregoing, sufficiently to eliminate in the judgment of the City, the delay and backlog of Work;
- (3) Reschedule activities as necessary to eliminate in the judgment of the City the delay and backlog of Work; and
- (4) Any other measure required by the schedule requirements of the Special Conditions.

In addition, the City may require Contractor to submit a proposed revised CPM Schedule Recovery Plan demonstrating its program and proposed plan to make up lag in scheduled progress and to ensure completion of the Work within the Agreement Time. If the City finds the proposed plan not acceptable, the City may require Contractor to submit a new and/or revised plan with direction and other input from the City and Engineer.

### **GC-27.2 Recoverable Acceleration Expenses**

In the limited and exclusive event that (1) the City directs Contractor to accelerate, and (2) it is subsequently determined that Contractor was entitled to time extensions for excusable delays which the City failed or refused to grant, and (3) Contractor in fact succeeds in accelerating substantial completion of the Project by substantially completing the Project significantly and materially sooner than what would have been the case had the City granted all time extensions to which Contractor was entitled, then, and only then, Contractor may be entitled to recoverable acceleration expenses as defined below if Contractor properly and timely complies with the provisions related to time, notice and form and substance of claims of the Agreement (including, without limitation, Articles GC-24, GC-26, and GC-41) Recoverable acceleration expenses shall be limited to the following without any markup for overhead and profit:

- (1) the premium portion only of overtime costs for hours worked in a single week that exceed 40 hours per week

- (2) if the overtime continues for more than 65% of the skilled labor on the site (including subcontractor personnel) for a continuous period of 8 weeks or more, then beginning in the 9<sup>th</sup> week, a multiplier of 10% of the premium portion of the overtime costs may be added as recoverable acceleration expenses to cover the cost of any loss or damage or additional expense resulting from the acceleration.

No expenses other than the two items noted above shall be allowed as recoverable acceleration expenses. No claims for acceleration for work that is not on the critical path shall be permitted.

#### GC-27.3 Acceleration by City's Forces

Failure of Contractor to substantially comply with the requirements of Article GC-27.1 may be considered grounds for a determination by the City and/or the Engineer that Contractor is failing to prosecute the Work with such diligence as will ensure its completion within the time specified. In such case, upon forty-eight (48) hours prior Written Notice to Contractor, City shall have the right to furnish such additional labor and Materials as may be required to comply with the schedule, and Contractor shall be liable for such costs incurred by City as provided elsewhere in this Agreement.

#### GC-27.4 Set-Off of Acceleration Costs

Any monies due to the City under this Article may be set-off by the City against monies due from the City to Contractor.

#### GC-27.5 Acceleration Remedies Cumulative

The remedies of the City set out in this Section are in addition to, and without prejudice to, all other rights and remedies of the City including those stated elsewhere in the Agreement Documents. The remedies of Contractor, however, are sole and exclusive and contingent upon compliance with the Agreement provisions as to time, notice, form, and substance of Claims, including, without limitation, Articles GC-24, GC-26, and GC-41.

## **GC-28 WORKING DRAWINGS, SHOP DRAWINGS, DATA ON MATERIAL AND EQUIPMENT, SAMPLES, AND LICENSES**

### **GC-28.1 General**

#### **GC-28.1.1**

Contractor shall submit to the Engineer for review and exception, if any, such working Drawings, Shop Drawings, test reports and data on Materials, licenses, and Equipment (hereinafter in this article called data), and material samples (hereinafter in this article called samples) as are required for the proper control of Work, including but not limited to, those working Drawings, Shop Drawings, data and samples specifically required elsewhere in the Specifications and Agreement Documents. Submittals are required for any product that becomes a part of, or affects, the permanent Work.

#### **GC-28.1.2**

Data on Materials and Equipment include, without limitation, Materials and Equipment lists, catalog data sheets, cuts, diagrams and similar descriptive material. Materials and Equipment lists shall give, for each item thereon, the name and location of the Supplier or manufacturer, trade name, catalog reference, size, finish and all other pertinent data.

#### **GC-28.1.3**

It is the duty of Contractor to check all Drawings, data and samples prepared by or for it before submitting them for review. Drawings and schedules shall also be checked and coordinated with the Work of all trades involved. Drawings and other submittals originating from Subcontractors will be reviewed and checked similarly by Contractor. Pursuant to this required review, Contractor shall indicate its approval, before they are submitted for review by the City, by affixing its stamp of approval, properly initialed and dated. All submittals shall be referenced to the applicable item, section or division of the Specifications.

#### **GC-28.1.4**

The Engineer's review of Drawings, data and samples submitted by Contractor will cover only general conformity to the Specifications, external connections, and dimensions which affect the installation. The Engineer's review and exception, if any, will not constitute an approval of dimensions, quantities, and details of the Material, Equipment, device, or item shown.

#### **GC-28.1.5**

Contractor shall not begin any of the Work covered by a Drawing, data, or a sample returned for correction until a revision or correction thereof has been reviewed and returned to it.

#### **GC-28.1.6**

The CPM Schedule shall include respective dates for the submission of shop and work Drawings, the beginning of manufacture, testing, and installation of Materials, Supplies, and Equipment.

GC-28.1.7

Acceptable submittals will be marked "No Exceptions Taken." Submittals requiring minor corrections before the Material or Equipment is acceptable will be marked "Make Corrections Noted." Contractor may order, fabricate, or ship the items included in the submittal, provided the indicated corrections are made. Drawings must be resubmitted for review prior to installation of Equipment or use of Materials, unless otherwise directed in writing by the Engineer.

GC-28.1.8

Submittals marked "Amend and Resubmit" must be revised to reflect required changes, and the initial review procedure repeated.

GC-28.1.9

The "Rejected - See Remarks" notation is used to indicate Materials or Equipment that are not acceptable. Upon return of a submittal so marked, Contractor shall repeat the initial review procedure utilizing acceptable Materials or Equipment.

GC-28.1.10

Drawings on other submittals not bearing the Engineer's "No Exceptions Taken" notation shall not be issued to Subcontractors or utilized for construction purposes. No Work shall be done or equipment installed without a drawing or submittal bearing the "No Exceptions Taken" notation. Contractor shall maintain at the job site a complete set of Drawings and other submittals bearing the Engineer's stamp.

GC-28.1.11

In the event Contractor obtains the City's approval for the use of equipment other than that which is called for in the Agreement Documents, Contractor shall, at its own expense and using methods approved by the City, make any changes to structures, piping and electrical work that may be necessary to accommodate this equipment. If Contractor substitutes any specified item of Material or Equipment with another item of Contractor's choosing as an "or equal" item, Contractor warrants the accuracy and adequacy of the design and performance of the substituted item and further warrants that it has exercised due diligence to ensure that the substituted item will function properly as a component into the integrated Project of which it is a part.

GC-28.1.12



Contractor shall submit all Drawings and schedules sufficiently in advance of construction requirements to provide no less than thirty (30) calendar days for checking and appropriate action.

#### GC-28.1.13

The review of Drawings and schedules will be general, but approval shall not be construed: (a) as permitting any departure from the Agreement requirements; (b) as relieving Contractor of responsibility for any errors, including details, dimensions, and Materials; and (c) as approving departures from details furnished by the City, except as otherwise provided herein.

### GC-28.2 Shop Drawings

#### GC-28.2.1

When used in the Agreement Documents, the term "Shop Drawings" shall be considered to mean fabrication drawings, wiring and control diagrams, cuts, or entire catalogs, pamphlets, descriptive literature, and performance and test data. The Drawings shall be submitted using standard transmittal forms in accordance with detailed instructions furnished by the City. A separate transmittal sheet shall be used for reference to each item, section or division of the Specifications.

#### GC-28.2.2

Contractor shall submit six (6) sets of each Shop Drawing for review. On electrical and instrumentation and control submittals Contractor shall submit seven (7) copies of each for review.

#### GC-28.2.3

Each Shop Drawing shall include the following:

- (1) Number and title of the submittal;
- (2) Date of Drawing or revision;
- (3) Name of Project;
- (4) Name of Contractor and/or Subcontractor submitting Drawing and with its seal of approval;
- (5) Specification title and number; and
- (6) Clear identification of contents and location of the Work.

#### GC-28.2.4

Drawings for Work on utility facilities, streets and other facilities, which are constructed for owners other than the City, shall be coordinated so that information required by these owners is included on the Shop Drawings for their facilities.

#### GC-28.2.5

If Drawings show variations from Agreement requirements, Contractor shall describe such variations in its letter of transmittal. If acceptable, proper adjustment in the Agreement shall be implemented where appropriate. If Contractor fails to describe such variations, it shall not be relieved of the responsibility for executing the Work in accordance with Agreement, even though such Drawings have been reviewed.

#### GC-28.2.6

If the Drawings or schedules as submitted describe variations and show a departure from the Agreement requirements which the City finds to be in the interest of the City and to be so minor as not to involve a change in Agreement Price or Time, the City may return the reviewed Drawings without noting an exception.

#### GC-28.2.7

If no exceptions are taken by the City, each of the Shop Drawings will be identified by being so stamped and dated. Shop Drawings stamped "Rejected - See Remarks" and with required corrections shown, will be returned to Contractor for correction and re-submittal. On re-submittals, Contractor shall direct specific attention, in writing or on resubmitted Drawings, to revisions other than the corrections requested by the City on previous submissions. Contractor shall make any corrections required by the City. If Contractor considers any correction indicated on the drawings to constitute a change to the Agreement Drawings or Specifications, Contractor shall give Written Notice thereof to the City in accordance with GC-41. At least two (2) copies of Drawings or data submittals will be returned to Contractor.

#### GC-28.2.8

When the Drawings or data submittals have been completed to the satisfaction of the City, Contractor shall carry out the construction in accordance therewith and shall make no further changes therein except upon written instructions from the City.

#### GC-28.2.9

After final review in which there are no exceptions noted or referenced, and before final payment is made, Contractor shall furnish to the City two (2) sets of record Shop Drawings, all clearly revised and completed and brought up to date, showing the permanent construction as actually made and marked FINAL/AS-BUILTS. One (1) set of such Shop Drawings shall be either drawn in ink on tracing cloth, or reproduced on mylar from which clear prints can be made. The other set could be a complete paper print.

#### GC-28.2.10

Contractor shall be responsible for and bear all cost of damages which may result from the ordering of any Material or from proceeding with any part of Work prior to the review, without exception, by the City of the necessary Shop Drawings.

### GC-28.3 Working Drawings

#### GC-28.3.1

When used in the Agreement Documents, the term "Working Drawings" shall be considered to mean Contractor's plans, including a detailed narrative, for temporary structures such as temporary bulkheads, support of open cut excavation, support of utilities, ground water control systems, forming and false work; for underpinning; and for such other work as may be required for construction but does not become an integral part of the Project.

#### GC-28.3.2

Copies of Working Drawings shall be submitted to the City where required by the Agreement Documents or requested by the City and shall be submitted at least thirty (30) calendar days in advance of their being required for Work.

#### GC-28.3.3

Working Drawings shall be signed and sealed by an engineer licensed to practice in the State of Georgia and shall convey, or be accompanied by, calculation of other sufficient information to completely explain the structure, machine, or system described and its intended manner of use. Prior to commencing such Work, Working Drawings must have been reviewed to the satisfaction of the City, and each Working Drawing identified by the City with the Engineer's stamp of "No Exception Taken." Review of the Working Drawings by the Engineer will not relieve Contractor in any way from its responsibility with regard to the fulfillment of the terms of Agreement. All risks of error are assumed by Contractor. The City and the Engineer shall have no responsibility therefor.

### GC-28.4 Record Agreement Drawings

Contractor shall keep at least one (1) record copy of all Agreement Documents, reference documents, and all technical submittals at the Site in good order and annotated to show all changes made during the construction process. Record drawings shall be updated and kept current on a monthly basis by Contractor. The record drawings will be reviewed monthly by the Engineer prior to approval of Contractor's monthly Payment Application. Final "as-built" plans of the Work, shall be satisfactory to the Engineer, and will be provided at Contractor's expense within thirty (30) days following Substantial Completion of the Work or any portion thereof. The provision of such as-built documents satisfactory to the Engineer shall be an express condition precedent to final payment. Upon request, the Engineer will provide one (1) set of reproducibles of the original Agreement Drawings, at no cost, to Contractor within two weeks subsequent to the execution of this Agreement.

## GC-28.5 Samples

### GC-28.5.1

Contractor shall furnish at no additional cost, for the approval of the City, samples required by the Agreement Documents or requested by the City. Samples shall be delivered to the City as specified or directed. Contractor shall prepay all shipping charges on samples. Materials or Equipment for which samples are required shall not be used in Work until approved by the City.

### GC-28.5.2

Each sample shall have a label indicating:

- (1) Name of Project;
- (2) Name of Contractor and Subcontractor;
- (3) Material or Equipment Represented;
- (4) Place of Origin;
- (5) Name of Producer and Brand (if any); and
- (6) Location in Project.

### GC-28.5.3

Contractor shall prepare a transmittal letter for each shipment of samples containing the information required in Article B above. It shall enclose a copy of this letter with the shipment and send a copy of this letter to the City. Approval of a sample shall be only for the characteristics or use named in such approval and shall not be construed to change or modify any Agreement requirement. Substitutions will not be permitted unless they are considered to be to the City's best interest.

### GC-28.5.4

Approved samples not destroyed in testing shall be sent to the City or stored at the Site of the Work. Approved samples of the hardware in good condition will be marked for identification and may be used in the Work. Materials and Equipment incorporated in the Work shall match the approved samples. Samples which failed testing or were not approved will be returned to Contractor at its expense if so requested at time of submission.

### GC-28.5.5

Contractor will provide architectural samples to the City in a composite color board format for review and color coordination. These samples shall be of the precise Material and color specified and of sufficient size for comparison to other material samples.

### GC-28.5.6

Custom colors and coatings may be required to complete the Project within acceptable architectural standards. Contractor shall comply with the Architect's selection and provide Materials that precisely match the approved samples.

#### GC-28.6 Operation and Maintenance Manuals

##### GC-28.6.1

Operation and maintenance manuals are operator and shop maintenance instructions that enable an average journeyman mechanic without prior knowledge of the specific type, make, or model to maintain and repair the Equipment. The manuals shall include repair parts data that provides positive identification for an item of the complete Equipment with reference to the manufacturer or dealer facilities to identify ordering part numbers in support of procured Equipment.

##### GC-28.6.2 Preparation Instructions

An operation and maintenance manual set is required to cover each specific make, model, year and serial numbered piece of Equipment scheduled for delivery under terms of this Agreement. It is the intent of these requirements to use standard commercial manuals modified to meet the minimum Specification set forth herein. The manuals shall provide instructions, illustrations, and other associated data for operations, preventive and corrective maintenance and repair, including a complete catalog of parts used in the assembly of the end item. The manuals provided shall contain complete instructions and information as set forth below for all Equipment components, assemblies, subassemblies, attachments, and accessories manufactured by the prime Supplier or those purchased by the prime Supplier from other sources and assembled in the finished end item.

##### GC-28.6.3 Contents of Operation and Maintenance Manuals

The contents of complete set of manuals shall include, at a minimum, the following:

- (1) Table of Contents;
- (2) Operating instructions;
- (3) Preventive maintenance, service, and corrective maintenance or repair instructions;
- (4) Parts list with recommended quantity; and
- (5) Approved Shop Drawing(s).

##### GC-28.6.4 Binding and Delivery

The manual(s) shall be bound or otherwise securely enclosed in an oil and moisture resistant binder(s). Each binder cover shall indicate in bold type the manufacturer's name, contract number, model number, and serial number of the unit or equipment. Five (5) copies of the manual(s) shall be delivered with the Shop Drawings and must be approved with the Shop Drawings.

### **GC-29 CONTRACTOR'S TITLE TO MATERIALS**

No Materials or supplies for the Work shall be purchased by Contractor or by any Subcontractor subject to any chattel mortgage, security agreement, or under a conditional sales contract or other agreement by which any security interest is retained by the seller. Contractor warrants that it has good title to all Materials and supplies used in the Work, free from all liens, claims or encumbrances.

### **GC-30 INSPECTION AND TESTING OF MATERIALS**

All Materials and Equipment used in the construction of the Project shall be subject to adequate inspection and testing in accordance with accepted standards and the requirements of the Agreement Documents. The laboratory and inspection agency shall be provided by Contractor and approved by the City for these tests; provided, however, that if the City has already secured the services of identified testing consultants/agencies, then Contractor shall engage the services of the testing consultant/agency designated by the City. Additional tests performed after rejection of Materials or Equipment shall be at Contractor's expense.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with Specifications and suitability for uses intended, but failure to inspect Materials will in no way waive the City's right to reject defective Materials or to condemn Work in which they are used. Contractor will provide for travel expenses, factory performed testing and set up costs for the factory inspection and testing of all major architectural elements, mechanical, electrical or process equipment. A factory visit for both designers' representative and a City representative may be required. No funds for stored materials or fabrication items will be released until the factory inspection is completed and a certified Payment Application is submitted.

All tests performed by Contractor shall be witnessed by the City unless the requirement therefor is waived in writing. Contractor shall give the City reasonable advance notice of all such tests. The City may perform additional tests on materials tested by Contractor, and Contractor shall furnish samples for this purpose as requested.

In the event that the City directs additional testing or inspection of the Work and the testing or inspection reveals that the Work is not in accordance with the Agreement Documents, Contractor shall pay for all costs of correction of the Work as well as for all costs of testing and inspection. In the event that any portion of Contractor's Work depends upon the Work of the City or any of its separate contractors, the Contractor agrees that the City's Work or that of its separate contractor is adequate and installed such that it is ready and sufficient in all respects to accept Contractor's Work, unless written notice of any defect or deficiency is provided by the Contractor to the City prior to the Contractor beginning performance of the Work.

### **GC-31 MATERIALS AND EQUIPMENT**

Contractor shall furnish all Materials and Equipment to be incorporated into the Work. Only Materials and Equipment conforming to the requirements of the Drawings and Specifications

shall be incorporated into the Work. Except as otherwise specified or approved in specific instances, all such Materials and Equipment shall be new and unused and of the highest quality available. Materials and Equipment for which no specific requirements are given in the Drawings or specifications shall be those best suited for the specified use, considering function, strength, durability and resistance to corrosion. Manufactured Materials and Equipment shall be obtained from sources which are currently manufacturing such Materials or Equipment, except as otherwise approved in writing.

If so ordered by the Engineer, sources of Materials shall be approved by him before delivery from those sources is commenced. Approval of a source of Materials may be withdrawn by the Engineer at any time that the Materials delivered from that source are found to be defective, and Contractor shall thereupon cease all deliveries from that source.

Manufacturer's warranties, certifications, guarantees, manuals, instruction sheets and parts lists provided with Materials and Equipment shall be furnished to the Engineer before final payment is made and receipt of same is a condition precedent to any obligation to make final payment.

### **GC-32 STORAGE OF MATERIALS AND EQUIPMENT**

Materials and Equipment to be incorporated in the Work shall be stored in such a manner as to preserve their quality and fitness for incorporation in the final project. They shall be stored in a manner acceptable to the Designer and Owner and in an accessible facility that allows inspection. If at any time the City determines that any Materials or Equipment are not being properly stored, they may issue a directive to correct the storage or reject the Material for incorporation in the Project. No additional payment will be made for storage requirements. No payment will be made on Materials stored improperly or replaced due to improper storage.

No Equipment may be stored outside without the express written permission of the City on that specific piece of equipment stating that unit's unique I.D. numbers.

For any Equipment or units that have rotating parts or bearing assemblies and must be stored for more than sixty (60) days, Contractor shall set up a schedule to manually rotate the units every fifteen (15) days and maintain a certification log to preserve the service life and warranties.

### **GC-33 REPORTS, RECORDS, AND DATA**

#### **GC-33.1 General**

Contractor shall submit to the City schedules of quantities and costs, progress schedules, reports, estimates, records, certificates, and other data as the City may request concerning Work performed or to be performed under this Agreement.

#### **GC-33.2 Payroll Reports**

Contractor shall be required to furnish weekly payroll reports to the City, certifying conformance with the wage rates listed in the Specifications. The requirement applies to Contractor, its

Subcontractors, and any lower-tier Subcontractor providing labor at the site. These reports shall show completed payroll information, and such certificates and statements of compliance as required in the Federal Labor Standards and by the City relative to payrolls. The schedule of wage rates shall be posted on a bulletin board available to the workers.

### GC-33.3 Contractor's Daily Reports

As soon as Contractor has started Work on the Project, it shall compile written daily reports of the Work performed the previous day by its employees, including the employees of Subcontractors.

The reports shall be prepared by Contractor's representative and shall bear his signature. Each report shall contain at least the following information:

- (1) Description of Work items and references to payment items;
- (2) Work forces and construction Equipment employed;
- (3) Materials and Equipment installed;
- (4) Work performed by Subcontractors; and
- (5) Description of any accidents, interruptions, impacts, delays, problems, visitors, impediments, etc. encountered or continued.

Contractor shall require similar reports from Subcontractors for each day on Site and shall attach copies to Contractor's Daily Report when submitted.

## **GC-34 CONTRACTOR'S SUPERVISION OF THE WORK**

### GC-34.1 General

Contractor shall provide competent, efficient supervision of the Work. All Work shall be performed in a skillful, workmanlike and orderly manner, and Contractor and its supervisory personnel shall enforce this requirement at all times.

### GC-34.2 Contractor's Representative

Before beginning Work, Contractor shall notify the City in writing of one (1) person within its organization, satisfactory to the City, who shall have complete authority to supervise Work, to receive orders from the City, and to represent and act for Contractor in all matters arising under Agreement. Contractor shall not remove its representative without first designating, in writing, a new representative, who meets all of the foregoing requirements. Upon ten (10) days notice, the City or the Engineer may request replacement of Contractor's Representative if, in the City's opinion, it is necessary to ensure the timeliness or quality of the Work.

Contractor's representative shall normally be present at or about the Site of Work while the Work is in progress. Before leaving the Site of Work for any extended period, whether or not the Work is in progress, Contractor's representative shall notify the City, in writing, of the designation of an assistant, satisfactory to the City, with full authority to act for the representative in his absence, or shall make substitute arrangements satisfactory to the City. When neither



Contractor, its representative, nor the representative's authorized assistant is present on a part of Work, the superintendent, foreman, or other employee or Contractor in charge of that part of the Work shall be an authorized representative of Contractor for the purposes set forth above.

### **GC-35 SUBCONTRACTORS AND SUPPLIERS**

Contractor may utilize the services of specialty Subcontractors on those parts of Work that, under normal contracting practices, are performed by specialty Subcontractors, except as otherwise required by the Agreement Documents.

In addition to the designation of Subcontractors in the proposal documents, Contractor shall submit to the City a listing of the Subcontractor name, full address and telephone number, contact person, class or trade of work, list of similar past projects worked on, including reference names, telephone numbers, and other information as applicable to that Subcontractor and the provisions of the Agreement Documents. Contractor shall make Subcontractor submittals sufficiently in advance of construction requirements to provide the Engineer and City with no less than sixty (60) days for review and appropriate action.

Contractor shall be as fully responsible to the City for the acts and omissions of all Subcontractors and Suppliers, and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to Work to bind Subcontractors and Suppliers to Contractor by the terms of the General Conditions and other Agreement Documents, insofar as applicable to the work of Subcontractors and Suppliers, and to give Contractor the same power as regards terminating any subcontract that the City may exercise over Contractor under any provisions of the Agreement Documents.

Nothing contained in this Agreement shall create any contractual relation between any Subcontractor or Supplier and the City. The Contractor shall not award more than seventy-five percent (75%) of the Work to Subcontractors, provided that, to the extent that a more stringent standard is required in the Special Conditions, the more stringent standard shall control.

### **GC-36 INSPECTION OF WORK**

#### **GC-36.1 General**

All of Work shall be subject to inspection by the City for conformity with the Drawings and Specifications, Working Drawings, Shop Drawings, data on Materials and Equipment, and material samples. Inspection of the balance of Work will be in accordance with this article, unless otherwise expressly indicated. Material tests and all other specified tests will be considered part of the inspection process and shall be subject to all of the provisions of this clause.

#### **GC-36.2 Engineer's Access to Work**

The Engineer shall have access to, and may inspect Work at all times and places. He shall have access to, and may inspect, Materials and Equipment to be incorporated in Work at all times at the place of production or manufacture and at the shipping point, as well as at Site of Work.

The Engineer will designate the Materials and Equipment to be inspected at the place of production or manufacture. Contractor shall give the Engineer fourteen (14) days advance written notice of the start of manufacture or production of Materials and Equipment so designated. The Engineer's failure to so designate Materials and Equipment shall in no way limit his right to inspect them at the place of production of manufacture.

Contractor's Materials and Equipment contacts shall include a notice to the Supplier or Subcontractor of the inspection requirements of this clause.

### GC-36.3 Cooperation And Safety

The Engineer will perform inspections in such manner as not to delay Work unnecessarily, and Contractor shall perform the Work in such manner as not to delay inspection unnecessarily. Contractor shall give the Engineer reasonable advance notice of operations requiring special inspection of a portion of Work at any time by reasonable advance notice to the Engineer.

If requested by the Engineer, Contractor shall submit written certification, in a form approved by the Engineer, that he has inspected the Work prior to inspection by the Engineer, and that it complies with the Agreement Documents.

Contractor shall bear any additional inspection costs resulting from Contractor's failure to have a portion of Work ready for inspection at the time requested by Contractor for its inspection, or from reinspection of any previously rejected portion of Work where the defects requiring such rejection were due to Contractor's fault or negligence. Such costs may be deducted, in whole or in part, from any money due or that may become due Contractor under the Agreement.

Contractor shall furnish the Engineer all reasonable facilities for his safety and convenience in inspecting the Work, at all times and at all places where inspection may take place. If the Engineer finds that conditions are unsafe for inspection at a particular location, he may, upon notice to Contractor, refuse to inspect in that location until such conditions are corrected. Contractor shall bear any additional costs incurred to permit subsequent inspection of any portion of Work covered or completed at the location after correction of the conditions, whether or not such portion of Work is found to meet the requirements of the Agreement Documents.

### GC-36.4 Inspection of Covered or Completed Portions of Work

If so ordered in writing by the Engineer, Contractor shall uncover, remove, tear out, or disassemble, in whole or in part, any covered or completed portion of Work to permit its inspection. If that portion of Work is found to be defective or unauthorized, Contractor shall bear all costs of uncovering, removal, tearing out, or disassembly. If such portion of the Work is found to conform with the Agreement Documents, including Agreement Drawings and Specifications, it shall be recovered, replaced, reassembled, or otherwise restored by Contractor to its original condition and, except as stated below, all Work required in connection with the inspection will be considered extra Work. If such portion of Work was covered or completed

without the approval of the Engineer, where such approval was required by the Specifications or required in advance by the Engineer, Contractor shall bear all costs involved in the inspection, notwithstanding conformance of such portion of Work with the Agreement Documents including the Agreement Drawings and Specifications.

#### GC-36.5 Inspection Not a Waiver or Acceptance

Neither the inspection nor lack of inspection of any portion of the Work, nor the presence or absence of the Engineer during performance of any of the Work, nor acceptance of the whole or any part of the Work by the Engineer, nor any possession taken by the City or its employees shall operate as a waiver of any provision of this Agreement Documents or any power herein reserved to City or any rights to damages herein provided. Should an error in the estimate, or conclusive proofs of defective Work or materials used by or on the part of Contractor be discovered after the final payment has been made, the City reserves the right to claim and recover by process of law such sums as may be sufficient to correct the error or to make good the defects in the Work and Materials.

#### GC-36.6 Correction of Non-Compliant Work

If Contractor is found to have Work that fails to meet the intent of the Plans and Specifications or other Agreement Documents, or is in other aspects unsuitable it may be issued a notice of non-compliance on that portion of the Project Work. Contractor shall remedy the defective or incorrect Work within twenty-four (24) hours unless a different schedule is agreed to in writing. This non-compliance status may be issued on temporary installations that fail to protect the Work or site conditions.

### **GC-37 CITY'S AUTHORITY**

The City shall have authority to decide all questions as to interpretation and fulfillment of the requirements and obligations of the Agreement Documents, including, without limitation, all questions as to the prosecution, progress, quality, and acceptability of Work. The City may implement and enforce its decisions by orders, instructions, notices, and other appropriate means.

Any decision, order, instruction, or notice of the City will be confirmed in writing. Such confirmation shall state the specific subject of the decision, order, instruction, or notice and its date, time, place, author and recipient.

Inspectors may be appointed to inspect all Materials used and all Work performed. Such inspection may extend to all or any part of the Work and to the preparation or manufacture of the Materials to be used. Inspectors will not be authorized to approve or accept any portion of the completed Work or to issue instructions contrary to the Plans and Specifications or other Agreement Documents. Inspector will have authority to reject defective Material and to suspend Work that is being improperly performed, subject to the final decision of the City. Inspector shall, in no case, act as foreman or perform other duties for Contractor.

## **GC-38 PROGRESS PAYMENTS**

### **GC-38.1 Progress Estimates**

Within the time set forth in the Special Conditions or, if none, then prior to the submittal of the first Payment Application, Contractor shall submit to the Engineer for approval, in the form directed or acceptable to the Engineer, a complete schedule of values of the various portions of the Work, including quantities and unit prices, aggregating the Agreement Price (except in cases and to the extent that accepted unit prices form the basis of payment). The schedule shall subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction and to coordinate with the progress schedule required under the Special Conditions, and shall be supported by such data to substantiate its correctness as the Engineer may require. Each item in the schedule of values shall include its proper share of overhead and profit. An unbalanced breakdown providing for overpayment to Contractor on items of Work which would be performed first will not be approved. The schedule of values, when approved by the Engineer, shall be used only as a basis for Contractor's monthly request for payment and shall not be used as the basis for computing additions to or deductions from the Agreement Price.

Subject to the provisions of this clause, Contractor shall prepare a written report for the Engineer's approval, on the form approved by the City, of the total amount of value of Work performed under the proposal items of Agreement to the time of such estimate and in accordance with the progress report based on the approved schedule.

No progress estimate or payment shall be considered an approval or acceptance of any Work performed, Material, or Equipment furnished. All estimates and payment will be subject to correction in subsequent estimates and the final estimate.

Progress payments will be made for all completed activities and for suitably stored Materials as herein provided.

### **GC-38.2 Progress Payments**

Upon completion of each monthly estimate of Work performed and Materials furnished, the Engineer, subject to the provisions of the Agreement Documents, shall recommend payment to Contractor for the estimated value of such Work, Materials, and Equipment, less the amount of all prior payments and all liquidated damages and other amounts to be deducted or retained under the Agreement. Contractor will be paid one hundred (100%) percent, less retainage, of the cost of Materials received and properly stored but not incorporated into the Work. Payments for Materials or Equipment stored on the Site shall be conditioned upon submission by Contractor of bills of sale or such other procedures satisfactory to the Engineer to establish the City's title to such Materials or Equipment or otherwise protect the City's interest, including applicable insurance. No progress estimate or payment needs to be made when, in the Engineer's judgment, the increment in the estimated value of Work performed and Materials and Equipment furnished since the preceding estimate is less than Ten Thousand Dollars (\$10,000.00). Contractor will be paid on or before the twenty-fifth day following receipt of the approved estimate from the Engineer.

### GC-38.3 Retention from Progress Payments

The amounts retained by the City from each progress payment shall be as follows:

- (1) Except as noted below, withholding ten percent (10%) of the estimated value of the Work performed until 50 percent of the Contract value, including change orders and other additions to the Contract value provided for by the Contract Documents, is due and the manner of completion of the Contract Work and its progress are reasonably satisfactory to the City.
- (2) At the discretion of the City and with the approval of Contractor, the retainage of each Subcontractor may be released separately as the subcontractor completes his or her work.
- (3) Upon receipt of written request from Contractor, the City may, in its unilateral discretion, reduce retainage to Contractor for payment of retainage to Subcontractors who have completed their Work. If such retainage is released, Contractor shall furnish the City with an affidavit certifying that all monies due the Subcontractor have been paid. If the City determines that the released retainage has not been paid to the Subcontractor, the amount released shall be reinstated.
- (4) The City may, in its unilateral discretion, elect to reduce Contractor's retainage and that of Subcontractors who have not completed all their work if the City believes it to be in its interest to do so.
- (5) If reduced, the City may reinstate ten percent (10%) withholding if it believes it necessary or desirable to do so. Contractor agrees that the City is free to do so.
- (6) If, after discontinuing the retention, the City determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level. If retention is resumed, Contractor and Subcontractors shall be entitled to resume withholding retainage accordingly.

### GC-38.4 Additional Payment Conditions

#### GC-38.4.1

The submission and approval of the CPM Schedule and periodic updates thereof, as required by the Schedule requirements of the Special Conditions, shall be an integral part and basic element of the application upon which Progress Payments shall be made. Contractor shall be entitled to Progress Payments only as determined from the currently approved and updated CPM Schedule.

#### GC-38.4.2

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

GC-38.4.3

The City may, on request and at its discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by Contractor and the action taken thereon by the City on account of Work done by such Subcontractor.

GC-38.4.4

Neither the City nor the Engineer shall have any obligation to pay or to see to the payment of any Subcontractor or Supplier, but may at its sole option, withhold payment from Contractor on account of claims of nonpayment by Subcontractors and Suppliers in accordance with GC-38.5.1.

GC-38.4.5

No certification of Progress Payment (any progress payment), or any partial or entire use or occupancy of the Project by the City, shall constitute an acceptance or approval of any Work not fully in accordance with the Agreement Documents.

GC-38.4.6

Any and all funds paid to Contractor pursuant to the City-Contractor Agreement are hereby declared to constitute trust funds in the hands of Contractor, to be applied first to the payment of claims of Subcontractors, laborers, and Suppliers arising out of the Work, to claims for utilities furnished and taxes imposed, and to the payment of premiums on surety and other bonds and on insurance, before application to any other purpose. Whenever required by the Engineer, it shall be the duty of Contractor to file with the Engineer a verified statement, in form satisfactory to the Engineer, certifying the amounts then due and owing from Contractor for labor and materials, setting forth therein the names of the person whose charges or claims for labor or materials are unpaid, and the undisputed amount due to each respectively. The City, at its option, may also require the Contractor to furnish evidence of payment of Subcontractors and Suppliers in any form satisfactory to the City in addition to the requirements of GC-38.6.

GC-38.4.7

No payments made hereunder by City to Contractor prior to Final Payment shall be deemed conclusive as to the actual value of the Work performed by Contractor or of Contractor's performance of the Agreement.

GC-38.4.8

City reserves the right to issue any Progress Payment and Final Payment by check jointly to Contractor and any Subcontractor or Supplier at City's option.

GC-38.4.9

Should the City fail to issue any Progress Payment within sixty (60) days of approval of an acceptable monthly estimate of Work performed and Materials furnished, annual interest on the payment amount may accrue at the Prime Rate, plus one percent. The Prime Rate shall be based on that published in the Wall Street Journal on the first business day of January or June, whichever has most recently passed, of the current year. Nothing stated herein shall invalidate any other conditions of Progress Payment approval.

GC-38.4.10

Contractor agrees to execute such payment application forms and release of claim forms as the City may require as a condition precedent to the City's obligation to make payment.

GC-38.4.11

This Article 38 shall completely supersede the Georgia Prompt Payment Act as it relates to Owner payments and any modifications or successors to it to the full extent allowed by law.

GC-38.5 Payments Withheld

GC-38.5.1

The City may decline to approve payment and may withhold any payment, in whole or in part, to the extent necessary to reasonably protect the City from loss because of:

- (1) Defective Work not remedied;
- (2) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (3) Failure of Contractor to make payments properly to Subcontractors, or for labor, Materials or Equipment;
- (4) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Agreement Price;
- (5) Damage or the reasonable expectation of damage to the City or another contractor;
- (6) Reasonable evidence that the Work will not be completed within the Agreement Time;
- (7) Failure to carry out the Work in accordance with the Agreement Documents;
- (8) Failure of Contractor to fully comply with the Schedule requirements of the Special Conditions;

- (9) Failure to comply with insurance and safety requirements;
- (10) Failure to keep current “As-Built” Records; or
- (11) Failure of Contractor to comply with the requirements of the Agreement Documents in connection with the Payment Application process.

#### GC-38.5.2

When the grounds in Article GC-38.5.1., above are removed, payment shall be made for amounts withheld because of them.

#### GC-38.6 Waiver and Preservation of Claims In Periodic Application of Payments

Contractor has been employed by the City to furnish labor, Material, services, and other improvements. Upon receipt of the amounts requested in any monthly Application for Payment, Contractor waives and releases any and all claims it may have against the City or the Engineer through the date of that Payment Application, excepting those rights that Contractor may have in any retained amounts on account of labor or Materials, or both, furnished by Contractor and the unresolved claims, if any, enumerated in the Application for Payment. Contractor expressly warrants by submission of its periodic Application for Payment that all due and payable bills with respect to the Work have been paid to date or shall be paid from the proceeds of the Application for Payment, and waivers and releases from all Subcontractors and materialmen have been or will be obtained and delivered to the City in such form as to constitute effective waivers and releases of claims under all applicable laws. Upon receipt of payment of the amounts certified in the Application for Payment, Contractor does thereby waive, release, and relinquish any claims for additional compensation or an extension of time which Contractor has then or may have had arising out of the performance of the work or the furnishing of the labor or materials by Contractor through the date of the Application for Payment. This waiver and release applies to all facts, events, circumstances, changes, constructive or actual delays, acceleration, extra work, disruption, interferences, impacts and the like, which have occurred or may be claimed to have occurred prior to the date of the Application for Payment, excepting only claims which are then currently unresolved for which written notice has previously been provided to the City **and** which Contractor specifically enumerates in its Application for Payment. Failure to so enumerate claims shall be a final waiver and relinquishment of claim, whether or not such claims were previously submitted in accordance with GC-41.

#### **GC-39 SUBSTANTIAL COMPLETION (“Substantial Completion”)**

##### GC-39.1 Certificate of Substantial Completion

When Contractor considers that the Work, or a designated portion thereof which is acceptable to the City, is Substantially Complete, Contractor shall prepare for the Engineer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Agreement Documents. When the Engineer, on the basis of an inspection, determines that the Work or designated portion thereof is Substantially Complete, they will then prepare a Certificate of Substantial Completion of the Work which shall establish the Date of Substantial Completion of the Work, shall state the



responsibilities of the City and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance and shall fix the time within which Contractor shall complete the items listed therein. The Certificate of Substantial Completion of the Work shall be submitted to the City and Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

#### GC-39.2 Warranty Commencement

Warranties required by the Agreement Documents shall commence on the Date of Final Completion of the Project or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion of the Work or designated portion thereof.

#### GC-39.3 Intentionally Omitted

### **GC-40 FINAL PAYMENT (“Final Payment”)**

#### GC-40.1 Certificate for Final Payment

Following the Engineer's issuance of the certificate of Substantial Completion of the Work or designated portion thereof, and Contractor's Completion of the Work, Contractor shall forward to the Engineer a Written Notice that the Work is ready for final inspection and acceptance, and shall also forward to the Engineer a final Application for Payment. Upon receipt, the Engineer will make the necessary evaluations. When the Engineer finds the Work acceptable under the Agreement Documents and the Agreement fully performed, the Engineer will issue a certificate for Payment that will approve the final Payment due Contractor (“Final Payment”).

#### GC-40.2 Final Payment Conditions

Neither the Final Payment nor the retainage shall become due until Contractor submits to the Engineer:

- (1) An affidavit that all payrolls, bills for Materials and Equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied;
- (2) Consent of surety, if any, to Final Payment;
- (3) Clear title for all vehicles and/or trailers, if any, to remain as City property;
- (4) Complete set of as-built record Drawings;
- (5) Documentation for all state sales taxes paid by Contractor including completed State Department of Revenue Refund forms and all necessary back up documentation required by the Department of Revenue;
- (6) If required by the Engineer or City, other data establishing payment or satisfaction of all such obligations, such as receipts, releases, and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by the

Engineer or City. If any Subcontractor refuses to furnish a release or waiver required by the Engineer or City, Contractor may furnish a bond satisfactory to the City to indemnify the City against any such loss. If any lien or indebtedness remains unsatisfied after all payments are made, Contractor shall refund to the City all monies that the latter may be compelled to pay in discharging such lien or other indebtedness, including, without limitation, all costs, expenses, arbitration fees, reasonable attorneys' fees, expert fees, or consultant fees incurred in connection with same; and

- (7) As a condition of Final Payment on the Project, Contractor shall, prior to final payment, complete and submit to the City, all of the invoice documentation and the State of Georgia Revenue Department forms required to obtain the sales tax refund on all applicable equipment expenditures. This submittal shall include the certified forms and auditable back-up necessary to substantiate the expenditures for State refund.

#### GC-40.3 Intentionally Omitted

#### GC-40.4 Waiver of Claims by Contractor Upon Final Payment

The acceptance of Final Payment shall constitute a waiver of all claims by Contractor except those previously made in writing and identified **and** enumerated by Contractor as unsettled at the time of the application for Final Payment. Failure to so enumerate unsettled claims shall be a final waiver and relinquishment of claim, whether or not such claims were previously submitted in accordance with GC-41.

### **GC-41 CLAIMS, CHANGES, AND EXTRA WORK**

Contractor acknowledges the extreme importance to Owner of identifying and resolving Claims on an "as-you-go" basis in order for Owner to maintain its relationship with all available funding sources, including local taxpayers as well as the state and federal governments. Contractor further acknowledges the extreme prejudice suffered by Owner as a result of any attempted assertion by Contractor of Claims except as specifically permitted herein in the precise manner and within the time limits established herein, which prejudice includes, but is not limited to that resulting from the trouble and expense of having to deal with disputes over claims, if any, that were not made in accordance with the precise manner and within the time established herein.

#### GC-41.1 Claims and Contractor's Obligation to Proceed in the Face of Disputes

##### GC-41.1.1

A claim is any demand, contention, or assertion by Contractor seeking additional time or money under the Agreement Documents. Claims by Contractor must be made in writing as specified herein. Claims from Contractor must contain all of the following:

- (1) a narrative statement referencing and attaching the supporting documentation and specifically describing the legal, factual, and contractual basis of the claim;
- (2) if the claim alleges delay to the work or requests an extension time for excusable delay, the claim must include the precise number of days claimed, all alleged impacts on the work, as well as a detailed critical path as-built schedule analysis illustrating that the delays claimed were on the critical path of the Project, and that no concurrent delays were experienced during the critical path delay;
- (3) if the claim alleges improper acceleration of the work pursuant to GC-27.2, the claim must include the precise number of days' time extension Contractor contends it would have been entitled to receive, but for the acceleration, and the precise number of days by which the work has been accelerated. No claims for acceleration for work that is not on the critical path shall be permitted. Claims for acceleration must be accompanied by a detailed CPM analysis. Claims for acceleration shall be limited to the recoverable acceleration expenses referenced in Article GC-27 of this Agreement; and
- (4) if the claim is for additional compensation, the claim must include a detailed calculation of the precise amount claimed with all supporting documentation and shall also comply with Atlanta Procurement Code §2-1201 for claims expected to exceed \$20,000.00. All claims must reference the specific contract provisions relied upon to support the claim. Claims that are not based upon a contractual provision or remedy shall be void as Contractor agrees that its entitlement is limited to the remedies offered by the terms of this Agreement. All claims must specifically reference, by name, this Article, and the fact that the claim is being submitted under this Article. Any writing or other form of notice, however designated, which fails to specifically reference this Article, by name, shall not be deemed to constitute a valid claim hereunder.

Items (1), (2), (3) and (4) above shall hereinafter be referred to as the “Final Accounting.”

Initial written notice of Contractor’s intent to assert a claim (the “Initial Notice”) must be made in writing within seven (7) days after the occurrence of the event giving rise to the claim or the right to submit a claim is waived. Contractor shall submit all information reasonably available to it that is otherwise required in the Final Accounting at the time of the Initial Notice.

Except for Claim events that continue more than thirty (30) days, within thirty (30) days after the conclusion of the event giving rise to the Claim, Contractor shall provide the Final Accounting. Failure to timely provide the Final Accounting shall constitute a waiver of the Claim even if timely Initial Notice is provided. Any waiver by the City of the notice requirements for the Initial Notice

or the Final Accounting for a single claim, event, or occurrence shall not constitute a waiver of these notice requirements for any other claim, event, or occurrence. Each request for time or money by Contractor shall be considered a separate claim. All information required in the Final Accounting must be submitted within the time limits established herein, and no supplementation of the information or claims shall be permitted. Any attempted reservation of the right to submit or supplement an earlier made claim shall be void.

For events giving rise to a claim that Contractor contends continues for more than thirty (30) days, including any alleged continuing claims or continuing impacts that Contractor contends continue to accrue beyond thirty (30) days, then Contractor shall give the Initial Notice as required herein, stating therein that the event or impact is continuing. Within thirty (30) days of the start of the event (as documented by the Initial Notice), Contractor shall provide all information available to it that is required in the Final Accounting, including without limitation a quantification of any costs incurred to date. Contractor shall supplement the required information, including without limitation any additional damages accrued during the period and any scheduling information required, every thirty (30) days thereafter until the event or impact ceases, culminating in the Final Accounting within thirty (30) days thereafter. Failure to timely provide: (a) the Initial Notice; (b) the information due within thirty (30) days thereafter; (c) timely and complete supplements; or (d) the timely Final Accounting shall be deemed a waiver of any claim for time or money for events occurring after the date Contractor last timely and completely complied with the requirements hereof. Any attempt to reserve the right to supplement at a different time or to accrue costs or impacts beyond thirty (30) days shall be void and shall be deemed a waiver of any further claim relating thereto.

The Final Accounting shall be accompanied by a sworn statement from a representative of Contractor who is the person most knowledgeable of the facts and circumstances surrounding the Claim and personally familiar with such facts and circumstances certifying that (a) the claim is submitted in good faith, (b) the cost data and all backup information submitted are true, accurate, and complete, and (c) that the amount requested accurately reflects the amount for which Contractor and the Affiant believe the City is liable.

#### GC-41.1.2 Claim Review

Upon receiving a statement of claim, and with the advice and assistance of the Engineer as appropriate, the City may review the statement of claim submitted by Contractor. In conducting this review, the Engineer or other person designated by the City shall have the right to require Contractor to submit such additional or supporting documents, data and other information as the City and/or the Engineer may require, and the failure to submit such additional documents, data or other information within thirty (30) days following written request shall be deemed a waiver of the claim. Contractor agrees that it will produce any documents requested that would otherwise be produceable in a civil action under O.C.G.A. § 9-11-34. Upon completion of such review, to take place within such time as the City may designate following receipt of the additional documents, data or

other information as may have been required by the City and/or the Engineer, the City in consultation with the Engineer may issue a written determination, and if it deems appropriate accept such parts of the claim as are found in good faith to be proper. If Contractor agrees, a Change Order shall be issued to amend the Agreement Price, the time for completion or either of them as may be found proper. If Contractor disputes the determination made by the City, Contractor as a condition precedent to any further action to resolve such dispute must notify the City and the Engineer in writing within ten (10) days following receipt of the decision of the factual basis of such dispute and permit the City fifteen (15) additional days to reconsider and, if it deems it appropriate, issue a modified decision.

#### GC-41.1.3 No Waiver

Nothing contained in this section shall operate to limit or extinguish any right or defense of the City contained elsewhere in the Agreement Documents or available at law or in equity or constitute a waiver by the City of any right or defense otherwise available. Nothing in this Article GC-41 shall alter Article GC-24 or GC-26 or give Contractor the right to recover additional compensation not authorized by other items of the Contract Documents or precluded thereby.

#### GC-41.1.4 Absolute Conditions Precedent

The failure of Contractor to file any claim within the time limits prescribed herein or in the form or manner precisely as required hereby shall be deemed a material prejudice to the interests of the City and shall constitute an absolute waiver of the claim and the right to file or thereafter prosecute the same.

#### GC-41.1.5

Claims by the Owner shall not be subject to the requirements of Section 41.1, Claims by the Owner shall be asserted within a reasonable time of discovery of the claim and shall include information necessary for Contractor to reasonably evaluate the claim. The Owner agrees to notify Contractor in writing of its claims within a reasonable time but not later than the close of discovery in any arbitration or litigation conducted hereunder.

#### GC-41.1.6

Pending final resolution of a Claim, except as otherwise agreed in writing, Contractor shall proceed diligently with performance of the Work and the Owner shall continue to make undisputed payments in accordance with the Agreement Documents. The making of any payment by Owner shall not constitute a waiver of any Claims by the Owner or an acknowledgement by Owner that Contractor is entitled to additional time or money.

#### GC-41.1.7

Contractor acknowledges the extreme importance to the City of completing the Work as expeditiously as possible and the prejudice the City may suffer if the Work is not completed as scheduled. Contractor further acknowledges the strong likelihood that

disputes between the parties will arise and that Contractor will likely be required to perform disputed work which the City contends to be included within Contractor's scope of work, or that if acknowledged as changed or extra work, the likelihood that the City may dispute the amount of Contractor's alleged entitlement. Irrespective of whether it is within the general scope of the Work, Contractor agrees to perform all work, whether disputed or undisputed, that the City directs. No dispute or controversy shall interfere with the progress of construction, and Contractor shall proceed with the work without interruption, deficiency, or delay. Contractor warrants and represents that Contractor and its Surety have sufficient capitalization and resources to complete the Work, including all disputed work whether or not it is within the general scope of the work, and resolve disputes in accordance with the terms of this Agreement. Contractor therefore agrees that any failure or refusal by Contractor to perform disputed work which the City directs Contractor to perform shall be a material and substantial breach of the Agreement for which Contractor and its surety are jointly and severally liable. Contractor acknowledges and agrees that its failure or refusal to perform disputed work will cause the City significant damage and that such damages may include increased costs to have another contractor complete the work at a premium over the costs Contractor would have incurred to perform the disputed work. Contractor acknowledges and agrees that should it refuse to proceed in the face of disputes, it is liable for all additional costs incurred in completing both Contractor's base Agreement scope of work and any changed, extra, or additional work.

## GC-41.2 Changes in the Work

### GC-41.2.1 General

#### GC-41.2.1.1

Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Agreement, by Change Order, Field Change, Work Authorization or Change Directive. For purposes of this Agreement, the terms "extra work" or "additional work" shall have the same meaning as "changed work" and be governed by the same Agreement provisions governing changes.

#### GC-41.2.1.2

Changes in the Work shall be performed under applicable provisions of the Agreement Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Field Change, Work Authorization or Change Directive. A change in the Agreement Price or the Agreement Time shall be accomplished only by Change Order or Change Directive, and no other compensation shall be due to Contractor other than that permitted pursuant to a Change Order or a Change Directive. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any change to the Work, whether or not there is, in fact, any unjust enrichment, shall be the basis of any claim for an increase in any amounts due under the Agreement Documents or a change in any time period provided for the Agreement Documents. Any failure to comply with the notice and other claim procedure

requirements included herein or any other Agreement requirements shall be a waiver of the right to additional time or money.

#### GC-41.2.1.3

Any written directive which Contractor believes to constitute a Change hereunder must be accompanied by the notice required under Article GC-41 governing claims. ALL CONTRACTOR CLAIMS FOR CHANGES MUST BE ASSERTED IN ACCORDANCE WITH ARTICLE GC-41 OR THEY ARE WAIVED AND RELEASED.

### GC-41.2.2 Change Orders

#### GC-41.2.2.1 [Intentionally Omitted]

#### GC-41.2.2.2 [Intentionally Deleted]

#### GC-41.2.2.3

Methods used in determining adjustments to the Agreement Price for Change Orders shall be limited to those listed, below:

Any Change Order accepted by Owner and Contractor constitutes a full and final settlement and accord and satisfaction of all effects of the change, including but not limited to any and all impact, delay and/or disruption relating thereto upon any and all aspects of the Work or the Agreement Documents, and will compensate Contractor fully. In such case, Contractor expressly waives any and all right to make a Claim or to take any action or proceeding for any other consequences of any Change Order, whether the consequences result directly or indirectly from the Change Order. In addition, Contractor expressly waives and releases any Claim it may have against the Owner for any adjustment in the Substantial Completion Date or Final Completion Date resulting from, arising out of, or related to the change reflected in any such Change Order, including, but not limited to, any impact that such change may have on the unchanged portion of the Work or the Substantial or Final Completion Date. In addition, Contractor expressly waives and releases any Claim it may have against the Owner for any additional compensation or damages resulting from, arising out of, or related to, the change reflected in any such Change Order, including, but not limited to any Claim for damages due to delay, disruption, hindrance, impact, ripple effect, cumulative impact, interference, cardinal change, abandonment, inefficiencies or extra work arising out of, resulting from, or related to the change reflected in any such Change Order, including, but not limited to, any impact that such change may have on the unchanged portion of the Work or the Substantial or Final Completion Date.

### GC-41.2.3 Change Directives

#### GC-41.2.3.1

The Owner may, by Change Directive, without invalidating the Contract, order Changes in the Work consisting of additions, deletions or other revisions, the Agreement Price and Agreement Time being adjusted accordingly to the extent necessary. Any Claim arising from a Change Directive must be made in accordance with the terms of this Contract.

#### GC-41.2.3.2

A Change Directive shall be used in the absence of total agreement on the terms of a Change Order, Field Change, or Work Authorization.

#### GC-41.2.3.3

If the Change Directive warrants an adjustment to the Agreement Price, the adjustment shall be based on one of the following methods:

- (1) mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (2) unit prices stated in the Agreement Documents or subsequently agreed upon;
- (3) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (4) by Force Account as provided hereafter.

### GC-41.2.4 Force Account

When no agreement is reached for Changed Work to be done at Lump Sum or Unit Prices or another mutually agreed manner, such work may be authorized by the City to be done on a Force Account basis. A Force Account estimate that identifies all anticipated costs shall be prepared by Contractor. Work shall not begin until the Force Account is approved. Payment for Force Account work will be in accordance with the following:

#### GC-41.2.4.1 Labor

For all labor, equipment operators, and supervisors, excluding superintendents, in direct charge of the specific operations, Contractor shall receive the rate of wage agreed upon in writing before beginning work for each and every hour that said labor, equipment operators, and supervisors are actually engaged in such work.

Contractor shall receive the actual costs paid to, or in behalf of, workers by reason of subsistence and travel allowances, health and welfare benefits,



pension fund benefits, or other benefits, when such amounts are required by collective bargaining agreement or other employment contract generally applicable to the classes of labor employed on The Work.

An amount equal to 10% of the sum of the above items will also be paid Contractor. Said 10% shall be deemed to include 3% for Contractor's fee and 7% for Contractor's overhead.

#### GC-41.2.4.2 Bond, Insurance, and Tax

For bond premiums, property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, and Social Security taxes on the Force Account work, Contractor shall receive the actual cost, to which cost no percentage will be added. Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, and tax.

#### GC-41.2.4.3 Materials

For materials accepted by the Engineer and used, Contractor shall receive the actual cost of such material incorporated into The Work, including Contractor paid transportation charges (exclusive of machinery rentals as hereinafter set forth), to which cost 10% will be added. Said 10% shall be deemed to include 3% for Contractor's fee and 7% for Contractor's overhead.

#### GC-41.2.4.4 Equipment

For any machinery or special equipment (other than small tools) including fuel and lubricant, plus transportation costs, the use of which has been authorized by the Engineer, Contractor shall receive the rental rates indicated below for the actual time that such equipment is in operation on the Work or the time, as indicated below, the equipment is directed to stand by.

Equipment rates shall be based on the edition in effect at the time of Contractor's original bid of the *Rental Rate Blue Book for Construction Equipment* or *Rental Rate Blue Book for Older Construction Equipment*, whichever applies, as published by EquipmentWatch using all instructions and adjustments contained therein and as modified below.

Allowable Equipment Rates shall be established as defined below:

- Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment factors x 70%.
- Allowable Hourly Operating Cost = Hourly Operating Cost x 70%.
- Allowable Rate Per Hour = Allowable Hourly Equipment Rate + allowable Hourly Operating Cost.
- Standby Rate = Allowable Hourly Equipment Rate x 35%

NOTE: The monthly rate is the basic machine plus any attachments.

Standby rates shall apply when equipment is not in operation and is directed by the Engineer to standby for later use. In general, Standby rates shall apply when equipment is not in use, but will be needed again to complete The Work and the cost of moving the equipment will exceed the accumulated standby cost. Payment for standby time will not be made on any day the equipment operates for 8 or more hours. For equipment accumulating less than 8 hours operating time on any normal workday, standby payment will be limited to only that number of hours which, when added to the operating time for that day equals 8 hours. Standby payment will not be made on days that are not normally considered workdays.

The City will not approve any rates in excess of the rates as outlined above.

Payable time periods will not include:

- Time elapsed while equipment is broken down;
- Time spent in repairing equipment; or
- Time elapsed after the Engineer has advised Contractor the equipment is no longer needed.

If a piece of equipment is needed which is not included in the above *Blue Book* rental rates, reasonable rates shall be agreed upon in writing before the equipment is used. All equipment charges by persons or firms other than Contractor shall be supported by invoices.

Transportation charges for each piece of equipment to and from the site of the Work will be paid provided:

- The equipment is obtained from the nearest approved source;
- The return charges do not exceed the delivery charges;
- Haul rates do not exceed the established rates of licensed haulers; and
- Such charges are restricted to those units of equipment not already available and not on or near the Project.

No additional compensation will be made for equipment repair.

#### GC-41.2.4.5 Miscellaneous

No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

#### GC-41.2.4.6 Compensation

Contractor's representative and the Engineer shall compare records and agree on the cost of work done as ordered on a Force Account basis at the end of each day. Should Contractor fail or refuse to fulfill this daily record keeping

function by meeting with the Engineer and agreeing upon the cost of Force Account Work, Contractor agrees that it forfeits and releases any right to payment or right to claim for the Force Account Work for that day.

#### GC-41.2.4.7 Subcontract Force Account Work

For work performed by an approved Subcontractor or lower-tier Subcontractor, all provisions of this Section that apply to Contractor in respect to labor, materials and equipment shall govern. Contractor shall coordinate the work of its Subcontractor. The prime Contractor will be allowed an amount to cover administrative cost equal to 5% of the Subcontractor's amount earned but not to exceed \$5,000.00 per Subcontractor for each Change in Work performed by Force Account. Markup for lower-tier Subcontract work will not be allowed. The 5% shall be for Contractor's overhead in administering the change.

Should it become necessary for Contractor or Subcontractor to hire a firm to perform a specialized type of work or service which Contractor or Subcontractor is not qualified to perform, payment will be made at reasonable invoice cost. To each invoice cost a markup to cover administrative cost equal to 5% of the total invoice but not to exceed \$5,000.00 will be allowed Contractor or Subcontractor but not both. If paid to Contractor, the 5% shall be for Contractor's overhead in administering the change.

#### GC-41.2.4.8 Statements

No payment will be made for work performed on a Force Account basis until Contractor has furnished the Engineer with duplicate itemized statements of the cost of such Force Account work detailed as follows:

- (1) Name, classification, date, daily hours, total hours, rate, and extension for each laborer, equipment operator, and supervisor, excluding superintendents;
- (2) Designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;
- (3) Quantities of materials, prices, and extensions;
- (4) Transportation of materials; and
- (5) Cost of property damage, liability, and worker's compensation insurance premiums, unemployment insurance contributions, and Social Security tax.

Statements shall be accompanied and supported by invoices for all materials used and transportation charges. However, if materials used on the Force Account work are not purchased specifically for such work but are taken from

Contractor's stock, then, in lieu of the invoices, Contractor shall furnish an affidavit certifying that such materials were taken from its stock, that the quantity claimed was actually used, and that the price and transportation claimed represent the actual cost to Contractor.

Payment based on Force Account records shall constitute full payment and settlement of all additional costs and expenses caused by, arising from, or associated with the Work performed, including any time related or impact costs in connection with the Force Account work or any unchanged work impacted thereby.

#### GC-41.2.5

If any change or Change Directive meets the requirements for excusable delay and a change in the Agreement Time is warranted as a direct result of the change or Change Directive, then the four items of delay damage compensation identified in Article GC-26.2.1 for the unenforceability exception to the recoverability of delay damages under the Agreement may be included as a part of the adjustment in the Agreement Price for the change or change directive if Contractor has met all other requirements of the Agreement, including the notice and claim procedure requirements. Provided, however, Contractor shall, under no circumstances, be allowed to duplicate any costs included under this Article so as to receive a double recovery. In the event that Contractor is entitled to the four items of delay damage compensation referenced above, there shall be deducted from said entitlement all amounts paid or allowed Contractor for overhead pursuant to the percentage markups included herein.

#### GC-41.2.6

Upon receipt of a Change Directive, Contractor shall promptly proceed with the Change in the Work involved and advise the Owner of Contractor's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Agreement Price or Agreement Time utilizing the notice and claim procedures set forth herein.

#### GC-41.2.7

A Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Agreement Price and Agreement Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order, Field Change or Work Authorization, as applicable.

#### GC-41.2.8

If Contractor does not respond promptly or disagrees with the method for adjustment in the Agreement Price, the method and the adjustment shall be based upon the actual expenditures and savings attributable to the change, as determined in accordance with Article 41.2.4.

#### GC-41.2.9

The amount of credit to be allowed by Contractor to the Owner for a deletion or change which results in a net decrease in the Agreement Price shall be the actual cost, and that proportion of Contractor's Fee (including both profit and overhead) allocable to such actual cost.

#### GC-41.2.10

Pending final determination of the total cost of a Change Directive to the Owner, amounts not in dispute for such changes in the Work may be included in Applications for Payment accompanied by a Change Order, Field Change or Work Authorization (as applicable) indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner may make an interim determination for purposes of monthly certification for payment for those costs. That interim determination of cost, if made, shall be subject to the right of the Owner to change or withdraw the same unless and until finalized by Change Order, Field Change or Work Authorization, as applicable.

#### GC-41.2.11

When Contractor agrees with the determination made by the Owner concerning the adjustments in the Agreement Price and Agreement Time, if any, or Owner and Contractor otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order, Field Change or Work Authorization, as applicable.

#### GC-41.3 No Oral Changes

It is expressly agreed that, except in an emergency endangering life or property, no modifications, additions or changes to the Work shall be made except upon written order of Contractor, and Contractor shall not be liable to Subcontractor for any extra labor, materials or equipment furnished without such written order. No officer, employee or agent of Contractor is authorized to direct any extra or Changed work by verbal order nor is Subcontractor authorized to proceed with any work upon verbal order.

No eliminations, additions, or alterations shall be made in the Work except upon written order of The City. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the City has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim for an increase in any amounts due under the Agreement Documents or an increase in any time period provided for in the Agreement Documents. No action, conduct, omission, prior failure, or course of dealing by the City shall waive, modify, change, or alter the requirement that Change Orders, Field Changes, Work Authorizations and Change Directives must be in writing signed by the City and/or Contractor, and that written Change Orders are the exclusive methods for effecting any change to the Agreement Price or Agreement Time. Contractor understands and agrees that the Agreement Price and Agreement Time cannot be changed by implication, oral contracts, verbal directives, actions, inactions, course of conduct, or constructive change order. Contractor shall be under no obligation to perform pursuant to an oral

directive to perform work in addition to the Project scope excepting the case of an emergency threatening personal injury or property damage. Contractor acknowledges and agrees that no one in the City's organization has the authority to order changes without a signed writing.

#### **GC-42 WORK AUTHORIZATIONS**

When directed by the City's Representative through a Work Authorization, the Contractor will perform Work that is expressly or generally contemplated under any allowance or contingency items designated by the Agreement Documents, which may include a Change for the addition of Work that does not result in an increase in the overall Agreement Price. Work Authorizations may include Work items that are not necessarily shown in the Agreement Documents, but may be necessary for the successful completion of the Project. The performance of the Work Authorization items must conform to the standards of the Agreement Documents. The funding for Work Authorizations is an allowance only and not a compensable pay item. The City is solely responsible for the appropriation of the funds. The Contractor shall have no claims to such funds. The City will retain ownership of any such funds not used after the completion of Work. The Work shall be assigned and directed by the City's Representative in written form. Measurement, Payment, Invoicing and Pricing of Adjustments for Work Authorizations will be in accordance with the Agreement Documents.

#### **GC-43 OWNERSHIP AND USE OF DOCUMENTS**

All Contract Documents furnished to the Contractor remain the property of the City. The Contract Documents are to be used only with respect to this Project and are not to be used on any other project. All Contract Documents are to be returned to the City upon request at the completion of the Work. The Contractor may maintain a record set of the Contract Documents for its records, but will maintain the confidentiality of the record set, except as required by law. The Contractor can use the Contract Documents for any purposes required for the Project that will not be considered publication in derogation of the common law copyright or other reserved rights of the holder.

Neither Contractor nor any Subcontractor, Sub-Subcontractor, Supplier, vendor or other person or organization performing or furnishing any of the Work under a direct or indirect contract with City acquires any title to or ownership rights in any of the Contract Documents. The Contractor may not reuse the Contract Documents for extensions of the Project or for any other project without written consent of the City.

#### **GC-44 CHANGED CONDITIONS**

Contractor shall notify the Engineer in writing of the following conditions, hereinafter called "changed conditions," promptly upon their discovery and before they are disturbed, in any event no later than seven (7) calendar days after their discovery:

- (1) Subsurface or latent physical conditions at the site of Work differing materially from those indicated in this Agreement; or

- (2) Unknown physical conditions at the site of the Work of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Agreement.

The Engineer shall promptly investigate the conditions, and if he finds that such conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performance of any part of the Work under this Agreement, whether or not changed as a result of such conditions, an equitable adjustment shall be made and the Agreement modified in writing in accordance with the provisions of this Agreement, subject to the provisions regarding Change Orders, Change Directives, notice and claims procedure and excusable delays. If the Engineer determines that conditions of which he has been notified by Contractor do not justify an adjustment in compensation, he will so advise Contractor in writing. Should Contractor disagree with such determination, it may submit a notice of claim to the Engineer as provided herein and follow the claims procedures of Article GC-41.

In computing any equitable adjustment sought by Contractor, the actual costs incurred by Contractor, computed in accordance with the Force Account provisions for changes shall be the standard for determining Contractor's entitlement. Provided, however, that if the City shows that conditions encountered by Contractor on the Project were more favorable and less costly than what Contractor reasonably should have expected to encounter, the net effect on Contractor from both the favorable and unfavorable conditions shall be considered in determining the amount of any equitable adjustment.

**GC-45 INTENTIONALLY OMITTED**

**GC-46 INTENTIONALLY OMITTED**

**GC-47 INTENTIONALLY OMITTED**

**GC-48 INTENTIONALLY OMITTED**

**GC-49 MEASUREMENT AND PAYMENT**

**GC-49.1 Measurement**

All items of Work to be paid for at Agreement Prices per unit of measurement will be measured or certified by the Engineer.

**GC-49.2 Payment at Agreement Prices**

The Agreement prices for items of Work shall include full compensation for all costs of items, including the costs for any Work, Materials and Equipment incidental to the items but not specifically shown or described in the Drawings and Specifications, subject only to such express limitations as may be stated in the Specifications defining the items or prescribing payment thereof.

## **GC-50 HISTORICAL, SCIENTIFIC, AND ARCHEOLOGICAL DISCOVERIES**

All articles of historical or scientific value, including, but not limited to, coins, fossils, articles of antiquity, which may be uncovered by Contractor during process of Work, shall become the property of City. Such findings shall be reported immediately to the Engineer who will determine the further operations of Contractor, the method of removal, where necessary, and the final disposition thereof.

## **GC-51 SEPARATE AGREEMENTS**

### **GC-51.1 Separate Contractors**

The City reserves the right to award other Agreements in connection with this Project. Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate its Work with theirs. If the proper execution of any part of Contractor's Work depends upon the work of another contractor, Contractor shall inspect and promptly report to the Engineer any defects in such work that render it unsuitable for such proper execution and results.

### **GC-51.2 Cooperation**

The City may perform additional work related to the Project by itself, or it may let other contracts containing provisions similar to these. Contractor shall afford the other contractors who are parties to such contracts and/or the City, if it is performing the additional work itself, reasonable opportunity for the introduction and storage of materials and equipment and the execution of work and shall properly connect and coordinate its work with theirs.

### **GC-51.3 Review of Separate Contractor's Work**

If any part of Contractor's Work depends for proper execution or results upon the work of the City or any separate contractor, Contractor shall, prior to proceeding with the Work, promptly report to the Engineer any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of Contractor so to report shall constitute an acceptance of the City's or separate contractor's work as fit and proper to receive the work, except as to defects which may subsequently become apparent in such work by others.



#### GC-51.4 Notice to Contractor

If the performance of additional work by other contractors of the City is not noted in the Agreement Documents prior to the execution of the Agreement, Written Notice thereof shall be given to Contractor prior to starting any such additional work.

#### GC-51.5 Damage to Separate Contractor

Should Contractor wrongfully delay, impact, or cause damage to the work or property of any separate contractor, Contractor shall, upon due notice, promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the City or the Engineer on account of any delay or damage alleged to have been caused by Contractor, the City shall notify Contractor, who shall defend such proceedings at Contractor's expense, and if any judgment or award against the City or the Engineer arises therefrom, Contractor shall pay or satisfy it and shall reimburse the City for all costs and expenses, including without limitation, attorneys' fees, expert fees, consultant fees, court costs, and litigation or arbitration fees or expenses that the City has incurred.

#### GC-51.6 City's Right to Clean Up

If a dispute arises between Contractor and separate contractors as to their responsibility for cleaning up or for accomplishing coordination, the City may clean up and carry out such work and charge the cost thereof to Contractors responsible therefor as the Engineer shall determine to be just.

### **GC-52 OFFICIAL NOT TO BENEFIT**

No officer or employee of the City shall be permitted to participate in the performance of this Agreement or receive any benefit or compensation arising out of the performance of such Agreement, and any Agreement entered into by the City in which any officer or employee of the City shall be personally interested shall be void, and no payment shall be made thereon by the City or any officer thereof; but this provision shall not be construed to extend to the Agreement if made with a corporation for its general benefit.

A bribe or attempt to bribe any representative or officer of City by Contractor shall be considered as a breach of the Agreement in bad faith, and shall thus empower City to complete Work and deduct the entire cost thereof from any monies due or to become due Contractor under the Agreement.

### **GC-53 GRATUITIES AND KICKBACKS**

The Contractor's Contract may be terminated in accordance with the Clause titled "TERMINATION FOR DEFAULT" if, after notice and hearing, the City determines that the Contractor, its agent, or another representative offered or gave a gratuity or kick-back to an

officer, official, or employee of the City and intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

The rights and remedies of the City provided in this Clause are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

The Contractor warrants that: (1) it has not employed nor retained any company or person, other than a bona fide employee working for the Contractor, to solicit or secure the contract; and that the Contractor has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for the Contractor, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of the contract. After Notice and hearing and upon a finding in contradictions to this Paragraph constituting a breach or violation of the above warranty, the City has the right to terminate the contract or take other appropriate actions.

**GC-54 PRECONSTRUCTION CONFERENCE**

Within twenty (20) days after delivery of the executed agreement by City to Contractor, but before issuance of Notice to Proceed, a conference will be held to review progress schedules, to review the insurance and safety program, to establish procedures for handling Shop Drawings and other submittals and for processing progress payments, and to establish a Working understanding between the parties as to the Project.

Contractor shall submit to the City for approval, prior to the preconstruction conference, a preliminary schedule of Shop Drawing submittals, and certification of insurance as required by Appendix B.

**GC-55 TIME OF COMPLETION AND LIQUIDATED DAMAGES**

GC-55.1 Liquidated Damages

It is understood and agreed that the City will sustain substantial monetary and other injury and damages, including, but not limited to, increased costs, expenses and liabilities in the event of failure by Contractor to perform its Work in accordance with the Completion and any Interim Milestone Date(s) set forth in the CPM Schedule prepared in accordance with the Special Conditions. Accordingly, should Contractor not complete the Work, or any such portion thereof, within the date(s) required by the CPM Schedule initially approved by the Engineer, as they may be adjusted pursuant to the Agreement Documents, then charges shall be assessed against any money due or that may become due Contractor in accordance with the following schedule:

For Each day of delay in Substantial Completion of the entire Work:           \$\_\_\_\_\_/ day

For Each day of delay in Final Completion of the entire Work:           \$\_\_\_\_\_/ day

The amount of such charges is hereby agreed upon as fixed liquidated damages due the City after the expiration of the Agreement Date(s) for completion specified in the CPM Schedule for the

Work or portions thereof. Contractor and its surety shall be liable for any liquidated damages in excess of the amount due Contractor on the Final Payment.

If the CPM Schedule projects an untimely completion with unexcused delay and the City in good faith believes that retainage will be insufficient to cover the City's damages, Contractor agrees that the City may withhold additional funds to assure the payment of the liquidated damages owed by Contractor.

#### GC-55.2 No Penalty

The fixed liquidated damages are not established as a penalty but are calculated and agreed upon in advance by the City and Contractor due to the uncertainty and impossibility of making a determination as to the actual direct, incidental and consequential damages which are incurred by the City as a result of the failure on the part of Contractor to complete the Work within the Agreement Time and completion date(s) specified in the Agreement Documents. Liquidated damages shall start in accordance with the above schedule upon notification to Contractor in writing that all apparent Agreement Time allowed to achieve the relevant completion date has been consumed. Liquidated Damages as they accrue will be deducted from periodic partial payments to the extent they are sufficient to cover the liquidated damages owing; provided that any excess liquidated damages owing over the periodic partial payment amount may be deducted from retainage. Such deduction shall be in addition to the retainage provided for in the Agreement Documents. The remaining amount of liquidated damages owing upon completion will be deducted from any amounts owing as Final Payment to Contractor or its surety. Any excess amount owing as liquidated damages shall be paid upon demand.

#### **GC-56 RIGHT TO AUDIT**

Contractor shall keep and maintain accurate books and records, and supporting data, documentation, correspondence, reports, instructions, Drawings, receipts, vouchers, and memoranda regarding performance of Work hereunder and including specifically, but without limitation, such information as estimates (pre and post Bid), costs incurred, labor and Materials consumed, schedules and progress records and quality control. Such books and records shall be available for inspection, audit, and copying by the City or its authorized representative for any purpose during the Work and for a period of three (3) years after Final Payment.

#### **GC-57 DISPUTES**

##### GC-57.1 Mediation

In the event of any controversy, claim, dispute or other matter in question arising out of or relating to this Agreement of the breach thereof or otherwise in connection with the Project to which this Agreement pertains, at the City's sole and exclusive option the parties shall, if the City so elects and as an express condition precedent to any party to this Agreement commencing legal action against the other relating to or arising out of the dispute, mediate the dispute utilizing a mutually agreeable mediator. Prior to commencing any legal action against the City,

Contractor must either mediate the dispute, at the City's election, or obtain a written waiver from the City of its right to mediate.

GC-57.2 Arbitration at the City's Election

At the Owner's sole election, any Claim arising out of or related to the Agreement shall be subject either to binding arbitration or litigation at the City's option. Prior to arbitration or litigation, the parties shall endeavor to resolve Claims or disputes in accordance with the terms of this Contract.

GC-57.2.1

If Claims are not resolved by negotiation, mediation, or otherwise, and the Owner elects arbitration, the arbitration shall be held in Atlanta, Georgia and shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently then in effect or such other similar rules and organization as the Owner may elect. The demand for arbitration shall be in writing and filed with the appropriate organization selected by the Owner and shall be served on the other party to the Contract. The agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof. In any arbitration or litigation, the arbitrators or the Court shall have the jurisdiction to award the City costs, arbitrator fees, expert fees, and attorneys' fees, and the arbitrators or the Court shall award all such fees to the City if it is the prevailing party.

GC-57.2.2

Except at Owner's sole discretion and with its consent, no arbitration arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, any other person or entity, including but not limited to the Designer and its employees and consultants, any of Contractor's subcontractors and suppliers, and any other separate contractors or suppliers. The Owner's consent or election to allow consolidation or joinder or shall not constitute consent to arbitration of any claim not subject to arbitration pursuant to this Contract.

GC-57.2.3

Any award rendered by an arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

GC-57.3 Litigation If Arbitration Not Elected

If the Owner does not elect arbitration, any Claims shall be resolved in Fulton County, Georgia Superior Court. Contractor hereby submits to jurisdiction and venue in Fulton County, Georgia, and waives all defenses based on a lack of jurisdiction and/or venue. Contractor acknowledges that this Agreement was negotiated, at least in part, in Fulton County, Georgia. In any arbitration or litigation, the arbitrators or the Court shall have the jurisdiction to award the City costs, arbitrator fees, expert fees, and attorneys' fees, and the arbitrators or the Court shall award all such fees to the City if it is the prevailing party.

## **GC-58 AGREEMENT ADMINISTRATION DOCUMENTS**

A substantial number of documents will be required for the administration of the Agreement. Some of these documents are identified in this document and elsewhere in the Agreement Documents (such as the Payment and Performance Bond forms) and others may not be. The Engineer shall have full power and authority to designate and prepare the documents to be used and Contractor and all Subcontractors and Material Suppliers shall utilize the documents so prepared and provided to them by the Engineer and shall follow the instructions of the Engineer with respect thereto in all regards save and excepting only those documents, if any, which Contractor reasonably determines contain terms or requirements contrary to or in addition to and not reasonably inferable from the terms of the Agreement Documents. If Contractor believes that any form or other document provided by the Engineer under the authority of this Section is subject to rejection by Contractor under the terms hereof, it shall notify the Engineer thereof within ten (10) days following its first receipt of the particular document or form giving specific reasons why the document or form is entitled to rejection. Thereafter, the form or document will be withdrawn, amended, or utilized as the Engineer finds in good faith to be appropriate after reviewing the notice provided by Contractor. All agreement administration documents may be revised at any time by the Engineer.

## **GC-59 MISCELLANEOUS PROVISIONS**

### **GC-59.1 Governing Law**

The Agreement shall be governed by the law of the State of Georgia.

### **GC-59.2 Contingent Assignment**

Effective as of any termination of the Agreement, Contractor hereby assigns to City all of Contractor's interest in those subcontracts and purchase orders entered into by Contractor prior to termination if the City specifically requests such an assignment by Written Notice. All Subcontractors and Purchase Orders shall provide that they are freely assignable by Contractor to the City and its assigns. City shall be at liberty to negotiate with and engage (for itself) any Subcontractors, Suppliers, or others that Contractor dealt with prior to termination.

### **GC-59.3 Rights and Remedies**

#### **GC-59.3.1**

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

### GC-59.3.2

No action or failure to act or to require in any one or more instances upon the strict performance of any one or more of the provisions of the Agreement Documents, or to exercise any right herein contained or provided by law by the City or the Engineer, shall constitute a waiver of any right or duty afforded any of them under the Agreement Documents, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach hereunder, nor shall it be construed as a waiver of the right to subsequently demand strict performance or exercise such rights, and the rights shall continue unchanged and remain in full force and effect, except as may be specifically agreed in writing.

### GC-59.3.3

Contractor agrees that it can be adequately compensated by money damages for any breach of this Agreement which may be committed by the City and hereby agrees that no default, act, or omission of the City, or the Engineer, shall constitute a material breach of the Agreement entitling Contractor to cancel or rescind the provisions of this Agreement or (unless the City shall so consent or direct in writing) to suspend or abandon performance of all or any part of the Work. Contractor hereby waives any and all rights and remedies to which it may otherwise be or become entitled, save only its right to money damages.

### GC-59.4 Unenforceability of any Article

If any Article or term of the Agreement Documents is held as a matter of law to be unenforceable or unconscionable, the remainder of the Agreement shall be enforceable without such clause or term, and only the narrowest possible portion of the clause or term that is allowed by law shall be unenforceable.

### GC-59.5 Obligation to Perform

Contractor shall carry on the Work and adhere to the approved current CPM Schedule during and notwithstanding all disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Contractor and City may otherwise agree in writing.

### GC-59.6 Labor Relations

Work on the Project may be performed by both union and nonunion separate contractors, Subcontractors, Suppliers, and other entities and persons. In the event of any strike, picket, sympathy strike, work stoppage, or other form of labor dispute at the Project whether directed at Contractor, other separate contractors, Subcontractors, Suppliers or other persons, Contractor shall continue to perform its Work required hereby without interruption or delay. In the event Contractor fails to continue its Work without interruption or delay, because of any or such events, the City, in addition to all other rights it has in the Agreement Documents and at law, may terminate the Agreement after giving Contractor forty-eight (48) hours written notice of its intent to do so for reason of Contractor's failure to perform. Additionally, if Contractor is party

to one or more labor agreement, Contractor shall take all reasonable action to avoid any Work stoppage, and in the event of a work stoppage, Contractor shall within twenty-four (24) hours take all legal action permitted by such labor agreements or by law in order to expedite resumption of Work on this Project.

#### GC-59.7 Covenant Not to Sue

Should the City elect to terminate the employment of Contractor for default as provided herein, then Contractor covenants that it will not file any suit or proceeding of any kind against the City by reason thereof until the City shall have either abandoned the Project or completed the Work as defined under the Agreement Documents. If Contractor should breach this “Covenant Not To Sue,” then Contractor shall be liable to the City for all costs resulting to the City therefrom, including, without limitation, all attorneys' fees expended by the City in defending said suit or proceeding, unless a positive determination is made therein that Contractor's termination by the City was motivated by fraud and bad faith and was without justification of any kind.

#### GC-59.8 Publicity and Advertising

The Contractor will not make any announcement, take any photographs, or release any information concerning the Work, this Contract, or the Project to any member of the public, press, business entity, or any official body, unless prior written consent is obtained from the City's Representative. The Contractor may not erect any signs without the written approval of the City's Representative.

### **GC-60 STATEMENT OF NON-DISCRIMINATION**

During the performance of this Agreement, Contractor agrees to comply with all provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1414 of the Code of Ordinances, City of Atlanta, as may be hereafter amended.

### **GC-61 EQUAL BUSINESS OPPORTUNITY (EBO)**

During the performance of this Agreement, Contractor agrees to comply with all provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1441 through 2-1460 of the Code of Ordinances of the City of Atlanta, the Equal Business Opportunity (“EBO”) Program as may be hereafter amended.

### **GC-62 WAGE RATES AND REPORTING PROCEDURES**

#### GC-62.1 Certified Payrolls

Contractor shall maintain accurate payroll records and be prepared to submit certified copies for the prime contractor and all subcontractors. Payrolls reporting an employee for the first time must contain the complete name, address, and social security of the employee.

GC-62.2 Submittals

All required payrolls shall be submitted to the Office of Contract Compliance. Any questions concerning these submittals can be addressed:

Office of Contract Compliance  
68 Mitchell Street SW, Suite 5100  
Atlanta, Georgia 30303  
(404) 330-6010

GC-62.3 [Intentionally Omitted]