

HARTSFIELD-JACKSON ATLANTA INTERNATIONAL AIRPORT  
EXHIBIT "A" GENERAL CONDITIONS  
IFB-C-1200348; SOUTH DEICING COMPLEX RAMP

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## GC-01 DEFINITIONS

**Airport** means Hartsfield-Jackson Atlanta International Airport.

**Award** means when legislation authorizing the award of the contract has been adopted by the council and approved by the mayor, provided, however, that the contract will not become binding upon the city and the city will incur no liability under it until it has been duly executed by the contractor, returned to the city with all required submittals, including insurance and bonding, if applicable, executed by the mayor, attested to by the municipal clerk, approved by the city attorney as to form and delivered to the contractor.

**Beneficial Occupancy** means the stage of construction before Substantial Completion or Final Acceptance, at which the CITY does occupy the building, structure or facility, or a portion thereof, for the purpose it was constructed.

**Bid Guaranty** means the security furnished with a Bid to guarantee that the Bidder will enter into a contract if his/her bid is accepted by the CITY.

**Bidder** means any individual, partnership, firm, or corporation, acting directly or through a duly authorized representative, who submits a Bid for the work contemplated.

**Bi-Lateral Change Order** means a written alteration in specification, delivery point, time and rate of delivery, period of performance, price, quantity or other provisions of the Contract accomplished by mutual action of the parties to the Contract and executed by both the CITY and CONTRACTOR.”

**Calendar Day** means every day shown on the calendar.

**Change Order** (*unilateral*) means a written order signed and unilaterally issued by the chief procurement officer or other authorized individual, directing the contractor to make changes that the Changes Clause of the contract authorizes without the consent of the contractor.

**CITY/OWNER/SPONSOR** means the CITY of Atlanta and its designated representatives, employees and successors in interest.

**Construction Manager** (CM) means the team retained by the CITY to assist in the management of construction projects. The CM will represent the ENGINEER.

**Contract Documents** means the Form of Contract, Exhibits A through I and all Attachments, Appendices and other documents referenced therein is signed by both CITY and Contractor.

**CONTRACTOR** means any person having a contract with the city.

**Contractor’s Representative** means the Contractor’s executive representative who is present on the work during progress, authorized to receive and fulfill instructions from the ENGINEER, and who shall supervise and direct the construction.

**DOA** means the CITY of Atlanta’s Department of Aviation.

**ENGINEER** means the Aviation Assistant General Manager – Planning and Development, an employee of the CITY of Atlanta Department of Aviation, and any of his designated representatives acting in their professional capacity.

**Equipment** means all machinery, together with the necessary supplies for upkeep and maintenance, and also all tools and apparatus necessary for the proper construction and acceptable completion of the work.

**FAA** means Federal Aviation Administration of the U.S. Department of Transportation. When used to designate a person, FAA shall mean the Administrator or his/her duly authorized representative.

**Federal Specifications** means Federal Specifications and Standards, and supplements, amendments and indices thereto which are prepared and issued by the General Services Administration of the Federal Government.

**Final Acceptance** means the CONTRACTOR has completed all Work included in the contract and a Final Acceptance letter has been issued by the ENGINEER indicating all requirements on the Final Acceptance Checklist are satisfied and all punchlist items are complete.

**Firm** means any individual, partnership, corporation, association, joint venture or other legal entity permitted by law to practice or offer professional or consultant services.

**FIS** means Federal Inspection Services.

**H-JAIA** means Hartsfield-Jackson Atlanta International Airport.

**Inspector** means an authorized representative of the ENGINEER assigned to make all necessary inspections and/or tests of the work performed or being performed, or of the materials furnished or being furnished by the CONTRACTOR.

**Installer** means the CONTRACTOR or another entity engaged by the CONTRACTOR, either as an employee, subcontractor or specialty contractor, to perform a particular construction activity, including installation, erection, application and similar operations. Installers are required to be experienced in the construction operations they are engaged to perform.

**Invitation for Bids** means all documents, whether attached or incorporated by reference, utilized for soliciting sealed Bids. No confidential or proprietary data shall be solicited in any invitation for Bids.

**ISO** means International Standards Organization.

**Jobsite** means the Hartsfield-Jackson Atlanta International Airport, Clayton County, Georgia, at which location construction activity shall be performed under this Contract.

**Laboratory** means official testing laboratories of the Owner or such other laboratories as may be designated by the ENGINEER.

**Lump Sum Price** means the full payment for performance of the work and covers all costs of whatever nature incurred by CONTRACTOR in accomplishing the Work in accordance with the provisions of the Contract.

**Materials** means any substance specified for use in the construction of the Contract work.

**Notice to Proceed** means a written notice from the CITY to the CONTRACTOR to begin the actual contract work.

**OSHA** means Occupational Safety and Health Administration. OSHA's mission is to prevent work-related injuries, illnesses, and deaths.

**Payment Bond** means a bond with good and sufficient surety or sureties payable to the governmental entity for which the work is to be done and intended for the use and protection of all Subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the Work provided for in the Public Works Construction Contract.

**Performance Bond** means a bond with good and sufficient surety or sureties for the faithful performance of the Contract and to indemnify the governmental entity for any damages occasioned by a failure to perform the same within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of the governmental entity for which the Work is to be done.

**Plans** means the official drawings or exact reproductions which show the location, character, dimensions and details of the airport and the Work to be done and which are to be considered as a part of the contract, supplementary to the specifications.

**Project Manager (PM)** means the designated representative in charge to coordinate, schedule, and monitor the progress of construction activities.

**Project** means the Hartsfield-Jackson Atlanta International Airport Project located at the jobsite for which the Work under this Contract is being performed.

**Service** means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance.

**Specifications** mean a part of the Contract containing the written directions and requirements for completing the Contract Work. Standards for specifying materials or testing which are cited in the Contract specifications by reference shall have the same force and effect as if incorporated into the Contract.

**Substantial Completion** means the Project, or a specified portion thereof, shall be deemed Substantially Completed or having achieved Substantial Completion when (a) the Work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Project, or a specified portion thereof, for its intended use, and (b) the Contractor has obtained on behalf of the Owner for the Project or specified portion thereof, all necessary permits and regulatory approvals necessary for the Owner to occupy and begin use or operation and (c) the Owner accepts the Project, or specified portion thereof, as being at Substantial Completion and issues a Notice of Substantial Completion.

**Total Contract Price** means the Contract value which is the sum of the product of all Contract Line Items extended as shown in Exhibit "C" titled "QUANTITIES, PRICING, AND DATA."

**Utility System** means any system at least five (5) feet underground, when installed or accessed by trenching, open cut, cut and cover, or other similar construction methods which install or access the system from the ground surface, including, but not limited to, gas distribution systems, electrical distribution systems, communication systems, water supply systems, sanitary sewerage and drainage systems, reservoirs and filtration plants, water and waste-water treatment plants, and pump stations, when the system distributes or collects a service, product, or commodity for which a fee or price is paid for said service, product, or commodity.

**Work** means the furnishing of all labor, materials, tools, equipment, and incidentals necessary or convenient to the CONTRACTOR's performance of all duties and obligations imposed by the contract, plans, and specifications.

## **GC-02 CONTRACTORS' OBLIGATIONS**

CONTRACTOR represents that it is fully experienced, properly qualified, registered, licensed, equipped, organized, and financed to perform the Work under this Contract.

**2.1** Subject to the provisions of this Agreement, CONTRACTOR hereby undertakes to cause and obtain the:

**2.1.1** Permitting, construction, and commissioning of the Work in accordance with the Construction Documents,

**2.1.2** To cause Substantial Completion of the same to occur on or before the Scheduled Completion Date, as the same may be extended pursuant to the provisions of this Contract, and

**2.1.3** To equip the Project in accordance with the Contract Documents. Provided that CITY shall be in compliance with its payment obligations hereunder, all costs, expenses and expenditures in connection with the permitting, construction, and commissioning of the Work, including, without limitation, the amounts owing to the, Subcontractors and Suppliers for supervision, transportation, labor, materials or Permits or other matters in connection with the Work, shall be paid by CONTRACTOR.

**2.2** CONTRACTOR shall manage, direct and cause the permitting, construction, commissioning and equipping of the Work, and shall coordinate the activities of all Subcontractors and Suppliers involved therein. CONTRACTOR shall meet with Persons providing construction Work on a regular and frequent basis and as specifically provided herein in order to assure the performance of the Work in accordance with the terms of this Agreement. To the extent CONTRACTOR has, obtains, or retains rights under any Subcontract pertaining to the Work, CONTRACTOR will exercise such rights in accordance with all approval and consent provisions provided to CITY in this Contract. CONTRACTOR shall ensure that all warranties provided by the Subcontractors are consistent with the terms of this Contract.

**2.3** CONTRACTOR shall provide all labor, materials, equipment and all services required to implement the scope defined by the Contract Documents, as approved by CITY.

**2.4** CONTRACTOR shall be responsible for the professional quality, technical accuracy, and other non-construction services furnished by the CONTRACTOR under this Contract. The CONTRACTOR shall, without additional compensation, correct or revise any errors in construction and other non-construction services and perform any necessary rework or modifications including any damage to real personal property for Work performed by the CONTRACTOR, its Subcontractors and its Suppliers, under this Contract.

**2.5 Independent CONTRACTOR.** CONTRACTOR shall act as an independent CONTRACTOR and not as the agent of CITY in performing this Contract, maintaining complete control over its employees and all of its Subcontractors. Nothing contained in this Contract or any Subcontract awarded by CONTRACTOR shall create any contractual relationship between any Subcontractor and CITY. CONTRACTOR shall perform the Work hereunder in accordance with its own methods subject to compliance with this Contract.

### **GC-03 DESIGNATED REPRESENTATIVES**

**3.1 Designation of ENGINEER.** CITY hereby designates the Assistant Aviation General Manager, Planning and Development, a full-time employee of the Department of Aviation, as ENGINEER for this Contract. The ENGINEER shall carry out the CITY's duties specified in this Contract, or necessarily to be implied from this Contract.

**3.2 ENGINEER's Representative.** ENGINEER may appoint a representative who shall carry out such duties and exercise such authority as may be delegated to him. Any communication given by ENGINEER's representative shall have the same effect as though it had been given by CITY; provided that any failure of ENGINEER to disapprove or reject any work shall not prejudice the authority of ENGINEER to disapprove such work or to give instructions for the recertification of defects.

**3.3 ENGINEER's Discretion.** Whenever, under this Contract, ENGINEER is required to exercise his discretion by giving a decision, opinion, or consent; by expressing his satisfaction or approval; or by determining values, he shall exercise such discretion reasonably, fairly, and impartially within the terms of this Contract.

**3.4 CONTRACTOR's representative.** Before starting work, CONTRACTOR shall designate, in writing, an authorized representative acceptable to ENGINEER to represent and act for CONTRACTOR and shall specify any and all limitations of such representative's authority. Such representative shall be present or be represented at the Jobsite at all times when Work is in progress; shall, together with other appropriate CONTRACTOR personnel, be available for meetings as required by ENGINEER; shall be empowered to receive communications in accordance with this Contract on behalf of CONTRACTOR. During periods when the Work is suspended, arrangements shall be made for an authorized representative acceptable to ENGINEER to be available for any emergency work that may be required. All communications given to the authorized representative by ENGINEER or by a designated representative, in accordance with this Contract shall be binding upon CONTRACTOR.

**3.5 Notification of Changes in Representatives.** Notification of changes of authorized representatives for either CITY or CONTRACTOR shall be provided in advance, in writing, to the other party.

#### **GC-04 NOTICES**

**4.1 Delivery.** All notices, demands, consents, approvals and requests given by either party to the other under this Contract shall be in writing and may be delivered by (i) regular mail, postage prepaid; (ii) certified or registered mail; (iii) facsimile; or (iv) hand-delivery, to the parties at the addresses and facsimile numbers set forth in the Clause titled "ADDRESSES."

**4.2 Receipt.** Notices sent by mail shall be deemed to be received upon deposit in the mail, properly addressed. Notices sent by certified or registered mail shall be deemed to be received upon acknowledgement. Notices sent by facsimile shall be deemed to be received upon successful transmission to the proper facsimile number. Notices delivered by hand-delivery shall be deemed to be received upon acceptance by the respective party or its agent.

**4.3 Change of Address or Facsimile Number.** Either party may, at any time, change its respective address or facsimile number by sending written notice to the other party of the change by registered or certified mail, postage prepaid, to the respective addresses set forth in this clause.

#### **GC-05 CONTRACT INTERPRETATION**

All questions concerning interpretation or clarification of this Contract or applicable standards and codes, including the discovery of conflicts, discrepancies, errors or omissions, or the acceptable performance thereof by CONTRACTOR, shall be immediately submitted in writing to ENGINEER for resolution. Subject to the provisions of the Clause titled "CHANGE DOCUMENTS", all determinations, instructions, and clarifications of ENGINEER shall be final and conclusive unless determined to have been fraudulent or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. At all times CONTRACTOR shall proceed with the Work in accordance with the determinations, instructions, and clarifications of ENGINEER. CONTRACTOR shall be solely responsible for requesting instructions or interpretations and shall be solely liable for any costs and expenses arising from its failure to do so.

#### **GC-06 ORDER OF PRECEDENCE**

**6.1 Precedence of Contract Documents.** All Contract Documents, and subsequently formally executed Addendums, Amendments or Modifications to the Contract Documents, are essential parts of this Contract and a requirement or provision contained in one is binding as though contained in all. In resolving conflicts, discrepancies, errors or omissions, including, but not limited to, interpretations pursuant to the Clause titled "CONTRACT INTERPRETATION", the following order of precedence will be used:

**6.1.1** Change Order(s);

**6.1.2** Legislation;



- 6.1.3 Agreement;
- 6.1.4 Exhibit A, Construction Contract General Conditions;
- 6.1.5 Exhibit B, Construction Contract Special Conditions;
- 6.1.6 Appendix B, Insurance and Bonding/Construction Safety and Health Plan;
- 6.1.7 Exhibit F, Airport Security Requirements;
- 6.1.8 Exhibit G, Schedule Requirements;
- 6.1.9 Exhibit H, Quality Control Program;
- 6.1.10 Exhibit D, Technical Specifications;
- 6.1.11 Exhibit E, Contract Drawings;
- 6.1.12 CONTRACTOR Submittals.

**6.2 Interpretation Not Affected.** The organization of this Contract into articles, sections, paragraphs, and subparagraphs, the Table of Contents and the insertion of headings and subheadings are for convenience and reference only and shall not modify or affect the meaning, interpretation, construction, or effect of this Contract nor the rights, obligations, and liabilities of the parties.

## **GC-07 STANDARDS AND CODES**

Wherever references are made in this Contract to standards or codes in accordance with which the Work under this Contract is to be performed, the edition or revision of the standards or codes current on the effective date of this Contract shall apply unless otherwise expressly stated. In case of conflict between any referenced standards and codes and any Contract Documents, the law and the code shall prevail over Contract Documents.

## **GC-08 LAWS AND REGULATIONS**

**8.1 Compliance with Applicable Law.** CONTRACTOR must comply with all applicable federal, state, or local statutes, laws, ordinances, codes, rules, regulations, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, permits, licenses or other governmental requirements of any kind, then in effect or which come into effect during the Work being performed, and any present or future amendments to those Governmental Requirements, which specifically relate to (i) the business of the CITY; (ii) the business of the CONTRACTOR or the CONTRACTOR's Subcontractors; (iii) the Contract and the Contract Documents; (iv) the performance of the Work under this Contract by the CONTRACTOR and its Subcontractors; (v) the Airport; (vi) the Transportation Security Administration (TSA) and Federal Aviation administration (FAA) security requirements; or (vii) any other matters relating to this Contract.

**8.2 Applicable Law.** This Contract shall be governed by and interpreted under the laws of the State of Georgia. The parties fix venue and jurisdiction for any actions brought in connection with this Contract in Fulton County, Georgia.

**8.3 Jurisdiction and Venue.** The parties submit and consent to the exclusive jurisdiction of the state courts of Fulton County, Georgia or the United States District Court for the Northern District of Georgia and irrevocably agree that all actions or proceedings relating to this Agreement will be litigated in such courts and each of the Parties waives any objection which it may have based on improper venue or forum non conveniens to the conduct of any such action or proceeding in such courts.

**8.4 Equitable Remedies.** The Parties agree that, notwithstanding the provisions of “Dispute Resolution”, due to the unique nature of either Party’s Confidential Information, there may not be an adequate remedy at law for a breach of the Section titled “Confidential Information”, which breach may result in irreparable harm to the non-disclosing Party. Accordingly, in such instance, the non-breaching Party will be entitled to appropriate equitable relief in addition to whatever remedies it might have at law.

**8.5 Notice of Inconsistencies.** If CONTRACTOR discovers any discrepancy or inconsistency between this Contract and any law, ordinance, statute, rule, regulation, order or decree, CONTRACTOR shall report the same immediately, in writing, to ENGINEER.

**8.6 Utility Contractor Licensing Requirements.** CONTRACTOR shall comply with the requirements of O.C.G.A. § 43-14-8.2 (b).

**8.7 Sec.2-1295 – Copyrights and Rights in Data.** Under this article, if a contract is being funded by the city, the contract shall include a provision giving the CONTRACTOR notice that the city shall have the right to any plans, drawings, specifications, computer programs, technical reports, operating manuals and similar work products developed and paid for under the contract.

**8.8 Confidential Information.**

**8.8.1 General.** Each Party agrees to preserve as strictly confidential all Confidential Information of the other Party for two (2) years following the expiration or termination of this Agreement; provided, however, that each Party’s obligations for the other Party’s Confidential Information that constitutes trade secrets pursuant to Applicable Law will continue for so long as such Confidential Information continues to constitute a trade secret under Applicable Law. Any Confidential Information that may be deemed Sensitive Security Information by the Department of Homeland Security or any other similar Confidential Information related to security will be considered trade secrets. Upon request by City, CONTRACTOR will return any trade secrets to City. Each Party agrees to hold the Confidential Information of the other in trust and confidence and will not disclose it to any Person, or use it (directly or indirectly) for its own benefit or the benefit of any other Person other than in the performance of its obligations under this Agreement.

**8.8.2 Disclosure of Confidential Information or Information Other Party Deems to be Confidential Information.** Each Party will be entitled to disclose any Confidential Information if compelled to do so pursuant to: (i) a subpoena; (ii) judicial or administrative order; or (iii) any other requirement imposed upon it by Applicable Law. Prior to making such a disclosure, to the extent allowed pursuant to Applicable Law, each Party must provide the other with thirty six (36) hours prior notice by facsimile of its intent to disclose, describing the content of the information to be disclosed and providing a copy of the pleading, instrument, document, communication or other written item compelling disclosure or, if not in writing, a detailed description of the nature of the communication compelling disclosure with the name, address, phone number and facsimile number of the Person requesting disclosure. Should the non-disclosing Party contest the disclosure, it must: a) seek a protective order preventing such disclosure; or b) intervene in such action compelling disclosure, as appropriate. This Section will be applicable to information that one Party deems to be Confidential Information but the other Party does not.

**8.9 Work Product.**

**8.9.1** Except as otherwise expressly provided in this Agreement, all reports, information, data, specifications, computer programs, technical reports, operating manuals and similar Work or other documents, all deliverables and other Work Product prepared or authored by CONTRACTOR or any of its Subcontractors exclusively for City under this Contract and all intellectual property rights associated with the foregoing items (collectively, the "Work Product") will be and remain the sole and exclusive property of City. Any of CONTRACTOR's or its Subcontractors' works of authorship comprised within the Work Product (whether created alone or in concert with City or Third Party) will be deemed to be "works made for hire" and made in the course of Work rendered and, whether pursuant to the provisions of Section 101 of the U.S. Copyright Act or other Applicable Law, such Work Product will belong exclusively to City. CONTRACTOR and its Subcontractors grant City a non-exclusive, perpetual, worldwide, fully paid up, royalty free license to all Work Product not exclusively developed for City under this Agreement.

**8.9.2** If any of the Work Product is determined not to be a work made for hire, CONTRACTOR assigns to City, worldwide and in perpetuity, all rights, including proprietary rights, copyrights and related rights and all extensions and renewals of those rights, in the Work Product. If CONTRACTOR has any rights to the Work Product that cannot be assigned to City, CONTRACTOR unconditionally and irrevocably waives the enforcement of such rights and irrevocably grants to City during the term of such rights an exclusive, irrevocable, perpetual, transferable, worldwide, fully paid and royalty-free license, with rights to sublicense through multiple levels of sublicensees, to reproduce, make, have made, create derivative works of, distribute, publicly perform and publicly display by all means, now known or later developed, such rights.

**8.9.3** City will have the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name or for its own benefit, all patents, copyrights, applications and registrations, renewals and continuations and all other appropriate protection.

**8.9.4** To the extent exclusive title or complete and exclusive ownership rights in any Work Product created by CONTRACTOR or its Subcontractor(s) may not originally vest in City by operation of Applicable Law, CONTRACTOR and its Subcontractors must, immediately upon

request, unconditionally and irrevocably assign, transfer and convey to City all rights, title and interest in the Work Product.

**8.9.5** Without any additional cost to City, CONTRACTOR and its Subcontractors must promptly give City all reasonable assistance and execute all documents City may reasonably request to enable City to perfect, preserve, enforce, register and record its rights in all Work Product. CONTRACTOR and its Subcontractors irrevocably designate City as agent and attorney-in-fact to execute, deliver and file, if necessary, any documents necessary to give effect to the provisions of this Section and to take all actions necessary, in CONTRACTOR's or its Subcontractor's name, with the same force and effect as if performed by CONTRACTOR or its Subcontractor.

**8.10 Sec.2-1213. Prohibition against contracting with predatory or high cost lenders.**

**8.10.1** The CITY, and those authorized to act on its behalf, shall not enter into any contract with any person or business entity that is a predatory or a high cost lender, or an affiliate thereof, as defined in Code Section 58-102.

**8.10.2** Every CITY contract and purchase order shall contain a provision requiring that the person or business entity with which the CITY is contracting certify, under penalty of perjury, that neither the person, or business entity, nor any of its affiliates is a high cost lender or a predatory lender, as provided by Code Section 58-102. All contractors shall identify a person having authority to sign for the CONTRACTOR who shall certify, in writing, as follows:

I certify, under penalty of perjury, that this offer is made by a person or business entity that is neither a high cost lender nor a predatory lender, nor is the CONTRACTOR an affiliate of a high cost lender or a predatory lender, as defined by City of Atlanta Code Section 58-102. I further certify that I am an agent duly authorized to sign this certification on behalf of the contracting party.

**8.10.3** Any person or business entity that provides a false affidavit shall be subject to any or all of the following penalties:

**8.10.3.1** Withholding of ten percent (10%) of all future payments under the involved contract until it is determined that the person, or business entity, is in compliance with this section.

**8.10.3.2** Withholding of all future payments under the involved contract until it is determined that the person, or business entity, is in compliance with this section.

**8.10.3.3** Cancellation of the involved contract.

**8.10.4** Nothing in this section shall affect the validity of any contract entered into in connection with any debt obligations issued by or on behalf of the CITY, regardless of whether the contract was awarded in compliance with this Clause.

**8.11 Sec.2-1200. Equal employment opportunity Clause**

**8.11.1** During the performance of this agreement, said CONTRACTOR agrees as follows:

**8.11.1.1** The CONTRACTOR shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

**8.11.1.1.1** Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

**8.11.1.1.2** The CONTRACTOR agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

**8.11.2** The CONTRACTOR shall, in all solicitations or advertisements for employees, placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.

**8.11.3** The CONTRACTOR shall send to each labor union or representative of workers with which the CONTRACTOR may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the CONTRACTOR's commitments under the equal employment opportunity program of the City of Atlanta and under the Code of Ordinances and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The CONTRACTOR shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.

**8.11.4** The CONTRACTOR shall furnish all information and reports required by the contract compliance officer pursuant to the Code of Ordinances, and shall permit access to the books, records, and accounts of the CONTRACTOR during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.

**8.11.5** The CONTRACTOR shall take such action with respect to any Subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for noncompliance; provided, however, that in the event the CONTRACTOR becomes involved in or is threatened with litigation as a result of such direction by the city, the city will enter into such litigation as is necessary to protect the interest of the city and to effectuate the equal employment opportunity

program of the city; and, in the case of contracts receiving federal assistance, the CONTRACTOR or the city may request the United States to enter into such litigation to protect the interests of the United States.

**8.11.6** The CONTRACTOR and its Subcontractors, if any, shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the CONTRACTOR and its Subcontractors.

**8.11.7** The CONTRACTOR shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each Subcontractor or vendor.

**8.11.8** A finding, as hereinafter provided, that a refusal by the CONTRACTOR or Subcontractor to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:

**8.11.8.1** Withholding from the CONTRACTOR in violation all future payments under the involved contract until it is determined that the CONTRACTOR or Subcontractor is in compliance with the provisions of the contract;

**8.11.8.2** Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as the CONTRACTOR or Subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code of Ordinances;

**8.11.8.3** Cancellation of the public contract;

**8.11.8.4** In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of CONTRACTORs, Subcontractors or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

## **8.12 Ethics: Gratuities and Kickbacks.**

**8.12.1 Gratuities and Kickbacks.** In accordance with the City of Atlanta's Code of Ordinances, Section 2-1484, as may be amended, it shall be unethical for any person to offer, give or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or

other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore. Additionally, it shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

**8.12.2 Rights and Remedies.** The rights and remedies of CITY provided in this Clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**8.12.3 Contingent Fees.** The CONTRACTOR warrants that it has not employed nor retained any company or person, other than a bona fide employee working for the vendor or CONTRACTOR or firm, to solicit or secure the Contract; and that the vendor or CONTRACTOR or firm has not paid or agreed to pay any person, company, association, corporation, individual, or firm, other than a bona fide employee working for the vendor or CONTRACTOR or firms, any fee, commission, percentage, gift or any other consideration contingent upon or resulting from the award or making of the Contract. For the breach or violation of the above warranty, and upon a finding after notice and hearing, CITY shall have the right to terminate the Contract, and, at its discretion, to deduct from the Contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

**8.12.4 Fraud and misrepresentation.** Any written or oral information provided by [insert as appropriate "Contractor" or Service Provider"], directly or indirectly related to the performance of the services required by this Agreement, constitutes material representations upon which the City relies for the requirements of the Agreement and compliance with local, state and federal laws, rules and regulations. [Contractor] agrees to notify the City immediately of any information provided to the City that it knows and/or believes to be false and/or erroneous and immediately provide correct information to the City and take corrective action. [Contractor] further agrees to notify the City immediately of any actions or information that it believes would constitute fraud or misrepresentation to the City in performance of this Agreement, whether or not such information actually constitutes fraud and/or misrepresentations, by contacting the Integrity Line 1-800-884-0911. [Contractor] agrees to place signage provided by the City regarding the Integrity Line at the location to which [Contractor's] employees report to perform the services required by this Agreement. [Contractor] acknowledges and agrees that a finding of fraud or other impropriety on the part of the [Contractor] or any of its [subcontractors] may result in suspension or debarment of the [Contractor]; and the City may pursue any other actions or remedies that the City may deem appropriate. [Contractor] agrees to include this clause in its [subcontracts] and take appropriate measures to ensure compliance with this provision.

**8.13 Sec. 2-1109 Compliance with Federal Requirements.** When the procurement or real estate transaction involves the expenditure of federal assistance or contract funds, the procurement or real estate transaction shall be conducted in accordance with any applicable mandatory federal law and authorized regulations which are not reflected in this article. Notwithstanding, where federal assistance or contract funds are used in a

procurement or real estate transaction, requirements that are more restrictive than federal requirements shall be followed.

**8.14 Sec. 2-1273 Wage Requirements for Construction Contracts.** Unless otherwise required or if federally assisted, when a construction project exceeds the sum of \$10,000.00, the prevailing wages paid shall correspond as nearly as practicable to the prevailing wages required in the federal Davis Bacon Act. Such scale of wages to be paid shall be posted by the CONTRACTOR in a prominent and easily accessible place at the site of work.

**8.15 Sec. 2-1291 Responsibilities and Rights of Parties to Contract.** CONTRACTOR acknowledges that this contract and any changes to it by amendment, modification, change order or other similar document may have required or may require the legislative authorization of the City's Council and approval of the Mayor. Under Georgia law, CONTRACTOR is deemed to possess knowledge concerning the City's ability to assume contractual obligations and the consequences of CONTRACTOR's provision of goods or services to the City under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the CONTRACTOR may be precluded from recovering payment for such unauthorized goods or services. Accordingly, CONTRACTOR agrees that if it provides goods or services to the City under a contract that has not received proper legislative authorization or if the CONTRACTOR provides goods or services to the City in excess of the any contractually authorized goods or services, as required by the City's Charter and Code, the City may withhold payment for any unauthorized goods or services provided by CONTRACTOR. CONTRACTOR assumes all risk of non-payment for the provision of any unauthorized goods or services to the City, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to the City, however characterized, including, without limitation, all remedies at law or equity.

## **GC-9 PERMITS**

**Responsibility of Permits.** Except as otherwise specified, CONTRACTOR shall procure and pay for all permits, licenses, certifications, and other applicable governing authority requirements and inspections, other than inspections performed by the CITY, and shall furnish any documentations, bonds, security or deposits required to permit performance of the Work.

## **GC-10 TAXES**

CONTRACTOR shall pay all taxes, levies, duties, and assessments of every nature due in connection with the Work under this Contract and shall make any and all payroll deductions and withholdings required by law, and hereby indemnifies and holds harmless the CITY, from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.

## **GC-11 TITLE AND RISK OF LOSS**

**11.1 Title to Goods.** Where Contractor fabricates or purchases equipment, materials or other tangible items (Goods) for incorporation into the Work or any of its separate parts, the title of such Goods shall be vested in CITY when the first of the following events occurs:



**11.1.1** The Goods or part thereof is first identifiable as being appropriated to this Contract,

**11.1.2** When CITY pays for the Goods or part thereof in accordance with this Contract, or

**11.1.3** When the Goods or part thereof are dispatched to or from Contractor's fabrication yard or to the Jobsite.

**11.2 CITY's Right to Reject Goods/Materials.** However such transfer of title in the Goods will be without prejudice to CITY's right to reject the Goods/Materials in case of non-conformity with the requirements of this Contract. Irrespective of transfer of title in the Goods/Materials, CONTRACTOR shall remain responsible for risk of loss or damage to work in progress and all Goods until Final Acceptance. CONTRACTOR shall ensure that the above provisions are imposed upon its suppliers and Subcontractors and shall execute all documents and take all steps necessary to vest title in accordance with this Clause.

**11.3 Title to Bulk Goods.** Title to standard Goods of the type usually bought in bulk such as reinforcement bars, piping materials, non-tagged instruments and instrument installation material, cable and similar items which are not incorporated into the Work shall revert to CONTRACTOR upon agreement by the CITY that such Goods are not required for the Work.

## **GC-12 PERFORMANCE AND PAYMENT BONDS**

**12.1 Bonding Requirements.** CONTRACTOR, at its sole expense, shall maintain in effect at all times during the performance of the Work Performance and Payment Bonds each in an amount with limits not less than those set forth in this article. All Bonds shall be issued in a form and by a Surety acceptable to the CITY and contain the Surety's waiver of notice of all contract changes, including, but not limited to, increase or decrease in scope, value, and schedule acceleration or deceleration. Upon satisfactory completion of all Contract obligations, CITY shall return such securities to Contractor.

**12.1.1** CONTRACTOR shall, at the time of execution of this Contract, furnish CITY a Performance Bond and a Payment Bond for the Work under this Contract, each in an amount equal to one hundred percent (100%) of the Contract value. The person executing the Bonds on behalf of the Surety shall file with the Bonds a general power of attorney as to amount and type of the Bonds covered by such power of attorney, and certified by an official of said Surety.

**12.2 Corporate Surety.** Bonds shall be executed by a corporate Surety (insurance company), which is satisfactory to CITY and meets the following minimum financial security requirements:

**12.2.1** Have a current Best's rating of not less than A-, and current, and;

**12.2.2** Have a Best's financial size category of not less than Class IX, and;

**12.2.3** Be authorized by the Georgia Insurance Commissioner pursuant to a valid and current Certificate of Authority to conduct and transact Surety business in the State of Georgia, and;

**12.2.4** Be a U.S. Treasury Circular 570 listed company.

The Bonds shall be submitted and will be dated by the CITY upon execution of the Contract. The Surety shall appoint an agent for service in Atlanta, Georgia upon whom all notices shall be served. The person executing the Bonds on behalf of the Surety shall file with the Bonds a general power of attorney unlimited as to amount and type of Bonds covered by such power of attorney, and certified to by an official of said Surety. The Bonds shall be on forms provided by CITY, and subject to increase for any alterations, extension of the time allows for performance, extra or additional work and any other changes authorized under this Contract.

**12.3 Amendment to Bonds.** In the event the Contract Price is increased, CONTRACTOR shall deliver to CITY an amendment or Rider to the Payment and Performance Bonds increasing the final amounts of the Bonds to the new Contract Price, or new Bonds shall be furnished in the final amount of the new Contract Price. These Bonds shall remain in effect through the period of performance, including the period of warranty, and as required under Georgia law for Bonds on Public construction contracts.

**12.4 Related Obligations.**

**12.4.1** No limitations. The requirements contained herein as to forms and limits, as well as CITY's approval of Bond coverage to be maintained by CONTRACTOR, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under this Contract.

**12.4.2** Use of Facilities. CONTRACTOR agrees that it will not use the facilities for any purpose which might void any Bond covering the Work or render any loss under any Bond uncollectible.

**GC-13 LABOR, PERSONNEL, AND WORK RULES**

**13.1 Qualifications and Procedures.** CONTRACTOR shall employ only competent and skilled personnel to perform the Work and shall remove from the Jobsite any CONTRACTOR personnel determined to be unfit or to be acting in violation of any provision of this Contract. CONTRACTOR is responsible for maintaining labor relations in such manner that there is harmony among workers and shall comply with and enforce Project and Jobsite procedures, regulations, work rules and work hours established by ENGINEER.

**13.2 Professional Standards.**

The Work will be performed in a professional and workmanlike manner in accordance with the standards imposed by Applicable Law and the practices and professional standards used in well managed operations performing work similar to the Work.

**13.3 Discretion to Deny Access.** ENGINEER may at his sole discretion deny access to the Jobsite to any individual by written notice to CONTRACTOR. In the event an employee is

excluded from the Jobsite, CONTRACTOR shall promptly replace such individual with another who is fully competent and skilled to perform the Work.

**13.4 Demands for Collective Bargaining.** CONTRACTOR shall give ENGINEER prompt notice in writing of every demand for collective bargaining made upon CONTRACTOR or any of its subcontractors by any labor organization and of any labor dispute, which may reasonably be expected to affect performance of the Work under this Contract.

**13.5 Jurisdictional Disputes.** Unless other methods are established by ENGINEER, the rules, regulations, and procedures of the Plan for Settlement of Jurisdictional Disputes in the Construction Industry, or any successor agreement thereto, shall be used to determine work assignments and to resolve jurisdictional disputes on work covered by this Contract.

**13.6 Wage Requirements for Construction Contracts.** Unless otherwise required or if federally assisted, when a construction project exceeds the sum of Ten Thousand Dollars (\$10,000.00), the prevailing wages paid shall correspond as nearly as practicable to the prevailing wages required in the federal Davis Bacon Act. Such scale of wages to be paid shall be posted by the Contractor in a prominent and easily accessible place at the site of work.

#### **GC-14 ASSIGNMENTS AND SUBCONTRACTS**

**14.1 Consent of CITY Required.** Any assignment of this Contract or rights hereunder, in whole or part, without the prior written consent of CITY shall be void, except that upon ten (10) calendar days written notice to CITY. CONTRACTOR may assign monies due, or to become due, under this Contract. Any assignment of monies shall be subject to proper set-offs in favor of CITY and to any deductions provided for in this Contract.

**14.2 Pass Down of Contract Requirements.** Purchase orders and subcontractors must include provisions to secure all rights and remedies of CITY provided under this Contract, and must impose upon the Subcontractor all of the duties and obligations required to fulfill this Contract with respect to their activities.

**14.3 Subcontractors.** If Consultant subcontracts any of the Services, Consultant shall: (i) be responsible for the performance of Services by the Subcontractors; (ii) remain City's sole point of contact for the Services; and (iii) be responsible for the payment of any Subcontractors.

**14.4 Required Provisions.** Purchase orders and Subcontractors must include provisions to secure all rights and remedies of CITY provided under this Contract, and must impose upon the Subcontractor all of the duties and obligations required to fulfill this Contract with respect to their activities.

**14.5 Copies of Purchase Orders and Subcontracts.** Copies of all purchase orders and Subcontracts are to be provided to ENGINEER upon request.

**14.6 No Relief of Responsibilities.** No assignment or subcontract will be approved which would relieve CONTRACTOR or its sureties, if any, of their responsibilities under this Contract. CITY may require revised or modified bonds or insurance and the execution of assumption agreements as conditions for approval.

**14.7 Further Acts.** CITY and CONTRACTOR each agrees to perform any additional acts, execute, and deliver any additional documents as may reasonably be necessary in order to carry out the provisions and effectuate the intent of this Contract.

#### **GC-15 COMMERCIAL ACTIVITIES**

Neither CONTRACTOR nor its employees shall establish any commercial activity or issue concessions or permits of any kind to third parties for establishing commercial activities on the Jobsite or any other lands owned or controlled by CITY.

#### **GC-16 PUBLICITY AND ADVERTISING**

CONTRACTOR shall not make any announcement, release any photographs, or release any information concerning this Contract, or the Project, or any part thereof to any member of the public, press, business entity, or any official body unless prior written consent is obtained from ENGINEER. CONTRACTOR may not erect any signs without the written approval of the ENGINEER, other than those required by this Contract.

#### **GC-17 ENVIRONMENTAL REQUIREMENTS**

**17.1 Environmental Plan and Controls.** Throughout performance of the Work, CONTRACTOR shall conduct all operations in such a way as to minimize impact upon the natural environment and prevent any spread of contaminated or hazardous materials. CONTRACTOR shall:

**17.1.1** Provide dust control of its operations within work and all other areas under its control and shall coordinate and cooperate with others for dust control in common areas;

**17.1.2** Provide working machinery and equipment with efficient noise suppression devices and all other noise and vibration abatement measures necessary for the protection of workers and the public;

**17.1.3** Provide suitable waste, sewage, sanitary, and garbage disposal methods and procedures approved by ENGINEER and consistent with State and Federal regulations.

**17.1.4** Provide suitable equipment, facilities, and precautions to prevent the discharge of contaminants into the atmosphere, adjoining workspaces, any body of water, or land areas;

**17.1.5** Provide all documentation required by all levels of governing authority or this Contract concerning environmental requirements; and

**17.1.6** Be responsible for developing and maintaining a written Environmental Compliance Plan in accordance with CONTRACTOR's established practices, including, but not limited to, compliance with all applicable laws and all applicable requirements in the Project Environmental Control Plan. CONTRACTOR shall have sole responsibility for developing, implementing, and enforcing its Environmental Compliance Plan and

CONTRACTOR's obligations under the Clause titled "INDEMNITY" apply to any liability arising in connection with or incidental to CONTRACTOR's performance or failure to perform as provided in this clause.

**17.1.7** Submit NPDES Permit for staging / batch plant as required.

**17.2 Storm Water Discharge.** All discharged storm water, associated with construction activities, to the waters of the State of Georgia shall be in accordance with the limitations, monitoring requirements and other conditions set forth in the provisions of the Georgia Water Quality Control Act (Georgia Laws 1964, p. 416 as amended). The Federal Clean Water Act (33 U.S.C. 1251 et seq., as amended) and the Rules and Regulations promulgated to these acts.

**17.3 Notice of Toxic/Hazardous Materials.** In the event CONTRACTOR encounters on the Jobsite material reasonably believed to be toxic or hazardous material or waste, which has not been addressed in this Contract, CONTRACTOR shall immediately stop work in the affected area and notify the ENGINEER or its designated representative in writing of the condition. Pending receipt of written instructions from ENGINEER, CONTRACTOR shall not resume work in the affected area.

#### **GC-18 HAZARDOUS SUBSTANCE AWARENESS**

**18.1 Hazardous Nature of the Work.** The nature of the Work to be performed under this Contract may involve inherent risks. CONTRACTOR agrees that it will inform its officers, employees, agents, suppliers and Subcontractors, and any other parties which may come into contact with any hazardous substance as a result of CONTRACTOR's activities hereunder of the nature of such materials and any health or environmental risks associated with such materials.

**18.2 Training Prior to Assignment.** CONTRACTOR warrants that CONTRACTOR's personnel and personnel of its suppliers and Subcontractors, assigned to or regularly entering the Jobsite, have or will receive training as specified in OSHA 29 CFR 1910.120(e) in relation to this Contract prior to their assignment to field duty. Supervisory personnel will also receive, as a minimum, eight (8) hours additional specialized training in the management of hazardous waste operations. Such training shall be at CONTRACTOR's expense. CONTRACTOR personnel assigned to the Jobsite may also be required to attend specialized training classes specific to the Jobsite as presented by CITY or its designated representatives.

#### **GC-19 HAZARDOUS SUBSTANCE REGULATIONS**

CONTRACTOR shall ensure that all hazardous substances with which it deals receive safe and proper handling. CONTRACTOR confirms that it is aware of and will comply with the requirements of the All Environmental Regulations, including but limited to, Comprehensive Environmental Response, Compensation, Liability Act, 42 U.S.C. 9601-9675 (CERCLA) as amended; the Resource Conservation and Recovery Act, 42 U.S.C. 6901-6992- (RCRA) as amended; the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601-2671; the Clean Water Act (CWA), 33 U.S. C. 1251-1387; Title 40 of the Code of Federal Regulations; the Department of Transportation (DOT) regulations applicable to hazardous substances, and any other federal, state, and local laws applicable to work with or near hazardous substances.

## **GC-20 DECONTAMINATION OF EQUIPMENT AND MATERIALS**

All CONTRACTOR equipment, debris and used or surplus materials must be fully decontaminated prior to removal from designated work areas. CONTRACTOR shall submit decontamination and contaminated material control procedures for ENGINEER review and acceptance. CONTRACTOR shall obtain ENGINEER's authorization to remove any such equipment, debris or surplus materials from the Jobsite.

## **GC-21 ON-SITE HANDLING AND DISPOSAL OF HAZARDOUS MATERIAL**

If the Work under this Contract includes any intrusive site or structural drilling, boring, coring, or sampling, debris may be produced as a result of these efforts. This debris could include solids or liquids drawn from site wells for sampling purposes. All such debris shall be treated by the CONTRACTOR as if it were hazardous waste regulated under the Federal Resource and Conservation Recovery Act of 1976, 42 U.S.C. 6901-6992 (RCRA) as amended, or any more stringent applicable regulations, unless and until the CONTRACTOR has been able to confirm, to the satisfaction of ENGINEER and/or the appropriate regulatory agencies that the wastes are not regulated as hazardous.

## **GC-22 OFF-SITE TRANSPORTATION AND DISPOSAL OF HAZARDOUS MATERIAL**

CONTRACTOR shall have no authority or responsibility for the off-site transportation, storage, treatment or disposal of contaminated or potentially waste materials of any kinds, which are directly or indirectly generated at the Jobsite. Such removal shall be made by the CITY. However, CONTRACTOR shall handle all materials at the Jobsite with due care, in accordance with work or Jobsite plans and the requirements of this Contract.

## **GC-23 SITE CONDITIONS AND NATURAL RESOURCES**

**23.1 Nature and Location of Work.** CONTRACTOR shall have the sole responsibility for satisfying itself concerning the nature and location of the Work and the general and local conditions, including but not limited to the following:

- 23.1.1** Transportation, access, disposal, handling and storage of materials;
- 23.1.2** Availability and quality of labor, water, electric power, and road conditions;
- 23.1.3** Climatic conditions, tides, and seasons;
- 23.1.4** Physical conditions at the Jobsite and the project area as a whole;
- 23.1.5** Topography and ground surface conditions; and
- 23.1.6** Equipment and facilities needed preliminary to and during the performance of the Work.

**23.2 Failure to Assess Conditions.** The failure of CONTRACTOR to acquaint itself with any applicable conditions will not relieve CONTRACTOR of the responsibility for properly estimating

either the difficulties, time, or cost of successfully performing CONTRACTOR's obligations under this Contract.

#### **GC-24 DIFFERING SITE CONDITIONS**

**24.1 Information on Subsurface Conditions.** Where CITY has made investigations of subsurface conditions in areas where work is to be performed under this Contract, such investigations are made by CITY for the purpose of study and design. If the records of such investigation are included in the Contract Documents, the interpretation of such records shall be the sole responsibility of CONTRACTOR. Neither CITY nor its agents, representatives and consultants assume any responsibility whatsoever in respect to the sufficiency or accuracy of such investigations, the records thereof, or of the interpretations set forth and there is no warranty or guarantee, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout such areas, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered.

**24.2 Notice for Differing Site Conditions.** CONTRACTOR shall immediately notify ENGINEER in writing before proceeding with any work which CONTRACTOR believes constitutes a differing site condition with respect to:

**24.2.1** Subsurface or latent physical conditions at the Jobsite differing materially from those indicated in this Contract; or

**24.2.2** Previously unknown physical conditions at the Jobsite, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

**24.3 Determination by ENGINEER.** ENGINEER shall investigate such condition and make a written determination. If ENGINEER determines that such condition does constitute a differing site condition, CONTRACTOR may then, pursuant to the Clause titled "CHANGE DOCUMENTS", submit a written Change Notice Request setting forth the impact of such differing site condition and describing any additional or modified work resulting therefrom. Failure of CONTRACTOR to give the required notice shall be grounds for rejection of the claim to the extent CITY is prejudiced by such delay.

#### **GC-25 TITLE TO MATERIALS FOUND**

The title to water, soil, rock, gravel, sand, minerals, timber, and any other materials developed or obtained in the excavation or other operations of CONTRACTOR or any of its Subcontractors, and the right to use said materials, or dispose of same, is hereby expressly reserved by CITY. CONTRACTOR may, at the sole discretion of CITY, be permitted, without charge, to use in the Work any such materials, which meet the requirements of this Contract.

#### **GC-26 SURVEY CONTROL POINTS AND LAYOUTS**

**26.1 Survey Control Points.** Survey control points as shown on the drawings will be established by CITY. If CONTRACTOR or any of its Subcontractors or any of their representatives

or employees move or destroy or render inaccurate any survey control point, such control point shall be replaced by ENGINEER at CONTRACTOR's expense.

**26.2 Work to Confirm.** CONTRACTOR shall complete the layout of all work and shall be responsible for execution of the Work in accordance with the locations, lines, and grades specified or shown on the drawings, subject to such modifications as ENGINEER may require as work progresses. Cross Sections, when required to establish quantities, shall be taken at a maximum of fifty (50) foot intervals.

**26.3 Replacement Survey Control Points.** If CONTRACTOR, or any of its Subcontractors or any of their representatives or employees, move or destroy or render inaccurate any survey control point, such control point shall be replaced by ENGINEER at CONTRACTOR's expense.

**26.4 Certification of Survey Work.** No separate payment will be made for survey work performed by CONTRACTOR, but all survey work shall be under the direction of registered Land Surveyor, licensed in Georgia, who shall certify all survey results.

## **GC-27 COOPERATION WITH OTHERS**

**27.1 Cooperation between CONTRACTORS.** The CITY reserves the right to Contract for and perform other, or additional, work on or near the Work covered by this Contract. When separate contracts are let within the limits of any one project, each CONTRACTOR shall conduct its work so as not to interfere with, or hinder the progress of, completion of the Work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.

Each contractor involved shall assume all liability, financial or otherwise, in connection with its Contract and shall protect and same harmless the CITY from any and all damages or claims that may arise because of inconvenience, delays, or loss experienced by CONTRACTOR because of the presence and operations of other contractors working within the limits of the same project.

The CONTRACTOR shall arrange its work and shall place and dispose of the materials being used so as not to interfere with the operations of the other CONTRACTORS within the limits of the same project. It shall join its work with that of the others in an acceptable manner and shall perform Work in proper sequence to that of the others.

## **GC-28 ILLUMINATION**

When any work is performed at night, or where daylight is obscured, CONTRACTOR shall, at its expense, provide artificial light sufficient to permit work to be carried on efficiently, satisfactorily and safely, and to permit thorough inspection. During such time periods, the access to the place of work shall also be clearly illuminated. All wiring for electric light and power shall be installed and maintained in a safe manner and meet all applicable codes and standards.



## **GC-29 USE OF COMPLETED PORTIONS OF WORK**

**29.1 Beneficial Occupancy.** Whenever, as determined by Engineer, any portion of the Work performed by CONTRACTOR is suitable for use, CITY may, upon written notice, occupy and use such portion. Use shall not constitute acceptance, relieve CONTRACTOR of its responsibilities, or act as a waiver by the CITY of any terms of this Contract (see "WARRANTY").

**29.2 Liability for Damage.** CONTRACTOR shall not be liable for normal wear and tear or for repair of damage caused by any misuse during such occupancy or use by CITY. If such use increases the cost or time of performance of remaining portions of the Work, CONTRACTOR shall, pursuant to the Clause titled, "CHANGE DOCUMENTS", be entitled to an equitable adjustment in its compensation or schedule. Damage caused by CONTRACTOR's acts or omissions during such use shall be remedied at CONTRACTOR's expense.

**29.3 Use of Unsatisfactory Work.** If, as a result of CONTRACTOR's failure to comply with the provisions of this Contract, such use of completed portions of the Work proves to be unsatisfactory to CITY, the CITY shall have the right to continue such use until such portion of the Work can be taken out of service at the CITY's discretion for correction of defects, errors, omissions, or replacement; provided that the period of operations or use pending remedial action shall not exceed twelve (12) months.

**29.4 Use of Permanently Installed Equipment.** CONTRACTOR shall not use any permanently installed equipment unless such use is approved in writing by ENGINEER. When such use is approved, CONTRACTOR shall at its own expense properly use and maintain and, upon completion of such use, recondition such equipment as required, normal wear and tear as expected.

## **GC-30 USE OF CITY OR ITS DESIGNATED REPRESENTATIVES CONSTRUCTION EQUIPMENT OR FACILITIES**

**30.1 Owner Furnished Materials.** None

**30.2** When CONTRACTOR requests and ENGINEER agrees to make available for rent any equipment or facilities belonging to CITY for the performance of work, the following shall apply:

**30.2.1** ENGINEER will furnish a copy of the equipment maintenance and inspection record, and these records shall be maintained by CONTRACTOR during the rental period;

**30.2.2** CONTRACTOR shall assure itself of the condition of such equipment and/or materials and assume all risks and responsibilities during its use;

**30.2.3** ENGINEER and CONTRACTOR shall jointly prepare an Inspection Report and inspect such equipment and/or materials before its use and upon its return, to document properly any damages as a result of CONTRACTOR's use. The cost of all necessary Improvements or replacement other than normal wear shall be at CONTRACTOR's expense; and

**30.2.4** If such equipment and/or materials is furnished with an operator, the services of such operator will be performed under the complete direction and control of CONTRACTOR and

such operator shall be considered CONTRACTOR's employee for all purposes other than the payment of wages, Workers' Compensation Insurance or other benefits.

**30.2.5** Equipment rental rates shall be those shown in Exhibit "C" (Quantities, Pricing and Data) or, if none are shown, rates shall be negotiated based upon then current Data Quest Blue Book data."

## **GC-31 INSPECTION AND QUALITY ASSURANCE**

**31.1 Inspection and Audit.** All material and equipment furnished and work performed shall be properly inspected by CONTRACTOR at its expense, and shall at all times be subject to quality surveillance and quality audit by the CITY who, upon reasonable notice, shall be afforded full and free access to the shops, factories, or other places of business of CONTRACTOR and its subcontractors for such quality surveillance or audit.

**31.2 Authority and Access for Inspectors.** Such quality auditors or inspectors are not authorized to change, revoke, or waive any provision of this Contract, not to issue instructions contrary to Contract requirements, nor to direct the efforts of any of CONTRACTOR's employees in any way. CONTRACTOR shall provide safe and adequate facilities, drawings, documents, and samples as requested, and shall provide assistance and cooperation including stoppage of work to perform such examination as may be necessary to determine compliance with the requirements of this Contract. Any work covered prior to any planned quality surveillance or test by the CITY shall be uncovered and replaced at the expense of CONTRACTOR if such covering interferes with or obstructs such inspection or test.

**31.3 Uncovering of portions of the Work.** At any time before Final Acceptance, ENGINEER may, for the purpose of inspection, direct CONTRACTOR to uncover portions of the Work which have been completed and covered up. If examination proves the completed work to be defective, corrections shall be made pursuant to the Clause titled "WARRANTY". If the Work is not defective, the impact of uncovering and restoration shall be treated as a change pursuant to the Clause titled "CHANGE DOCUMENTS".

**31.4 Defective Work.** If any work is determined by the CITY to be defective or not in conformance with this Contract, the provisions of the Clause titled "WARRANTY" shall apply.

**31.5 Samples.** CONTRACTOR shall furnish samples as requested and shall provide reasonable assistance and cooperation necessary to permit tests to be performed on materials or work in place including reasonable stoppage of work during testing. Any material or assembly that does not conform to the requirements of the Contract Documents shall be considered unacceptable and shall be rejected. The CONTRACTOR shall remove any rejected material or assembly from the site of the Work, unless otherwise instructed by the ENGINEER.

No rejected material or assembly, the defects of which have been corrected by the CONTRACTOR, shall be returned to the site of the Work until such time as the ENGINEER has approved its use in the Work.

**31.6 Quality Assurance.** The CONTRACTOR is advised that the cost of failing tests requiring additional tests to confirm compliance will be deducted from the monies due to CONTRACTOR through the Progress Payment Process.

## **GC-32 MONITORING**

The equipment and materials furnished and work performed under this Contract shall be subject to monitoring by ENGINEER or his representatives who shall be afforded full and free access to the ships, factories, and other places of business of CONTRACTOR and its Subcontractors for monitoring purposes. As required by ENGINEER, CONTRACTOR shall provide detailed schedules and progress reports for use in monitoring and shall cooperate with ENGINEER in monitoring activities.

## **GC-33 BACKCHARGES**

**33.1 Corrective Actions by CITY or its Designated Representatives.** If, under the provisions of this Contract, CONTRACTOR is notified by ENGINEER to correct defective or nonconforming work, and CONTRACTOR states, or by its actions indicates that it is unable or unwilling to proceed with corrective action in a reasonable time, ENGINEER may, upon written notice, proceed to accomplish the redesign, repair, rework or replacement of nonconforming work by the most expeditious means available and backcharge CONTRACTOR for the costs incurred. Furthermore, if ENGINEER agrees to or is required to perform work for CONTRACTOR, such as cleanup, off-loading or completion of incomplete work, ENGINEER may, upon written notice, perform such work by the most expeditious means available and backcharge CONTRACTOR for the costs incurred.

**33.2 Backcharge Costs.** The cost of backcharge work shall include:

**33.2.1** Incurred labor costs including all payroll additives;

**33.2.2** Incurred net delivered material costs;

**33.2.3** Incurred Subcontractor costs directly related to performing the corrective action;

**33.2.4** Equipment and tool rentals at prevailing rates in the Jobsite area; and

**33.2.5** A factor of thirty-five percent (35%) applied to the total of Items 33.2.1 through 33.2.5 for overhead, supervision, and administrative costs.

**33.3 CONTRACTOR's Concurrence.** The backcharge notice will request CONTRACTOR's concurrence for ENGINEER to proceed with the required work. However, failure of CONTRACTOR to grant such concurrence shall not impair CITY's right to proceed with work under this or any other provision of this Contract.

**33.4 Backcharge not a Release.** ENGINEER shall separately invoice or deduct from payments otherwise due to CONTRACTOR the costs as provided herein. CITY's right to backcharge is in addition to any and all other rights and remedies provided in this Contract or by law. The

performance of backcharge work by ENGINEER shall not relieve CONTRACTOR of any of its responsibilities under this Contract including, but not limited to, express or implied warranties, specified standards for quality, contractual liabilities and indemnifications, and meeting the Contract Milestones of the Clause titled "COMMENCEMENT, PROGRESS, AND COMPLETION OF THE WORK".

#### **GC-34 SUSPENSION**

**34.1 Suspension Notice.** CITY may, by written notice to CONTRACTOR, suspend at any time the performance of all, or any portion of, work to be performed under this Contract. Upon receipt of such notice, CONTRACTOR shall, unless the notice requires otherwise;

**34.1.1** Immediately discontinue work on the date and to the extent specified in the notice;

**34.1.2** Place no further orders or subcontracts for material, services, or facilities with respect to suspended work other than to the extent required in the notice;

**34.1.3** Promptly make every reasonable effort to obtain suspension upon terms satisfactory to CITY of all orders, subcontracts, and rental agreements to the extent they relate to performance of suspended work;

**34.1.4** Continue to protect and maintain the Work including those portions on which work has been suspended; and

**34.1.5** Take any other reasonable steps to minimize costs associated with such suspensions.

**34.2 Notice to Resume.** Upon receipt of notice to resume suspended work, CONTRACTOR shall immediately resume performance under this Contract to the extent required in the notice.

**34.3 Equitable Adjustment.** CONTRACTOR shall be entitled to an equitable adjustment for suspensions pursuant to the Clause titled "CHANGE DOCUMENTS", provided that within ten (10) days after receipt of notice to resume work, CONTRACTOR submits a Proposed Change Document, and provided that the suspension was not made necessary by the defective performance of work or any other Contract obligation of CONTRACTOR. No adjustment or relief of schedule milestones or completion dates shall be made for suspensions caused by CONTRACTOR.

#### **GC-35 TERMINATION FOR DEFAULT**

**35.1 Reasons for Default.** Notwithstanding any other provisions of this Contract, CONTRACTOR shall be considered in default of its contractual obligations under this Contract if it:

**35.1.1** Performs work which fails to conform to the technical requirements of this Contract;

**35.1.2** Fails to make progress so as to endanger performance of this Contract;

**35.1.3** Abandons or refuses to proceed with any of the Work, including modifications directed pursuant to the Clause titled "CHANGE DOCUMENTS";

**35.1.4** Fails to fulfill or comply with any of the terms of this Contract;

**35.1.5** Engages in behavior that is dishonest, fraudulent or constitutes a conflict of interest with CONTRACTOR's obligations under this Contract; or,

**35.1.6** Reasonable grounds for insecurity arise with respect to CONTRACTOR's performance.

**35.2 Notice of Default.** Upon the occurrence of any of the foregoing, ENGINEER shall notify CONTRACTOR in writing of the nature of the failure and of CITY's intention to terminate this Contract for default. If CONTRACTOR does not cure such failure within seven (7) calendar days from receipt of notification, or sooner, if safety to persons is involved, or fails to provide satisfactory evidence that such default will be corrected within a reasonable time, the CITY, by written notice to CONTRACTOR and without notice to CONTRACTOR's sureties, if any, shall terminate in whole or in part CONTRACTOR's right to proceed with the Work and CITY may prosecute the Work to completion in a timely manner by another contract or by any other reasonable method deemed expedient. CITY may take possession of and utilize any data, designs, licenses, equipment, materials, plant, tools, and property of any kind furnished by CONTRACTOR and necessary to complete the Work.

**35.2A Immediate Termination.** This Contract will immediately terminate, without the requirement of any action on CITY's part, and all termination for default remedies available and applicable termination actions required by CONTRACTOR when all work is terminated under this Contract shall apply, if CONTRACTOR:

**35.2A.1** Voluntarily consents to an order for relief by filing a petition under the laws of the United States codified as Title 11 of the United States Code;

**35.2A.2** Seeks consent to, or does not, contest the appointment of a receiver, custodian, or trustee for itself or for all or any part of its property;

**35.2A.3** Files a petition seeking relief under the bankruptcy, arrangement, reorganization, or other debtor relief laws of any state or other competent jurisdiction;

**35.2A.4** Admits in writing that it is generally not paying its debts as those debts become due;

**35.2A.5** Gives notice to any governmental body of insolvency or pending insolvency or suspends operations;

**35.2A.6** Becomes insolvent as that term is defined under applicable fraudulent transfer or conveyance laws; or

**35.2A.7** Makes an assignment for the benefit of creditors or takes any other similar action for the protection or benefit of creditors.

**35.3 Excess Reprocurement Costs.** CONTRACTOR and its sureties, if any, shall be liable for all costs in excess of this Contract price for such terminated work reasonably and necessarily incurred in the completion of the Work, including cost of administration of any Contract awarded to others for completion.

**35.4 Termination Actions.** Upon termination for default, CONTRACTOR shall:

**35.4.1** Immediately discontinue work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the terminated work;

**35.4.2** Inventory, maintain and turn over to CITY all data, designs, licenses, equipment, materials, plant, tools, and property furnished by CONTRACTOR, or provided by CITY for performance of the terminated work;

**35.4.3** Promptly obtain cancellation upon terms satisfactory to CITY of all purchase orders, subcontracts, rentals, or any other agreements existing for performance of the terminated work or assign those agreements as directed by CITY;

**35.4.4** Cooperate with the CITY in the transfer of data, designs, licenses and information and disposition of work in progress so as to mitigate damages;

**35.4.5** Comply with other reasonable requests from CITY regarding the terminated work and;

**35.4.6** Continue to perform in accordance with all of the terms and conditions of this Contract such portion of the Work that is not terminated.

**35.5 CONTRACTOR not in Default.** If, after termination pursuant to this Clause, it is determined for any reason that CONTRACTOR was not in default, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued pursuant to the Clause titled "TERMINATION FOR CONVENIENCE."

#### **GC-36 TERMINATION FOR CONVENIENCE**

**36.1 Termination Actions.** CITY may terminate for convenience any of the Work under this Contract in whole or, from time to time, at any time by written notice to CONTRACTOR. Such notice shall specify the extent to which the performance of the Work is terminated and the effective date of such termination. Upon receipt of such notice, CONTRACTOR shall:

**36.1.1** Immediately discontinue the Work on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities, other than as may be required for completion of such portion of the Work that is not terminated.

**36.1.2** Promptly obtain assignment or cancellation upon terms satisfactory to CITY of all purchase orders, subcontracts, rentals, or any other agreements existing for the performance of the terminated work or assign those agreements as directed by CITY;

**36.1.3** Assist ENGINEER in the maintenance, protection, and disposition of work in progress, plant, tools, equipment, property, and materials acquired by CONTRACTOR or furnished by CITY under this Contract and;

**36.1.4** Complete performance of such portion of the Work which is not terminated in accordance with the scheduled milestones and Contract completion dates.

**36.2 Waiver and Compensation.** In the event of termination, CONTRACTOR waives any claims for damages including loss of anticipated profits. As CONTRACTOR's sole right and remedy, CITY shall pay in accordance with the following:

**36.2.1** The Contract price corresponding to the Work performed in accordance with this Contract prior to such notice of termination;

**36.2.2** All reasonable costs for work thereafter performed as specified in such notice;

**36.2.3** Reasonable administrative costs of settling and paying claims arising out of the termination of work under purchase orders or subcontracts;

**36.2.4** Reasonable costs incurred in demobilization and the disposition of residual material, plant, and equipment and;

**36.2.5** A reasonable overhead and profit on items 36.2.2 and 36.2.4 of this clause.

**36.3 Proposal for Compensation.** CONTRACTOR shall submit within thirty (30) calendar days after receipt of notice of termination, a written statement setting forth its proposal for an adjustment to the Contract price to include only the categories of incurred costs described in this clause. CITY shall review, analyze, and verify such proposal, negotiate an appropriate adjustment, and modify this Contract by Change Order accordingly.

## **GC-37 CHANGE DOCUMENTS**

**37.1** This section will govern changes to the Contract issued under the Contract, whether such changes involve an increase in the Total Contract Price or not. Changes in Contract or other aspects of this Contract shall be made by written document ("Change Document" or "Unilateral Change Document").<sup>1</sup> All changes shall be implemented pursuant to this subsection and any Applicable Law.

**37.2** Potential Change Documents that may be issued concerning this Contract include, but are not limited to:

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<sup>1</sup> Change Documents may assume numerous multiple forms and titles depending on the nature of the change involved (e.g. Change Order, Unilateral Change Order, Amendment, Contract Modification, Renewal, etc.)

**37.2.1** Change Documents to the Contract involving an increase to the Total Contract Price executed between CITY and CONTRACTOR which may, or may not, require legislative approval under Code Section 2-1292; and

**37.2.2** Change Documents that do not involve an increase in the Total Contract Price will be executed pursuant to Code Section 2-1292(d) either bilaterally or unilaterally by the CITY; and

**37.2.3** Unilateral Change Documents to the Contract issued by CITY pursuant to Code Section 2-1292(d) involving no increase to the Total Contract Price and changes in the value of the changes, or changes in the terms of amounts of compensation under the Total Contract Price; and

**37.2.4** Change Documents to the Contract involving no increase to the Total Contract Price, changes in the value of the Charges or changes in the terms or amounts of compensation under the Total Contract Price executed between CITY and CONTRACTOR pursuant to Code Section 2-1292(d).

**37.3** CITY may propose a change in the Contract or other aspects of this Contract by delivering written notice to CONTRACTOR describing the requested change ("Change Request"). Within ten (10) days of receipt of CITY's Change Request, CONTRACTOR shall evaluate it and submit a written response ("Proposed Change Document"). A Change Request which involves the reduction of Services shall be effective upon written notice to Contractor.

**37.4** CONTRACTOR may, without receiving any Change Request, on its own submit a Proposed Change Document describing its own proposed requested change to the Contract.

**37.5** Each Proposed Change Document shall include the applicable schedule for implementing the proposed change, any applicable changes to the Charges (either increased or decreased) and all other information applicable to the proposed change. Each Proposed Change Document shall constitute an offer by CONTRACTOR and shall be irrevocable for a period of sixty (60) days. CITY shall review and may provide CONTRACTOR with comments regarding a Proposed Change Document, and CONTRACTOR shall respond to such comments, if any. A Proposed Change Document from CONTRACTOR will become effective only when executed by an authorized representative of CITY.

**37.6** CITY may propose any changes to the Contract, including, but not limited to, changes that it contends do not involve an increase to the Maximum Payment Amount, and CONTRACTOR shall, in good faith evaluate such proposed Change Request. If CITY and CONTRACTOR are able to reach agreement on such Change Request, each will execute a Change Document concerning such Change Request pursuant to Code Section 2-1292(d). Nothing in this Contract shall, in the event of disagreement between CITY and CONTRACTOR concerning a proposed Change Request, or otherwise, prohibit CITY from issuing a Unilateral Change Document to CONTRACTOR, pursuant to Code Section 2-1292(d), and CITY and CONTRACTOR agree to resolve their dispute pursuant to the Dispute Resolution Procedures set forth in the "DISPUTES" Clause. During the pendency of such Dispute, CONTRACTOR shall continue to perform the Services, as changed by such Unilateral Change Document.



**37.7 Submittals Substantiating Adjustments.**

**37.7.1** CONTRACTOR shall supply certified pricing within thirty (30) days after providing written notice of intent to claim time or money. CONTRACTOR's pricing shall remain firm for a period of not less than sixty (60) days after delivery of the certified pricing. Any delay in the submission of all necessary supporting documentation or the determination of pricing will not justify or constitute a basis for an increase in the Total Contract Price, Purchase Order Amount, or Contract Completion.

**37.7.2** CONTRACTOR shall certify in writing that the amounts included in the Proposed Change Document cover will direct, supplemental, indirect, consequential, serial, and cumulative costs and requested time extension, as applicable, and that those costs and the additional time would be or were necessarily incurred, despite the CONTRACTOR's reasonable and diligent efforts to mitigate them.

**37.7.3** No submittal for an adjustment in the Total Contract Price, Purchase Order Amount, or Contract Completion shall be valid unless submitted in accordance with this Clause.

**37.7.4** For each submittal, CONTRACTOR shall execute a certificate of current costs or pricing data. The certificate shall contain the wording in Clause:

**37.7.4.1** This certificate shall be supplied at the time CONTRACTOR submits pricing information for any and all Proposed Change Documents.

**37.7.4.2** The certificate of current costs or pricing data shall contain the following statement: "This is to certify that, to the best of my knowledge and belief, the costs or pricing data submitted, either actually or by specific identification in writing, to ENGINEER or any of his authorized representatives, in support of [identify the request for price adjustment, giving the appropriate reference any date] are accurate, complete and current as of [insert the day, month, and year when submittal was provided to ENGINEER]."

CONTRACTOR: [type name]

By: [type name]

Title:

Date of Execution: [insert the day, month, and year of signing, which should be the same date as when the pricing information is submitted],

**37.7.4.3** If any price, including profit or fee, negotiated under this Clause, or any cost reimbursement under this Contract was increased by any amount because CONTRACTOR furnished costs or pricing data that were not complete, accurate, and current as certified in its certificate of current costs or pricing

data, the price or costs shall be reduced accordingly, and this Contract shall be modified to reflect the deduction. CONTRACTOR is also placed on notice that, to the extent any submittal is determined to be a false claim based on any state or federal law, CONTRACTOR will be liable to the CITY for all remedies permitted by applicable statutes.

**37.8 Failure to Agree.** Failure by ENGINEER and CONTRACTOR to agree on any adjustment pursuant to this Clause shall be considered a Dispute, subject to the procession under the "DISPUTES" Clause of the Contract.

**37.9 Emergency Cases.** In addition to the CITY's ability to initiate changes through a Change Notice, in the event of an emergency that poses imminent threat to life or property, ENGINEER may use oral orders to CONTRACTOR for any work required by reason of such emergency. CONTRACTOR shall commence and complete such emergency work as directed by ENGINEER. Such orders will be confirmed by an appropriate Change Document. Any Change Document resulting from an emergency will be processed pursuant to this Clause.

**37.10 Other Modifications.** All other modifications to this Contract shall be by written amendment signed by both parties.

## **GC-38 PRICING OF ADJUSTMENTS**

**38.1 Pricing Methods.** When costs are a factor in any determination of a Contract adjustment pursuant to the Clause titled "CHANGE DOCUMENTS", CONTRACTOR shall propose upward or downward price adjustments in one of the following methods as directed by ENGINEER:

**38.1.1** Using Unit Prices established in this Contract in which case CONTRACTOR is not authorized any additional markup's as the Contract Unit Prices are fully burdened;

**38.1.2** Estimating new Unit Prices or a lump sum price for the change, subject to negotiation as detailed in 38.2; or

**38.1.3** Force Account by establishing separate cost accounting records, subject to daily end-of-the-day written approval by ENGINEER of all allocable costs to include reimbursement of reasonable and approved incurred costs, plus specified mark ups as defined in 38.3.

### **38.2 Negotiated Unit or Lump Sum Prices**

**38.2.1 Cost Breakdown Information.** When the CONTRACTOR is directed to propose price adjustments for the negotiation of new unit or lump sum prices it shall provide cost breakdown information for the purpose of, and in sufficient detail to permit analysis and negotiation by the City. Cost breakdown information shall include, but not be limited to labor categories, job hours and rates, equipment and material quantities, sources and calculations, overhead costs and allocations, profit computations, subcontractor quotes, and reference data upon which estimates are based.

**38.2.2 Markups.** Markups shall be negotiated between CONTRACTOR and ENGINEER based on the complexity (as defined by CITY) and type of work required. However, markups shall not exceed the limits established under 38.3 Force Account, unless CITY determines in writing that it is in its own best interests to do so.

### **38.3 Force Account**

**38.3.1** If, for any reason, ENGINEER and CONTRACTOR are unable to agree upon a new unit rate or lump sum Contract price, the work will proceed based on Force Account and the adjustment provisions contained in section 38.3 shall apply to establish and define allowable costs and rates.

**38.3.2 Subcontracts.** Approved incurred costs for subcontracted tasks shall be allowable plus five percent (5%) overhead and profit for CONTRACTOR; provided that ENGINEER has approved the subcontract pursuant to the Clause on Titled "ASSIGNMENTS AND SUBCONTRACTS" before any work is performed.

**38.3.3 Contractor Direct Labor.** If included in the Contract, the fully burdened labor rate schedule shall be used. If there is no labor rate schedule, the incurred direct labor wages for technical, craft, and manual labor for all classifications through lead engineer, foreman or equivalent are allowable for the period of performance of the change. General supervision and management above foreman or equivalent, and indirect labor, e.g., office personnel, timekeepers and maintenance personnel, are not allowable as direct costs because they are in the overhead and profit rates established in section 38.3.6. For labor rates not already in the Contract, payroll additives are allowable and should include taxes, insurance premiums, paid absences, and social and retirement benefits required by the Applicable Law, labor agreements, published company policies applying uniformly to CONTRACTOR's work force or which are normal and customary. CITY shall have access to CONTRACTOR's certified payroll records for verification of labor costs.

**38.3.4 Materials.** Approved incurred costs for material incorporated into the changed Work or required for temporary construction facilities made necessary by the change shall be allowable at net cost delivered to the Jobsite plus five percent (5%) markup for CONTRACTOR

**38.3.5 Equipment.** For the cost of both rented and Contractor owned equipment to be allowable, ENGINEER must agree in writing, prior to their being used, that the individual pieces of equipment are needed, and are appropriate for the Work, as follows:

**38.3.5.1 Limited Equipment Charges.** When the operated use of equipment is infrequent and, as determined by ENGINEER, such equipment need not remain at the Work site continuously, charges shall be limited to actual hours of use. Equipment not operating but retained at the location of changes at ENGINEER's direction shall be charged at the standby rate.

**38.3.5.2 Contractor Owned Equipment Charges.** CITY shall pay a rate not greater than seventy percent (70%) of Penton Business Media, Inc./Equipment Watch/ Rental Rate Blue Book daily rental rates for equipment less than 10 years of age applicable for the period of performance of the change plus operating costs such as fuel, oil, lubricants, and maintenance; and

**38.3.5.3 Rental Equipment Charges.** CITY shall pay the documented net rental costs plus a markup of five percent (5%) for CONTRACTOR, except tools and equipment having original purchase prices of less than Five Hundred Dollars (\$500.00) each, which are deemed to be covered in the overhead and profit rates. If operating costs are not included in the rental rates, they are also allowable.

**38.3.6 Overhead, Profit, and all other Costs.** CITY may pay an additional markup which will be deemed to be full consideration for all Project and office overhead, interest, profit and other additional costs (e.g. supervision and tools) and for all impacts of the change on all elements of the Work, whether or not changed. The determination of the application of this mark-up is at the sole discretion of CITY depending on the size, complexity and relativity of the change to the base Contract scope of work. This additional markup can be up to fifteen percent (15%) on top of the cumulative amount of direct labor, materials, and equipment as described within section 38.3.

#### **GC-39 EXCUSABLE DELAYS**

**39.1 Force Majeure.** Force Majeure shall mean:

**39.1.1** Strikes, labor disputes, work stoppages, or picketing (legal or illegal);

**39.1.2** Adverse weather conditions not reasonably foreseeable or unusually severe weather;

**39.1.3** Acts of God, including, without limitation, floods, hurricanes, tornadoes, high winds, sinkholes, landslides, earthquakes, epidemics, quarantine and pestilence;

**39.1.4** Fires or other casualties;

**39.1.5** Freight embargoes;

**39.1.6** Governmental actions, restrictions or moratoria;

**39.1.7** Acts of a public enemy, civil commotion, riots, insurrections, acts of war, blockades, terrorism, effects of nuclear radiation or national or international calamities;

**39.1.8** Sabotage or vandalism;

**39.1.9** Condemnation or other exercise of the power of eminent domain

**39.1.10** The passage or enactment of, or the interpretation of, any governmental requirement, and the orders of any governmental authority having jurisdiction over CONTRACTOR or the Work;

**39.1.11** Delays in any approval process of any governmental authority to the extent such delays are not due to any fault, negligence, or lack of diligence of CONTRACTOR or its agents, employees, contractors, subcontractors, or consultants;

**39.1.12** Actions of CITY (and its agents, employees or other representatives) not permitted by the Contract or by law;

**39.1.13** Inconvenience, delays, inefficiencies or loss experienced by CONTRACTOR caused by the presence and operations of other CITY CONTRACTORS working within the limits of the Project; and

**39.1.14** Restraint or other act by court or public authority to the extent such delays are not due to any fault, negligence, or lack of diligence of CONTRACTOR or its agents, employees, contractors, subcontractors, or consultants.

**39.2 Force Majeure shall in any event exclude:**

**39.2.1** Lack of sufficient funds or any other financial difficulty of CONTRACTOR, and

**39.2.2** Adverse weather

**39.2.2.1** Occurring during non-work periods or on any day which is not a business day, unless CONTRACTOR can demonstrate that said weather impeded the Work the following day; or

**39.2.2.2** Which shall not result in a direct and actual delay in CONTRACTOR's performance of Work at the time of such inclement weather.

**39.3 Extensions for Force Majeure.** If CONTRACTOR is delayed at any time in the commencement or progress of the Work by reason of Force Majeure or by other causes which CITY in its discretion may determine justifies an extension of the time for substantial completion or final completion, then the time for substantial completion or final completion shall be extended by Change Order for such reasonable time as CITY may determine that the Project's completion, or the achievement of any Contract milestones, is delayed by the Force Majeure, but only:

**39.3.1** If and to the extent such event or circumstance is beyond the reasonable control of CONTRACTOR;

**39.3.2** If and to the extent CONTRACTOR shall have taken all reasonable precautions to prevent delays by reason of such event or circumstance if such event or circumstance was actually shown in advance to CONTRACTOR,

**39.3.3** If and to the extent such event or circumstance is not caused by CONTRACTOR's or CONTRACTOR's agents', materialmen's, Subcontractor's, or employees' fault or negligence,

**39.3.4** If and to the extent CONTRACTOR shall have taken all reasonable precautions to mitigate the delays owing to such event or circumstance,

**39.3.5** If and to the extent that such event caused a delay to activities on the critical path of the Contract schedule, and

**39.3.6** If CONTRACTOR strictly complied with the requirements of GC-39.3

**39.4 Notice of Force Majeure.** If CONTRACTOR is prevented or delayed by reason of Force Majeure, CONTRACTOR shall, within twenty-four (24) hours after the commencement of the Force Majeure, provide to ENGINEER written notice of the Force Majeure and shall, within seven (7) days after the Force Majeure event has ended, provide to ENGINEER a written description of the impact caused on the performance of the Work by the Force Majeure. The description of the impact for weather related Force Majeure events shall include U.S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, or other relevant impacting weather event for the past ten years from the nearest reporting station. The ten-year average will determine the number of adverse weather days that CONTRACTOR should normally expect to encounter.

**39.5 Sole Remedy for Force Majeure.** For delays in the construction of the Project caused by reason of Force Majeure, an extension in the time for Contract completion shall be CONTRACTOR's sole and exclusive remedy for any such delay. In no event shall CONTRACTOR be entitled to any increase in the Total Contract Price or any other additional compensation for costs resulting by reason of Force Majeure.

#### **GC-40 COMPLETION AND ACCEPTANCE**

**40.1 Notice of Completion.** When CONTRACTOR considers the Work or any independent portion of the Work under this Contract, to be complete and ready for acceptance, or when ENGINEER notifies CONTRACTOR in writing that some portion of the work is ready for Beneficial Occupancy, CONTRACTOR shall notify ENGINEER in writing that such Work is materially complete and ready for inspection. ENGINEER or his designated representatives, with CONTRACTOR's cooperation, will conduct such reviews, inspections and tests as may be reasonably required to satisfy ENGINEER that the Work, or identified portion of the Work, conforms to all requirements of this Contract. If all, or any part, of the Work covered by CONTRACTOR's notice does not conform to Contract requirements, ENGINEER shall notify CONTRACTOR of such nonconformance and CONTRACTOR shall take corrective action in accordance with the Clause titled "WARRANTY" and shall have the nonconforming work re-inspected until all Contract requirements are satisfied."

**40.2 Notice of Substantial Completion.** The ENGINEER will issue a Certificate of Substantial Completion if the Work is deemed to be substantially complete. The CONTRACTOR will ascertain when the Work, or designated portions thereof, is ready for the ENGINEER's

Substantial Completion inspection. CONTRACTOR will provide required regulatory or permit authority acceptance documentation for the ENGINEER's review at inspection.

**40.3 Notice of Final Acceptance.** ENGINEER shall issue a written Notice of Final Acceptance of the Work as a whole when satisfactorily inspected. ENGINEER's written Notice of Final Acceptance of the Work as a whole under this Contract shall be conclusive except with regard to latent defects, fraud, or such gross mistakes as amount to fraud, or with regard to CITY's rights under the Clause titled "WARRANTY".

#### **GC-41 WARRANTY AND COMPONENT WARRANTIES**

**41.1 Warranty Standards.** CONTRACTOR warrants to CITY that equipment and materials furnished under this Contract shall be new, or clear title and of the most suitable grade of their respective kinds for their intended uses, unless otherwise specified. All workmanship shall be first-class and performed in accordance with sound construction practices acceptable to ENGINEER. All equipment, materials, and workmanship shall conform to the requirements of the Contract documents.

**41.2 Warranty Period.** CONTRACTOR warrants all equipment and material it furnishes, and all work it performs against defects in CONTRACTOR's design/build, equipment, materials, or workmanship for a period from commencement of work to a date twenty-four (24) months after Beneficial Occupancy provided that all of requirements of this section have been met, unless more stringent requirements are otherwise specified elsewhere in the Contract documents. CONTRACTOR shall provide an additional thirty-six (36) month warranty on all chillers, pumps, starters, compressors, ventilation systems, fire detection systems, fire suppression equipment, emergency power, and communication equipment. A minimum of one (1) year labor warranty is required for all equipment/system replacement and repairs.

#### **41.3 Warranty Guidelines.**

**41.3.1** Warranty should include manufacturers' and CONTRACTOR's name, telephone, contact, address, start, and end date of warranty.

**41.3.2** All sections shall be tabbed and labeled.

**41.3.3** A minimum of five (5) hard and two (2) electronic copies shall be furnished.

**41.4 Discovery of Defects.** If, at any time during the warranty period, the CITY or CONTRACTOR discovers any defect in the design/build, equipment, materials, or workmanship, immediate notice shall be given to the other parties. CONTRACTOR shall, within a reasonable time, propose corrective actions to cure such defects to meet the requirements of this Contract.

**41.5 Remedies for Defects.** ENGINEER, at his sole discretion, may direct CONTRACTOR in writing and CONTRACTOR agrees to:

**41.5.1** Rework, repair or remove and replace defective equipment and materials or re-perform defective workmanship to acceptable quality at a time and in a manner acceptable to ENGINEER;

**41.5.2** Cooperate with others assigned by ENGINEER to correct such defects and pay to ENGINEER all actual costs reasonably incurred by ENGINEER in performing or in having performed corrective actions; or

**41.5.3** Propose and negotiate in good faith an equitable reduction in the Contract price in lieu of corrective action. This clause is applicable only for discovery of defects prior to the acceptance of the Project.

**41.6 Incidental Cost.** All costs incidental to corrective actions including demotion for access, removal, disassembly, transportation, reinstallation, reconstruction, retesting, and re-inspection as may be necessary to correct the defect and to demonstrate that the previously defective work conforms to the requirements of this Contract shall be borne by CONTRACTOR.

**41.7 Extended Warranty.** CONTRACTOR further warrants any and all corrective actions it performs against defects in design/build, equipment, materials, and workmanship for an additional warranty period of twelve (12) months as an extension to the original specified warranty period following acceptance by ENGINEER of the corrected work.

**41.8 Operations and Maintenance (O&M) Data/Manuals.** Prior to the commissioning of any equipment or section of the work, submit five (5) hard and two (2) electronic copies of operation and maintenance data/manuals that are specifically applicable to this Contract and a complete and concise description of the provided equipment or product. Data containing extraneous information to be sorted through to find applicable instructions will not be accepted. Present information in sufficient detail to clearly explain O & M requirements of the system, equipment, component, and subassembly level. Include an index preceding each submittal.

**Information Required in O & M Data/Manuals, as applicable:**

- 1) Environmental Conditions Operating Instructions
- 2) Safety Precautions
- 3) Operator Pre-start
- 4) Startup, Shutdown, and Post Shutdown Procedures
- 5) Normal Operations
- 6) Emergency Operations
- 7) Operator Service Requirements
- 8) Installation Details
- 9) Preventive Maintenance Instructions, Plans, and Schedule
- 10) Lubrication Data
- 11) Corrective Maintenance Instructions
- 12) Troubleshooting Guides and Diagnostic Techniques
- 13) Wiring Diagrams and Control Diagrams Including Sequence of Operations
- 14) Maintenance and Repair Procedures
- 15) Removal and Replacement Instructions
- 16) Spare Parts and Supply Lists Including Cost



- 17) Parts Identification
- 18) Personnel Training Requirements
- 19) Testing Equipment and Special Tool Information

**41.9 Binding and Delivery.** The manuals shall be bound or otherwise securely enclosed in oil and moisture resistant binders and sections shall be tabbed. Each binder cover shall indicate bold type, the manufacturer's name, Contract number, model number, and serial number of the unit or equipment. Five (5) hard and two (2) electronic copies of the manuals shall be delivered with the shop drawings and must be approved with the shop drawings. Also included, shall be CONTRACTOR's name, address, telephone number and contact.

**41.9 Training.** Include in the applicable specification sections the following requirements:

**41.9.1** The CONTRACTOR shall include in the base Contract, all costs required to train the OWNER's operation and maintenance personnel in the use and maintenance of the specific systems.

**41.9.2** Training sessions shall be conducted by instructors certified or approved in writing by the manufacturer of the specific system or equipment.

**41.9.3** Sessions shall be conducted for not less than four-hour periods during normal working hours, i.e., Monday through Friday, 8:00 a.m. to 5:00 p.m. Training session schedules shall conform to the requirements of the OWNER; therefore, such schedules shall be submitted to the OWNER for approval not less than two weeks prior to the training session. Training sessions for different systems shall not be scheduled concurrently. All training sessions shall be digitally videotaped – two copies shall be delivered to the OWNER. At the OWNER's discretion, provisions shall be made to allow up to six (6) OWNER's personnel to participate in final system check of all systems.

**41.9.4** All Operations and Maintenance Manuals shall be approved and issued prior to training.

**41.9.5** All training shall be completed prior to final acceptance of equipment, systems, etc.

## **GC-42 DISPUTES**

### **42.1 Claims, Counterclaims, Disputes:**

**42.1.1** All claims, counterclaims, disputes, and any other matters in question arising under, or relating to, the Contract Documents, or the breach thereof, shall be processed in accordance with the provisions of this Clause and are subject to audit by the CITY.

**42.1.2** A "Claim" means a written demand or assertion by the CONTRACTOR seeking an adjustment in the Contract Price and payment of monies so due, an extension or shortening in Contract Completion, the adjustment or interpretation of Contract terms, or other relief arising under or relating to the Contract following denial of a submittal

for Change Notice Request under "CHANGE DOCUMENTS". A written demand or assertion by the CONTRACTOR seeking the payment of money or an extension of time is not a Claim under this Clause until certified as required below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a Claim under this Clause.

**42.1.3** A Claim arising under the Contract, unlike a Claim relating to the Contract, is a Claim that can be resolved under a Contract provision that provides for, or excludes, the relief sought by the Claimant. A Claim arising under the Contract shall be resolved under the applicable provisions of the Contract. A Claim relating to the Contract must meet all requirements of this provision and any request for an increase in the Contract Price or an extension to the time for Contract Completion shall be calculated pursuant to and limited by the provisions of this Contract.

**42.1.4** CONTRACTOR shall not be entitled to any damages or an adjustment in the Contract Price, and neither CITY nor its designated representatives shall be liable to CONTRACTOR or its Subcontractors in tort (including negligence) or Contract, except as specifically provided in this Contract.

#### **42.2 When Notice and Claim Submittal Become Due:**

**42.2.1** For any Claim under this Clause to be valid, it shall be based upon written notice delivered by the CONTRACTOR to the ENGINEER promptly, but in no event later than seven (7) days, after the occurrence of the event giving rise to the Claim and stating the general nature of the Claim. The Claim submittal with all supporting cost data and CPM schedule analysis shall be delivered by the CONTRACTOR to the ENGINEER within sixty (60) days after that occurrence (unless the ENGINEER allows an additional period of time to ascertain more accurate data in support of the Claim). The responsibility to substantiate a Claim shall rest with the party making the Claim.

**42.2.2** A Claim by the CONTRACTOR shall be made in writing and submitted to the ENGINEER within the timeframe required by GC 42.2.1 for a written decision.

#### **42.3 Requirements for contractor Claims:**

**42.3.1** For all CONTRACTOR Claims seeking an increase in the Contract Price or time for Contract Completion, the CONTRACTOR shall submit with the Claim an affidavit certifying that:

**42.3.1.1** The Claim is made in good faith, and the amount claimed accurately reflects the adjustments in the Contract Price or time for Contract Completion for which the CONTRACTOR can prove the CITY is liable, and covers all direct, supplemental, indirect, consequential, serial, and cumulative costs and delays to which the CONTRACTOR is entitled as a result of the occurrence of the claimed event;

**42.3.1.2** Supporting cost and pricing data are current, accurate, complete, and represent the best of the CONTRACTOR's knowledge and belief; and

**42.3.1.3** If the CONTRACTOR is an individual, the affidavit shall be executed by that individual; if the CONTRACTOR is not an individual, the affidavit shall be executed by a senior company official in charge at the CONTRACTOR's plant or location involved, or a responsible officer or general partner of the CONTRACTOR.

**42.3.2** The attention of the CONTRACTOR is drawn to state and federal laws regarding penalties for false claims. The CITY will prosecute the CONTRACTOR to the fullest extent of the law for the submission of a false, fictitious, or unsubstantiated Claim.

**42.3.3** A Claim for an adjustment of the time for Contract Completion shall be supported by an analysis of the Progress Schedule detailing the impact of the event giving rise to the Claim.

**42.3.4** Any costs or expenses for consultants, experts, or legal representation that the CONTRACTOR elects to engage to investigate, prepare, and substantiate any claim related to any dispute shall be born solely by the CONTRACTOR.

**42.4 Determination on a Claim.** For CONTRACTOR-certified claims of \$50,000.00 or less, the ENGINEER will, if requested in writing by the CONTRACTOR, render a determination within sixty (60) days of the request. For CONTRACTOR-certified claims over \$50,000.00, the ENGINEER will, within sixty (60) days tender a determination of the Claim or notify the CONTRACTOR of the date by which the determination will be made. If CONTRACTOR and ENGINEER cannot resolve any claim or dispute, CONTRACTOR agrees to participate in good faith in non-binding Mediation if requested by the ENGINEER. The cost of Mediation will be split equally between CONTRACTOR and ENGINEER. If a resolution cannot be reached through mediation, the CONTRACTOR's sole appeal of the ENGINEER's Final Determination is to institute legal action in Fulton Superior Court within sixty (60) days after Final Completion of the Work.

**42.5 Dispute Defined.**

**42.5.1** Any Claim that is denied by the ENGINEER shall be considered a Dispute within the meaning of this Clause.

**42.5.2** Pending final resolution of any Claim or Dispute, including litigation, the CONTRACTOR shall proceed diligently with performance of the Work, and comply with any decision of the CITY or the ENGINEER.

**42.5.3** In the event the CITY is a prevailing party in any litigation brought under, or to enforce the provisions of this Contract, CONTRACTOR shall pay to CITY all its costs, expenses and fees associated with the litigation and the preparation thereof, including, but not limited to, reasonable attorneys' fees, expert witness fees, and all expenses

incurred. CONTRACTOR shall pay CITY's reasonable attorneys' fees and other costs whether the services are performed by CITY's employees or independent counsel.

**42.6 Failure to Provide Notice is a Waiver.** The CITY must receive notice in strict compliance with the Contract of all Claims and Disputes in order to investigate such Claims and Disputes and to make decisions that will eliminate or minimize any additional costs or delays to the Work, the Project or to the CITY's overall expansion program. CONTRACTOR acknowledges that it has no right in law or equity to seek any increase to the Contract Price or an extension to the time for Contract Completion or any milestone(s), unless CONTRACTOR strictly complies with all requirements of this Clause. Failure by CONTRACTOR to meet all of the requirements of this Clause shall be deemed an intentional waiver by CONTRACTOR of any right to file a lawsuit seeking redress of any type. Compliance with all the requirements of this Clause is a strict condition precedent to CONTRACTOR having the right to file a lawsuit seeking redress of any type. The CITY is entitled to have any lawsuit dismissed with prejudice by showing that CONTRACTOR did not strictly comply with all of the requirements of this Clause.

**42.7 Venue.** CONTRACTOR acknowledges and agrees that the exclusive jurisdiction and venue for any legal action or proceeding, at law or in equity, arising out of or relating to this Contract shall be the Superior Court for Fulton County, Georgia. CONTRACTOR waives all objections it may have as to venue in the Fulton County Superior Court. CONTRACTOR also consents to the Fulton County Superior Court's jurisdiction for any such action or proceeding, regardless of CONTRACTOR's residence or domicile.

#### **GC-43 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**

**43.1** CONTRACTOR and OWNER expressly waive claims against each other for consequential damages arising out of, or relating to, this Contract. This mutual waiver includes:

**43.1.1** Damages incurred by the OWNER for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity, or of the services of such persons; and

**43.1.2** Damages incurred by the CONTRACTOR for principal office expenses including the compensation of the personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination. Provided, however, nothing in this Contract shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract documents.

#### **GC-44 RECORDS AND AUDITS**

CONTRACTOR shall maintain records and accounts in connection with the performance of this Contract that will accurately document incurred costs, both direct and indirect, including, but not limited to, labor hours and costs, equipment hours and costs, Subcontractor costs, material costs, and other costs of whatever nature, by cost code, including budgeted amounts, for a period of three (3) years from the expiration of CONTRACTOR's Contract unless otherwise

specified by applicable law. As used in this agreement, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

CITY, or its designated representatives, shall have the right to examine and copy all such records, including weekly and monthly summary reports of the entire project, labor cost reports, and equipment cost reports, at all reasonable times, with advance notification. CONTRACTOR may also be required to provide an electronic "data dump" of each transaction posted to each cost code, labor hours and costs, and equipment hours and costs, and other transactions. Such data shall be in the format of an electronic spreadsheet or database, and not in "PDF" or other image formats.

**44.1 City of Atlanta (COA) Audit.** As used in this agreement, "records" includes book, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

**44.2** Whenever the OWNER enters into any type of contractual arrangement including, but not limited to, lump sum contracts (i.e. fixed priced or stipulated sum contracts), unit price, cost plus or time and material contracts with or without a guaranteed maximum (or not-to-exceed amounts), CONTRACTOR's and Subcontractors' "records" shall, upon reasonable notice, be open to inspection and subject to audit and/or reproduction during normal business working hours. Such audits may be performed by an OWNER's representative or an outside representative engaged by OWNER. The OWNER, or its designee, may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law. OWNER's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with CONTRACTOR employees, field and agency labor, Subcontractors, and vendors.

**44.3** CONTRACTOR's "records", as referred to in this contract, shall include any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in OWNER's judgment have any bearing on, or pertain to, any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payments documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other CONTRACTOR records which may have a bearing on matters of interest to the OWNER in conjunction with the CONTRACTOR's dealings with the OWNER (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- 44.3.1** Compliance with contract requirements for deliverables
- 44.3.2** Compliance with approved plans and specifications
- 44.3.3** Compliance with OWNER's business ethics expectations
- 44.3.4** Compliance with Contract provisions regarding the pricing of change orders
- 44.3.5** Accuracy of CONTRACTOR representations regarding the pricing of invoices
- 44.3.6** Accuracy of CONTRACTOR representations related to claims submitted by the CONTRACTOR or any of his payees.

**44.4** CONTRACTOR shall require all payees (examples of payees include Subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between CONTRACTOR and payee. CONTRACTOR will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract.

**44.5** OWNER's authorized preventative or designee shall have reasonable access to the CONTRACTOR's facilities, shall be allowed to interview all current or former employee's to discuss matters pertinent to the performance of this Contract and shall be provided adequate and appropriate work space in order to conduct audits in compliance with this article.

**44.6** If an audit, inspection, or examination, in accordance with this article, discloses overpricing or overcharges, of any nature, by the CONTRACTOR to the OWNER in excess of one percent (1%) of the total Contract billed to date, in addition to making adjustments for the overcharges, all reasonable cost of the OWNER's audit shall be reimbursed to the OWNER by the CONTRACTOR. Any adjustments and/or payments, which must be made as a result of any such audit or inspection of the CONTRACTOR's invoices and/or records, shall be made within a reasonable amount of time, not to exceed 90 days, from presentation of OWNER's findings to CONTRACTOR.

## **GC-45 INDEMNITY**

**45.1 Hold Harmless Agreement.** In addition to its agreement to obtain and maintain the insurance as set forth herein, CONTRACTOR shall defend, indemnify and hold harmless the CITY, its officers, agents and employees, from and against any and all suits, actions, legal, or administrative proceedings, claims, damages, demands, liabilities, interest, attorney's fees, costs, and expenses of whatsoever kind or nature, including without limitation, those arising out of injury to, or death of, CONTRACTOR's employees, officers, agents or any subconsultant/Subcontractors' officers, agents or employees, whether arising before or after the completion of work, which allegedly arises out of any act or omission of the CONTRACTOR or any subconsultant/Subcontractor employed by the CONTRACTOR or any of the CONTRACTORS' and/or subconsultants'/Subcontractors' officers, agents or employees, whether active or passive. This defense, indemnification, and hold harmless agreement shall also apply to any and all claims which result from any condition created or maintained by the CONTRACTOR or any

Subcontractor employed by CONTRACTOR, or any of the CONTRACTORS' and/or Subcontractors' officers, agents or employees, of which condition was not specified to be created or maintained by this Contract. The CONTRACTOR further agrees that its agreement to defend, indemnify and hold harmless the CITY, its officers, agents and employees shall not be limited to the limits of the liability insurance under this Contract and the attached specifications. However, CONTRACTOR shall not be required to indemnify the CITY, its officers, agents, and employees for any claims resulting from the sole negligence or willful misconduct of the CITY, or any other party released, indemnified, or held harmless pursuant to this Contract. This paragraph shall survive any termination or expiration of this Contract.

**45.2 Negligence and Waiver.** CONTRACTOR's aforesaid release, indemnity and hold harmless obligations, or portions or applications thereof, shall apply even in the event of the fault or negligence, whether active or passive, or strict liability of the parties released, indemnified or held harmless to the fullest extent permitted by law, but in no event shall they apply to liability caused by the willful misconduct or sole negligence of the party released, indemnity by an industrial insurance or workers' compensation statute. CONTRACTOR further agrees that this Contract to indemnify and hold harmless the parties released shall not be limited to the limits or terms of the liability insurance, if any required under this Contract and/or otherwise maintained by the CONTRACTOR. This indemnity provision shall survive any termination or expiration of this Contract.

#### **GC-46 PATENT AND INTELLECTUAL PROPERTY INDEMNITY**

**46.1 Indemnification and Substitution.** CONTRACTOR hereby indemnifies and shall defend and hold harmless CITY, and its officers, agents, employees and its authorized representatives from and against any and all claims, actions, losses, damages, and expenses, including attorneys' fees, arising from any claim, whether rightful or otherwise, that any concept, product, design, equipment, material, process, copyrighted material or confidential information, or any part thereof, furnished by CONTRACTOR under this Contract constitutes an infringement of any patent or copyrighted material or a theft of trade secrets. If use of any part of such concept, product, design, equipment, material, process, copyrighted material or confidential information is limited or prohibited, CONTRACTOR shall, at its sole expense, procure the necessary licenses to use the infringing or a modified but non-infringing concept, product, design, equipment, material, process, copyrighted material or confidential information or, with CITY's prior written approval, replace it with substantially equal but non-infringing concepts, products, designs, equipment, materials, processes, copyrighted material or confidential information; provided however,

**46.1.1** That any such substituted or modified concepts, products, designs, equipment, material, processes, copyrighted material or confidential information shall meet all the requirements and be subject to all the provisions of this Contract; and

**46.1.2** That such replacement or modification shall not modify or relieve CONTRACTOR of its obligations under this Contract.

**46.2 Exclusion if Furnished.** The foregoing obligation shall not apply to any concept, product, design, equipment, material, process, copyrighted material or confidential information the

detailed design of which (excluding rating and/or performance specifications) has been furnished in writing by the CITY to CONTRACTOR.

#### **GC-47 NON-WAIVER**

Failure by CITY or its designated representatives to insist upon strict performance of any terms or conditions of this Contract; failure to delay to exercise any rights or remedies provided herein or by law; failure to properly notify CONTRACTOR in the event of breach; the acceptance of, or payment for, any goods or services hereunder; the review or failure to review designs shall not release CONTRACTOR from any of the warranties or obligations of this Contract and shall not be deemed a waiver of any right of CITY to insist upon strict performance hereof.

#### **GC-48 ARCHAEOLOGICAL AND HISTORICAL FINDINGS**

**48.1 No Known Significance.** To the best of the knowledge of CITY, the Jobsite is not within any property, district, or site, and does not contain any building, structure or object listed in the current National Register of Historic Places published by the United States Department of Interior.

**48.2 Stop Work.** Should the CONTRACTOR encounter, during its operations, any building, part of a building, structure, or object, which is incongruous with its surroundings, which might be considered to be of archaeological or historical interest, CONTRACTOR shall immediately cease operations in that location and notify the ENGINEER in writing. The ENGINEER will investigate and will direct the CONTRACTOR either to resume its operations or to suspend operations in accordance with the Clause titled "SUSPENSION OF WORK".

#### **GC-49 EXPLOSIVES**

**49.1 Transport of Explosives.** Explosives shall be transported to the Jobsite only when required to perform the Work under this Contract and with prior notice to, and written approval of, CITY. CONTRACTOR shall be responsible for properly purchasing, transporting, storing, safeguarding, handling and using explosives required to perform the Work under this Contract. CONTRACTOR shall employ competent and qualified personnel for the use of explosives and, notwithstanding any other provision in this Contract to the contrary, shall assume full responsibilities for the cost of any incidental or consequential damages caused by the improper use of explosives. Residual surplus explosives shall be promptly removed from the Jobsite and properly disposed of by CONTRACTOR.

**49.2 Notice of Detonation.** CONTRACTOR shall notify ENGINEER in writing no less than forty-eight (48) hours in advance of each intended detonation of explosives. CONTRACTOR shall submit a comprehensive blasting plan for each intended use of explosives to ENGINEER for approval. The plan shall describe drilling plans and patterns, types and amounts of explosives, and methods. Safety and storage considerations shall also be included.

#### **GC-50 DRUGS, ALCOHOL, AND WEAPONS**

**50.1 Policy.** CONTRACTOR's personnel shall not bring onto the Jobsite, or any other location where the provisions of this Contract apply:



**50.1.1** Any firearm of whatsoever nature, knife with a blade exceeding four (4) inches (100 millimeters) in length or any other object which in the sole judgment of ENGINEER is determined to be a potential weapon.

**50.1.2** Alcoholic beverages of any nature.

**50.1.3** Illegal or CITY prohibited non-prescription drugs of any nature without exception.

**50.2 Violations.** CONTRACTOR shall abide by and enforce the requirements of this Clause to include the immediate removal from the Work under this Contract, of any employee who has violated the requirements of this Clause or who ENGINEER, in his sole judgment, determines has violated the requirements of this Clause.

## **GC-51 ESCROW DOCUMENTS**

**51.1 Generally.** The Escrow Bid Documents constitute all documents generated by CONTRACTOR (or its subcontractors, if applicable) in preparation of its Bid for this project. CONTRACTOR was required to submit one complete set of its Escrow Bid Documents to the CITY to be held in the CITY's secured vault located within the Department of Procurement ("escrow"). Such Escrow Bid Documents shall remain in escrow for the duration of the Contract. Nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract Documents.

If the CONTRACTOR subcontracts any part of the Work, the Escrow Bid Documents must include the documents of each subcontractor whose total subcontract price exceeds five percent (5%) or Five Hundred Thousand (\$500,000) Dollars, whichever is less, of the total Contract price. Such documents must be filed in the same manner and at the same time as the CONTRACTOR's Escrow Bid Documents and shall remain in escrow for the duration of the Contract. CITY retains the right to require the CONTRACTOR to submit Escrow Bid Documents from any other subcontractor.

An Escrow Bid Documents Certificate ("Certificate") must accompany the Escrow Bid Documents at the time they are placed in escrow. The Certificate must be signed by an individual authorized by the CONTRACTOR to execute the bid proposal who must represent and warrant (1) that the material in the Escrow Bid Documents constitutes all the documents used in preparation of the Bid, (2) that he or she has personally examined the contents of the Escrow Bid Documents container, (3) that the documents in the container are accurate and complete, and (4) that no other Bid preparation information shall be considered in resolving disputes.

**51.2 Format and Contents.** CONTRACTOR may submit Escrow Bid Documents in their usual cost-estimating format. The Escrow Bid Documents shall be in English.

The Escrow Bid Documents must clearly itemize the estimated costs of performing the Work of each Bid item contained in the Bid schedule. Bid items should be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all quantity takeoffs, crew, equipment, calculations of rates

of production and progress, copies of quotations from subcontractors and suppliers, and memoranda, narratives, consultant's reports, add/deduct sheets, and all other information used by the CONTRACTOR to arrive at the prices contained in its Bid. Estimated costs should be broken down into the CONTRACTOR's usual estimate categories such as direct labor, repair labor, equipment operation, equipment ownership, expendable materials, permanent materials, and subcontract cost as appropriate. Plant and equipment and indirect costs should be detailed in the CONTRACTOR's usual format. The CONTRACTOR's allocation of plant and equipment, indirect costs, contingencies, markup and other items to each Bid item shall be included. All costs shall be identified. For Bid items amounting to less than Ten Thousand (\$10,000) Dollars, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.

Bid Documents provided by the CITY should not be included in the Escrow Bid Documents unless needed to comply with the requirements of this specification.

**51.3 Purpose.** Escrow Bid Documents will be used to assist in the negotiation of price adjustments, change orders, settlement of disputes, claims and litigation against the CITY related to the Contract. They will not be used for pre-award evaluation of the CONTRACTOR's anticipated methods of construction or to assess the CONTRACTOR's qualifications for performing the Work.

**51.4 Examination.** The Escrow Bid Documents shall be examined by the CITY and the CONTRACTOR (or designated representative) at any time deemed necessary by the CITY or the CONTRACTOR, to assist in the negotiation of price adjustments and change orders, or the settlement of disputes, claims and litigation related to this Contract.

Examination of the Escrow Bid Documents is subject to the following conditions:

**51.4.1** The Escrow Bid Documents are proprietary and confidential regarding any "trade secrets." (See Confidentiality and Georgia Open Records Act section below.)

**51.4.2** The CITY and CONTRACTOR may each designate one or more representatives in writing which shall be provided to the other party at least ten (10) days prior to any scheduled examination. Such representatives may be authorized to examine the Escrow Bid Documents on behalf of their respective principal. No other person shall have access to the Escrow Bid Documents.

**51.5 Ownership.** The Escrow Bid Documents are and shall remain the property of the CONTRACTOR, subject only to joint review by the CITY and the CONTRACTOR, as provided herein.

**51.6 Confidentiality and Georgia Open Records Act.** The CITY acknowledges that the Escrow Bid Documents may contain information that the CONTRACTOR, or its Subcontractor(s), considers "trade secret," as that term is defined in O.C.G.A. § 10-1-761. Information provided to the City is subject to disclosure under the Georgia Open Records Act. Pursuant to O.C.G.A. § 50-18-72(a)(34), "[a]n entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit

affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10 [O.C.G.A. § 10-1-760 et seq].”

**51.7 Final Disposition.** The Escrow Bid Documents will be returned to the CONTRACTOR at such time as the Contract has been completed and final settlement has been achieved.

## **GC-52 MISCELLANEOUS**

**52.1 Severability.** In the event that any provision of this Agreement is declared invalid, unenforceable or unlawful, such provisions shall be deemed omitted and shall not affect the validity of other provisions of this Agreement.

**52.2 Further Assurances.** Each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary to give effect to this Agreement.

**52.3 No Drafting Presumption.** No resumption of any Applicable Law relating to the interpretation of contracts against the drafter shall apply to this Agreement.

**52.4 Survival.** Any provision of this Agreement which contemplates performance subsequent to any termination or expiration of this Agreement or which must survive in order to give effect to its meaning, shall survive the expiration or termination of this Agreement.

**52.5 Third Party Beneficiaries.** This Agreement is not intended, expressly, or implicitly, to confer on any other Person any rights, benefits, remedies, obligations or liabilities.

**52.6 Cumulative Remedies.** Except as otherwise provided herein, all rights and remedies under this Agreement are cumulative and are in addition to, and not in lieu of, any other remedies available under Applicable Law, in equity or otherwise.

**52.7 Latent Defects.** Latent defects are defects which are eventually revealed but were initially hidden or dormant and could not initially be discovered using ordinary and reasonable means of care during inspection. Contractor has be responsible for the remediation of latent defects in accordance with applicable State Law.

**52.8 Entire Agreement.** The Contract Documents contain the entire Agreement of the Parties relating to their subject matter and supersede all previous communications, representations or agreements, oral or written, between the Parties with respect to such subject matter. This Agreement may only be amended or modified by a writing executed by each Party’s authorized representative and each such writing shall be deemed to incorporate the Contract Documents, except to the extent that CITY is authorized under Applicable Law to issue Unilateral Change Documents. SERVICE PROVIDER MAY NOT UNILATERALLY AMEND OR MODIFY THIS AGREEMENT BY INCLUDING PROVISIONS IN ITS INVOICES, OR OTHER BUSINESS FORMS, WHICH SHALL BE DEEMED OBJECTED TO BY CITY AND OF NO FORCE OR EFFECT.

**52.9 Unauthorized Goods or Services.** CONTRACTOR acknowledges that this Agreement and any changes to it by amendment, modification, change order, or other similar document may have required, or may require, the legislative authorization of the CITY’s Council and approval of the Mayor. Under Georgia law, Service Provider is deemed to possess knowledge concerning

the CITY's ability to assume contractual obligations and the consequences of Service Provider's provision of goods or services to the CITY under an unauthorized contract, amendment, modification, change order or other similar document, including the possibility that the Service Provider may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Service Provider agrees that if it provides goods or services to the CITY under a contract that has not received proper legislative authorization, or if Service Provider provides goods or services to the CITY in excess of the any contractually authorized goods or services, as required by the CITY's Charter and Code, the CITY may withhold payment for any unauthorized goods or services provided by Service Provider. Service Provider assumes all risk of non-payment for the provision of any unauthorized goods or services to the CITY, and it waives all claims to payment or to other remedies for the provision of any unauthorized goods or services to the CITY, however characterized, including, without limitation, all remedies at law or equity.