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CONSTRUCTION PROCUREMENT SIMPLIFIED™



Book 2

IQCC STANDARD TERMS AND CONDITIONS AND CONTRACT GENERAL CONDITIONS

CONTRACT NO.

GA01-062911, GA02-062911, GA03-062911, GA04-062911,
GA05-062911, GA06-062911, GA07-062911, GA08-062911,
GA09-062911, GA10-062911, GA11-062911, GA12-062911

INDEFINITE QUANTITY CONSTRUCTION CONTRACT

200 First Street NE
Staples, MN 56479

Mr. Gregg Meierhofer
Coordinator of Bids and Contracts
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May 2011

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BOOK 2

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SECTION ONE - IQCC STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 Addendum or Addenda: the additional Bidding Document provisions issued in writing by NJPA prior to the receipt of Bids.
- 1.2 Agreement: the written Agreement between the Contractor and NJPA covering the Work to be performed; and other Contract Documents incorporated in or referenced in the Agreement and made part thereof as if provided therein.
- 1.3 Adjustment Factors: the Contractor's competitively bid price adjustment to the Unit Prices as published in the Construction Task Catalog, Book 3. Adjustment Factors are expressed as an increase to or decrease from the published prices.
- 1.4 IFB Documents: The Invitation to Bid; Book 1 - Project Information, Instructions to Bidders, and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and Contract General Conditions; Book 3 - The Construction Task Catalog; and Book 4 - IQCC Technical Specifications.
- 1.5 Construction Task Catalog: A comprehensive listing of specific construction related Tasks, together with a specific unit of measurement and a Unit Price (also referred to as the CTC).
- 1.6 Contract Documents: This Agreement; the IFB Documents (Book 1 - Project Information, Instructions to Bidders and Execution Documents; Book 2 - IQCC Standard Terms and Conditions and IQCC General Conditions; Book 3 - Construction Task Catalog (CTC), Book 4 - Technical Specifications) and Addenda thereto, the Bid Deposit, all payment and performance bonds (if any), material and workmanship bonds (if any); wage rate decisions and certified payroll records (if any), Notice of Award, State of Georgia General Conditions, State of Georgia Supplementary General Conditions, State of Georgia Exhibits, all modifications issued thereto, including Supplemental Work Orders/Change Orders and written interpretations and all Purchase Orders and accompanying documents (Requests for Proposals, Detailed Scopes of Work, Work Order Proposal Packages, etc.) issued hereunder.
- 1.7 Contractor: The individual, firm, partnership, corporation, joint venture, or other legal entity or combination thereof with whom NJPA has contracted and who is responsible for the acceptable performance of the Agreement and for the payment of all legal debts pertaining to the Work. All references in the Contract Documents to third parties under contract or control of Contractor shall be deemed to be a reference to Contractor.
- 1.8 Days: Calendar days, unless otherwise stated.
- 1.9 Detailed Scope of Work: A document prepared following a Joint Scope Meeting which describes in detail the Work the Contractor will perform for a particular Work Order.
- 1.10 Holidays: the specific days designated by NJPA or NJPA members as legal Holidays. NJPA designates the following days as Holidays: New Year's Day, Martin Luther King Jr.'s Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the following day, and Christmas Day.
- 1.11 Joint Scope Meeting: a meeting, normally at the Site, to discuss the Work with the Contractor to assist in the development of the Detailed Scope of Work.
- 1.12 Non Pre-priced Task (NPP): a task not included in the Construction Task Catalog but within the general scope and intent of this the Agreement.
- 1.13 Non-Secure Area: an Area that is not a Secure Area.
- 1.14 Normal Working Hours: the hours of 7:30 a.m. to 5:00 p.m. Monday to Friday, except Holidays.
- 1.15 Other Than Normal Working Hours: 5:00 p.m. to 7:30 a.m. Monday to Friday and any time Saturday, Sunday, and Holidays.

- 1.16 Price Proposal: The price proposal prepared by the Contractor using the Construction Task Catalog, Adjustment Factors and appropriate quantities.
- 1.17 Price Proposal Package: The Contractor's Price Proposal; incidental drawings, sketches, or specification information; quantity take-offs supporting all material quantities; catalog cuts providing information on materials or products, as specifically requested; list of known Subcontractors, construction schedule, back-up for any Non Pre-Priced Tasks, warranty information on special equipment or materials and or other such documentation as the NJPA Member may require in order to evaluate the Price Proposal.
- 1.18 Project: collectively, the Work to be accomplished by the Contractor in satisfaction of a requirement or group of related requirements pursuant to one or more Work Orders.
- 1.19 Purchase Order. The document establishing the engagement by NJPA or the NJPA Member to the Contractor to complete a specifically identified Work Order Proposal Package at a specific Work Order Price and in a specific Work Order Completion Time. A Purchase Order will reference the IQCC to which it relates and will identify the schedule on which the Work Order Price will be paid to the Contractor.
- 1.20 Request for Proposal: The NJPA Member's written request for the Contractor to prepare and submit a Work Order Proposal Package for a specific Work Order.
- 1.21 Secure Area: An area where the contractor is required to comply with stringent security procedures on a particular work site that materially impedes its productivity (i.e. a GA Department of Corrections site where daily personnel check-in and check-out and tool and material counts are required or where movement of personnel and tools are severely restricted and monitored). Areas where the contractor must pass through a gate or security checkpoint are not necessarily considered Secure Areas.
- 1.22 Site: The area upon or in which the Contractor performs the Work and such other areas adjacent thereto as may be designated by NJPA or the NJPA Member.
- 1.23 State: The state of Georgia.
- 1.24 Subcontractor: Any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor or his Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.
- 1.25 Supplemental Work Order or Supplemental Purchase Order: A Work Order or Purchase Order issued to add or delete Work from an existing, related Work Order.
- 1.26 Technical Specifications: The comprehensive listing of the NJPA Members standards for quality of workmanship and materials, and the standard for the required quality of the Work.
- 1.27 Unit Price: The price published in the Construction Task Catalog for a Task. The Unit Prices are fixed for the Contract Term. Each Unit Price is comprised of the Labor, Equipment, and Material costs to accomplish that specific Task.
- 1.28 Work: The labor, material, equipment and services necessary or convenient to the completion of Work Orders.
- 1.29 Work Order: The written obligation document establishing an engagement by NJPA or NJPA Member to the Contractor to complete a specifically identified Work Order Proposal Package at the Work Order Price and within the Work Order Completion Time. A Work Order will normally be in the form of a Purchase Order issued by an NJPA Member.
- 1.30 Work Order Completion Time: The period of time set forth in the Work Order within which the Contractor must complete the Detailed Scope of Work.
- 1.31 Work Order Price: The lump sum price to be paid to the Contractor for completing the Detailed Scope of Work within the Work Order Completion Time.

- 1.32 Work Order Proposal Package: The final agreed upon Price Proposal, drawings, sketches, list of Subcontractors, final schedule, and, when appropriate, permits, or other such documentation as the NJPA Member may require for a specific Work Order.

2. SCOPE OF WORK AND PROCEDURE FOR ORDERING WORK

2.1. Scope of Work

- 2.1.1. This is an indefinite quantity contract for the supplies or services specified, and effective for the period stated in the IFB Documents.
- 2.1.2. Job or performance shall be made only as authorized by Work Orders issued in accordance with these IQCC Standard Terms and Conditions.
- 2.1.3. The Scope of Work of this Agreement shall be determined by individual Work Orders issued hereunder. The Contractor shall provide all pricing, management, incidental drawings, shop drawings, samples, documents, Work, materials, supplies, parts (to include system components), transportation, plant, supervision, labor, and equipment needed to complete each Work Order. The Contractor shall also be responsible for Site safety as well as Site preparation and cleanup during and after construction. All costs associated with the above scope of work and the preparation of proposals shall be the responsibility of the Contractor.
- 2.1.4. The Work shall be conducted by the Contractor in strict accordance with the Agreement and all applicable laws, regulations, codes, or directives including Federal, State, County and City.
- 2.1.5. The Contractor shall maintain accurate and complete records, files and libraries of documents to demonstrate compliance with Federal, State, and local regulations, codes, applicable laws listed herein, and manufacturers' instructions and recommendations which are necessary and related to the Work to be performed.
- 2.1.6. The Contractor shall prepare and submit required reports, maintain current record drawings, and submit required information. The Contractor shall provide: materials lists to include trade names and brand names, and model materials lists to include trade names, brand names, model number, and ratings (if appropriate) for all materials necessary to complete the Work Order.
- 2.1.7. In addition to the Tasks in the CTC, Book 3, NJPA may, from time to time, require Non Pre-priced Tasks. These Non Pre-priced Tasks will be incorporated into individual Work Orders.
- 2.1.8. All Work shall comply with any applicable standards, including those specified in the following documents. If the Work Order specifies a standard which is different or more stringent, the standard used in the Work Order shall control:
 - 2.1.8.1. City Building Codes
 - 2.1.8.2. The State Department of Transportation Standard Specifications for Road and Bridge Construction
 - 2.1.8.3. The specific Work Order supplemental specifications
 - 2.1.8.4. Work Order Contract Technical Specifications – Book 4
 - 2.1.8.4.1. The Technical Specifications, Book 4, are numbered and organized in the Construction Specification Institute's (CSI) master format. All specifications are filed in divisions 2 through 43 per CSI guidelines.
 - 2.1.8.4.2. The intent of these specifications is to furnish concise industry and commercial standards for construction, maintenance or repair of NJPA Member facilities.
 - 2.1.8.4.3. Reference in the Technical Specifications or the CTC to a specific

manufacturer, trade name, or catalog is intended to be descriptive but not restrictive and only to indicate to the prospective Bidder items that will be satisfactory.

3. ARCHITECTURAL AND ENGINEERING SERVICES

- 3.1. Under this Agreement it is expected that the level of A/E services and design, if any, will be incidental to the Agreement and therefore any cost associated with this is to be included in the Contractor's Adjustment Factors. If the level of A/E services for a Work Order requires that the Contractor provide stamped drawings and plans, the Contractor will be reimbursed according to the appropriate Task in the CTC. The Contractor will be required, as on any construction project, to provide shop drawings, as-built drawings, project layout drawings and sketches as required.
- 3.2. The preparation of incidental drawings/plans, specifications, safety plans, shop drawings, product data and samples, as-builts and all other documentation required herein by the Contractor as required by individual Work Orders is part of the Scope of Work of this Agreement and the cost there of shall be included in the Contractor's Adjustment Factors.

4. TERM OF AGREEMENT

- 4.1. This Agreement is for term shown on the IFB. The Contractor may withdraw from the Agreement on each anniversary of the award, provided that the Contractor provides 60 Days written notice of its intent to withdraw. NJPA may, for any reason, terminate this Agreement at any time.
- 4.2. A Work Order may be issued by an NJPA Member at any time during the term of this Agreement even though the Work and the payments made for such Work occur after the term ends. All the provisions of this Agreement are incorporated into each Work Order issued hereunder.

5. REGIONS

Contractor will primarily perform Work in the Region designated but may be required to perform Work anywhere within the Zone. However, if all parties (NJPA, NJPA Member, and Contractor) agree, the Contractor may perform Work in another Zone at the Adjustment Factors bid or as adjusted according to Article 7 below that and the Construction Task Catalog that is in the best interest of the NJPA Member.

6. ESTIMATED ANNUAL VALUE

The Estimated Annual Value of the Agreement is as specified in the IFB. The Contractor is not guaranteed to receive any Work Orders under this Agreement. The Estimated Annual Value is not a limit on the total value of Work Orders that could be issued to the Contractor in any one year.

7. UPDATING THE ADJUSTMENT FACTORS

- 7.1. **Economic Price Adjustment:** The Adjustment Factors shall be updated on each anniversary of the award date according to the following:
 - 7.1.1. A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for Atlanta published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the Award date for this contract.
 - 7.1.2. A Current Year Index shall be calculated by averaging the 12 month CCIs for Atlanta published in ENR for the 12 months immediately prior to the anniversary date of the Award for this contract.
 - 7.1.3. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.

- 7.1.4. The Adjustment Factors being updated shall be multiplied by the Economic Price Adjustment to obtain the new Adjustment Factors effective for the next 12 months.
- 7.1.5. Averages shall be obtained by summing the 12 month indices and dividing by 12.
- 7.1.6. All calculations shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
 - 7.1.6.1. The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
 - 7.1.6.2. The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 7.2. ENR occasionally revises CCIs. The CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCIs, if any, shall be used in subsequent calculations.7.3 Unlike the Contractor's Normal Working Hours Adjustment Factor and Other Than Normal Working Hours Adjustment Factor which shall be annually adjusted to account for construction escalation or de-escalation as provided in this Article, the Contractor's Non Pre-priced Task Adjustment Factor shall remain unchanged for the total duration of the Contract.
- 7.3. If NJPA fails to issue the Economic Price Adjustment by the anniversary date, it is the Contractor's responsibility to request the Economic Price Adjustment. Under all circumstances, should the Contractor submit a Price Proposal with inaccurate Adjustment Factors, the act of submission by the Contractor is a waiver of all rights to any further compensation above the price submitted in the Price Proposal.
- 7.4. By submitting a Proposal to the NJPA Member, the Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal within the Job Order Completion Time at the price submitted. It is the Contractor's responsibility to include the proper Adjustment Factor(s) and the necessary tasks and quantities in the Price Proposal prior to delivering it to the NJPA Member. The risk associated with incorrect Adjustment Factor(s), missing tasks, and inaccurate quantities from the Price Proposal shall be borne by the Contractor.

8. PROCEDURE FOR ORDERING WORK

8.1. Initiation of a Work Order

- 8.1.1. As the need exists, NJPA will, on behalf of an NJPA Member, notify the Contractor of a project and schedule a Joint Scope Meeting.
- 8.1.2. The Contractor shall attend the Joint Scope Meeting to discuss, at a minimum:
 - a. the general scope of the Work,
 - b. alternatives for performing the Work and value engineering,
 - c. access to the Site and protocol for admission,
 - d. hours of operation,
 - e. staging area,
 - f. requirements for professional services, sketches, drawings, and specifications,
 - g. construction schedule,
 - h. the presence of hazardous materials, and
 - i. date on which the Price Proposal Package is due.
- 8.1.3. Upon completion of the joint scoping process, NJPA, working with the NJPA Member and the Contractor, will prepare a Detailed Scope of Work referencing any sketches, drawings, photographs, and specifications required to document accurately the work to

be accomplished. NJPA will issue a Request for Proposal that will require the Contractor to prepare a Price Proposal. The Detailed Scope of Work, unless modified by both the Contractor and NJPA, will be the basis on which the Contractor will develop its Price Proposal and NJPA and the NJPA Member will evaluate the same. The Contractor does not have the right to refuse to perform any Task or any work in connection with a particular project.

8.2. **Preparation of the Price Proposal:** The Contractor will prepare Price Proposals in accordance with the following:

8.2.1. **Pre-priced Tasks:** A Pre-priced Task is a Task described and for which a Unit Price is set forth in the Construction Task Catalog. For Pre-priced Tasks the Contractor shall identify the Task from the Construction Task Catalog and the quantities required.

8.2.2. **Non Pre-priced Tasks:** A Non Pre-priced Task is a Task which is not in the Construction Task Catalog.

8.2.2.1. If the Contractor will perform the Non Pre-priced Task with its own forces, it shall submit three independent quotes for all materials to be installed and shall provide a breakdown of the labor and equipment costs.

8.2.2.2. If the Non Pre-priced Task is to be subcontracted, the Contractor must submit three independent quotes or bids from Subcontractors. The Contractor shall not submit a quote or bid from any supplier or Subcontractor that the Contractor is not prepared to use. NJPA may require additional quotes and bids if the suppliers or Subcontractors are not acceptable or if the prices are not deemed reasonable by NJPA.

8.2.2.3. **Pricing Non Pre-priced Tasks:** The final price submitted for Non Pre-priced Tasks shall be according to the following formula. Each Non Pre-priced Task must be supported with the necessary back-up documents including the calculation below:

For Work Performed with the Contractor's Own Forces:

A = The number of hours for each labor classification and hourly rates from the CTC

B = Equipment costs (other than small tools) from the CTC or for Equipment not in the CTC supported by equipment amortization data

C = Three independent quotes for all materials

Total Cost for self-perform work = (A+B+C) x NPP Adjustment Factor

For Work Performed by Subcontractors:

If the Work is to be subcontracted, the Contractor must submit three independent bids from Subcontractors. If three quotes or bids can not be obtained, the Contractor will provide the reason in writing for NJPA Member's approval why three quotes cannot be submitted.

D = Subcontractor Costs (supported by three quotes)

Total Cost of Non Pre-priced Task = D x NPP Adjustment Factor

8.2.2.4. At the discretion of NJPA, Non Pre-priced Tasks, as well as other Tasks, may be added to the CTC during the course of the Agreement. Unit prices will be established based on actual quotes from material suppliers and installers and fixed as a permanent Pre-priced Task in the CTC.

8.2.2.5. NJPA determination as to whether an item is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to the Contractor.

8.2.2.6. The means and methods of construction shall be such as the Contractor may

choose; subject however, to NJPA's right to reject means and methods proposed by the Contractor that:

- 8.2.2.6.1. Will constitute or create a hazard to the Work, or to persons or property; or
- 8.2.2.6.2. Will not produce finished Work in accordance with the terms of the Contract; or
- 8.2.2.6.3. Unnecessarily increases the price of the Work Order when alternative means and methods are available.

8.2.3. The Contractor shall submit a complete Price Proposal Package, which includes:

- a. any incidental drawings or sketches, calculations and or specification information,
- b. quantity take-off summary supporting all material quantities contained in the Price Proposal
- c. catalog cuts providing information on materials or products, as specifically requested,
- d. back-up for any Non Pre-priced Tasks,
- e. identification of known Subcontractors and material suppliers,
- f. a construction schedule,
- g. for special equipment or materials , warranty information.

8.2.4. By submitting a Price Proposal Package to NJPA, the Contractor is offering to complete the Detailed Scope of Work within the construction schedule for the amount of the Price Proposal. It is the Contractor's responsibility to include all necessary tasks in its Price Proposal prior to delivering it to NJPA.

8.2.5. **Unlike the Normal Working Hours- Non-Secure Areas Adjustment Factor, Normal Working Hours- Secure Areas Adjustment Factor, Other Than Normal Working Hours- Non-Secure Areas Adjustment Factor, and the Other Than Normal Working Hours- Secure Areas Adjustment Factor, the Non Pre-priced Adjustment Factor shall not be adjusted by the provisions of Article 7 above for the duration of the Agreement.**

8.3. Time for Submittal of the Price Proposal Package

8.3.1. The Contractor's Price Proposal (and all associated information described in Article 8.2.3 above) shall be submitted by the date set forth in the Request for Proposal. The time allowed for preparation of the Proposal will depend on the complexity and urgency of the Work Order; but in most cases, it shall not exceed **ten (10) working days**.

8.3.2. In emergency situations and for Work Orders requiring immediate completion, the Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, the Contractor may begin work immediately, with the paperwork to follow.

8.3.3. If the Contractor fails to meet the deadline for submittal of the Price Proposal Package, this may be reason to suspend issuance of this particluar Work Order.

8.4. Review of the Price Proposal Package

8.4.1. NJPA and/or the NJPA Member will evaluate the Contractor's Price Proposal by evaluating the nature and number of Tasks proposed against the agreed upon Detailed Scope of Work and will determine the reasonableness of approach. Furthermore NJPA and/or the NJPA Member may compare the Contractor's Price Proposal to the NJPA Member cost estimate for the Detailed Scope of Work. NJPA and the NJPA Member reserve the right to reject a Contractor's Price Proposal based on

unjustifiable/unsupported (with take off details) quantities and/or Work items, performance periods, inadequate documentation, or other inconsistencies on the Contractor's part.

- 8.4.2. If NJPA and/or the NJPA Member finds any part of the Contractor's Price Proposal unacceptable, NJPA may request the Contractor to re-submit its Price Proposal or cancel the Work Order. The Contractor is expected to submit correct Price Proposals the first time. However, NJPA recognizes that some adjustments to the Price Proposal may be required after review by NJPA and the NJPA Member. Therefore, NJPA will allow the Contractor to submit the first Price Proposal and a second Price Proposal for each Work Order.
 - 8.4.3. Additionally, NJPA and/or the NJPA Member will evaluate all other components of the Contractor's Price Proposal Package and may request revisions thereto.
 - 8.4.4. **Requested revisions to any and all of the Price Proposal Package components should be made by the Contractor and resubmitted in three (3) working days or less.** If after the second review by NJPA and/or the NJPA Member, NJPA and/or the NJPA Member finds requested revisions to the Price Proposal Package that were not made, this may be reason to suspend and/or cancel that particular Work Order.
 - 8.4.5. Failure by the Contractor to submit Price Proposal Packages, and revisions thereto, in a timely manner (within time frames described above) is grounds for suspension of all future Work Orders.
 - 8.4.6. NJPA reserves the right to obtain Price Proposals from any or all of the Contractors awarded an IQCC Contract.
 - 8.4.7. If the Contractor continues to submit Price Proposals which are rejected by NJPA, NJPA may declare the Contractor in default and initiate termination of the Agreement, according to Article 34 of the Agreement General Conditions.
- 8.5. Delivery of the Work Order Proposal Package**
- 8.5.1. After NJPA reaches an agreement with the Contractor on the Price Proposal Package and any requested revision thereto, if applicable, NJPA will assemble and deliver a Work Order Proposal Package for the NJPA Member's consideration.
 - 8.5.2. A Work Order Proposal Package will consist of:
 - a. a Work Order signature document listing: the Work Order number, a brief description of the work, the Work Order Amount, and whether liquidated damages apply or not, and other information
 - b. the Detailed Scope of Work Approved by the NJPA Member, including the Work Order Completion Time
 - c. the Contractor's Price Proposal,
 - d. a list of estimated subcontractors,
 - e. and other pertinent information (including part of the Contractor's Price Proposal Package) that may vary by Work Order.
 - 8.5.3. Once the Work Order Package has been submitted to the NJPA Member the Contractor is bound by its content.
- 8.6. Review of the Work Order Proposal Package by the NJPA Member and Issuance of Purchase Order**
- 8.6.1. The NJPA Member will evaluate the entire Work Order Proposal Package.
 - 8.6.2. The NJPA Member may reject a Work Order Proposal Package for any reason
 - 8.6.3. The NJPA Member may request changes to or clarifications of any part of the Work

Order Proposal package The Contractor and NJPA will work together to make any requested revisions in a timely manner and resubmit a revised Work Order Proposal Package.

- 8.6.4. Upon approval of the Work Order Proposal Package by NJPA and the NJPA Member, the NJPA Member may issue a Notice to Proceed, a signed Purchase Order, Notice of Award, or similar document accepting the Contractor's offer. The document will include:
 - a. Reference to the Detail Scope of Work
 - b. The Work Order Amount
 - c. Start date, Work Order Completion Time (duration) and completion date
 - d. Whether liquidated damages will apply
- 8.6.5. When the Work Order Package is accepted, the NJPA Member may send to the Contractor a Purchase Order, or a notice of intent to award a Purchase Order (sometimes used if bonding is required) or a similar document.
- 8.6.6. Once a Contractor has received the Purchase Order then the Contractor may not refuse to perform the Work. Such actions may be grounds for termination of this Contract or other disciplinary action at the option of NJPA
- 8.6.7. If performance and payment bonding is required, or if a separate and/or special insurance certificate is required, the Contractor will deliver such requirements to the NJPA Member within ten (10) days of notification of the requirement.

8.7. Changes

- 8.7.1. The NJPA Member reserves the right to make, in writing, at any time during the Work, changes in the Detailed Scope of Work as are necessary to satisfactorily complete the Project, and to delete in whole or in part, or to add to, the Detailed Scope of Work. Such changes, deletions, or additions will not invalidate the Agreement or the Work Order nor release the surety, if any, and the Contractor agrees to perform the Work as altered.
- 8.7.2. All changes, deletions, and additions to the Detailed Scope of Work will be reflected in a Supplemental Work Order priced in accordance with the procedure for developing and approving all Price Proposals.

9. MARKETING REQUIREMENTS

- 9.1. The Contractor shall be proactive about selling and marketing this contract to public agencies and non-profit organizations. Failure to do so may be grounds for termination of this Contract or other disciplinary action at the option of NJPA.
- 9.2. NJPA selected its Indefinite Quantity Construction Contracting system based on their research of what provides their members with the best value and most cost effective results. The Contractor shall promote NJPA's IQCC program and avoid all conflicts of interest with the promotion of other IQCC systems to any agency eligible to purchase under this Contract. The promotion of other IQCC systems to any agency eligible to purchase under this Contract may be grounds for termination of this Contract. The Contractor is also prohibited from pursuing the Work with other means if the Contractor provides an EZIQC proposal for the Work.
- 9.3. The Contractor must adhere to the following when preparing marketing materials, and in the use of trademarks:
 - 9.3.1. The Contractor shall include the NJPA logo and website address on all marketing materials and web sites that mention EZIQC or have anything to do with the EZIQC process.
 - 9.3.2. The Contractor shall include the EZIQC logo, website address, and phone number on all marketing materials and web sites that mention EZIQC or have anything to do with the EZIQC process.

- 9.3.3. All uses of the trademarks, NJPA and EZIQC, shall include the registered trademark symbol:
- 9.3.4. All “calls to action” shall direct users to the EZIQC web site and EZIQC phone number.
- 9.3.5. The Contractor shall not collect information from an owner on forms or web sites. All information collection shall be done at the EZIQC web site or by an EZIQC representative. The Contractor may input project information on the EZIQC web site on behalf of an owner.
- 9.3.6. Under no circumstance may copy or branding images pertaining to The Gordian Group Inc.’s intellectual property be altered in any way without the express written approval of The Gordian Group.
- 9.3.7. All marketing materials shall be coordinated and approved by EZIQC, LLC.

10. PUNCH LIST COMPLETION

- 10.1. The Contractor understands and agrees that time is of the essence in closing out the Work of this Contract. Upon Substantial Completion of the Work, the Punch List will be transmitted to the Contractor from the NJPA Member. The Contractor agrees to begin performance of Punch List Work immediately after receipt of the Punch List.
- 10.2. Failure of the Contractor or its Subcontractors to begin the Punch List Work within three (3) business days after receipt of the Punch List will be construed as failure to prosecute the Work of the Contract.
- 10.3. Punch List Work will be continuously prosecuted once begun and completed within thirty (30) Days from the receipt of the Punch List. Should the Contractor fail to complete the Punch List within this period of time, the liquidated damages as identified in Article 30 of the Contract General Conditions will apply.

11. PAYMENT AND PERFORMANCE BONDS AND MATERIAL AND WORKMANSHIP BONDS

If required by the NJPA Member for a particular Work Order, the Contractor shall deliver a Labor and Material Payment Bond and a Performance Bond in the amount of such Work Order. If required by the NJPA Member for a particular Work Order, the Contractor shall deliver Material and Workmanship Bonds in the amount required by the NJPA Member. The bonds must be in a form, and executed by a surety, acceptable to the NJPA Member. The bonds must be received before the Work Order will be issued. The Contractor shall be compensated for the cost of the bonds up to 2% of the Job Order Price through the Reimbursable Fee work task in the Construction Task Catalog . The Contractor shall apply a 1.0650 to the Reimbursable Fee work task rather than applying the Contractor’s competitively bid Adjustment Factor.

12. COMPUTER SOFTWARE

The Contractor shall maintain at its office for its use a computer with an high-speed internet connection. The Contractor will be furnished with a copy of the internet based PROGEN software which will allow the Contractor to generate Price Proposals. This software program contains an electronic copy of the Construction Task Catalog and allows the Contractor to select items and quantities for use in a particular Proposal. The software generates a Price Proposal in a preset format acceptable to the NJPA Member. There is no separate charge to the Contractor for the software and the related software training.

13. PREPAYMENT OPTION

An NJPA Member may elect to deposit the funds for any Project or Work Order in a special account established by NJPA for the purpose of paying the Contractors for work to be performed. Funds shall be transferred into and out of such account in strict accordance with the rules and procedures established therefor.

14. ADVERTISING SUBCONTRACT OPPORTUNITIES

The Contractor shall post all subcontract opportunities in excess of \$7,500.00 on the <http://www.egordian.com> website. The posted information shall include but not be limited to project name, trade/speciality, brief scope, Contractor contact information, and bid due date. The Contractor shall post such opportunities as soon as is practicable, thus giving the interested subcontractors as much time as possible to respond prior to the applicable bid due date.

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SECTION TWO – CONTRACT GENERAL CONDITIONS

1. PROJECT MANAGER

Project Manager: the person or firm designated by an NJPA Member and authorized to represent the NJPA Member in connection with a signed Work Order.

2. NJPA MEMBER’S RIGHT TO STOP WORK

The NJPA Member may order the Contractor to stop the Work on any Work Order, or any portion thereof, at any time for any reason.

3. NJPA MEMBER’S RIGHT TO COMPLETE WORK

If the Contractor has been ordered to stop the Work, the NJPA Member may, without prejudice to other remedies, have the Work completed by any available means.

4. REVIEW OF FIELD CONDITIONS

4.1. Before submitting a Proposal, the Contractor shall carefully study the Detailed Scope of Work, as well as the information furnished by the NJPA Member, shall take field measurements of any existing conditions related to the Work and shall observe any conditions at the Site affecting it. Any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Project Manager.

4.2. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Project Manager, but it is recognized that the Contractor’s review is made in the Contractor’s capacity as a Contractor and not as a licensed design professional. The Contractor is not required to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Project Manager.

5. SUPERVISION

5.1. The Contractor shall supervise and direct the performance of the Detailed Scope of Work, using the Contractor’s best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. If the Detailed Scope of Work gives specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the Site safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Project Manager and shall not proceed with that portion of the Work without further written instructions from the Project Manager.

5.2. The Contractor shall be responsible to the NJPA Member for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the work for or on behalf of the Contractor or any of its Subcontractors.

5.3. The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

6. WORKMANSHIP AND QUALITY

6.1. The Contractor may make substitutions only with the consent of the Project Manager.

- 6.2. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not skilled in the portions of the Work assigned to them.

7. WARRANTY

- 7.1. All Work furnished under this Agreement shall be guaranteed against defective materials and workmanship, improper performance and non-compliance with the Contract Documents for a period of one year after final acceptance of the Work, except as otherwise specified in other parts of the Contract Documents, or within such longer period of time as may be prescribed by law or provided by the manufacturer.
- 7.2. During the guarantee period, the Contractor shall repair and replace at Contractor's own expense, all Work that may develop defects whether such defects may be inherent in the equipment or materials, in the functioning of the piece of equipment, or in the functioning and operation of pieces of equipment operating together as a functional unit. Any equipment or material which is repaired or replaced shall have the guarantee period extended for a period of one year from the date of the last repair or replacement.
- 7.3. If the Contractor fails to repair, replace, rebuild or restore such defective or damaged Work promptly after receiving such notice, the NJPA Member shall have the right to have the Work done by others and to deduct the cost thereof from the monies owed to the Contractor. If the amount owed is insufficient to cover such costs, the Contractor shall be liable to pay such deficiency on demand.
- 7.4. The Project Manager's certificate setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective Work when performed by one other than the Contractor shall be binding and conclusive as the amount thereof upon the Contractor.
- 7.5. The Contractor shall obtain all manufacturer's warranties and guarantees of all equipment and materials required by this Agreement in the name of the NJPA Member.

8. PERMITS, FILING

- 8.1. The Contractor will be reimbursed the actual cost of a filing or permit as part of its Price Proposal paid with the "Reimbursable Item" Task from the Construction Task Catalog without markup (Factor of 1.0650). However, the cost(s) of expediting services or equipment use fees are not reimbursable.
- 8.2. The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.
- 8.3. It is not the Contractor's responsibility to ascertain that the Detailed Scope of Work is in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that any portion of the Detailed Scope of Work is at variance therewith, the Contractor shall promptly notify the Project Manager in writing.

9. PERSONNEL

The Contractor shall employ competent personnel for the development of the Project's Detailed Scope of Work, the preparation of the Price Proposal and the execution of the Work. During the performance of the Work, the superintendent assigned to the Project shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

10. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 10.1. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Detailed Scope of

Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Detailed Scope of Work. Submittals which are not required by the Contract Documents may be returned by the Project Manager without action.

- 10.2. The Contractor shall review for compliance with the Contract Documents, approve and submit to the Project Manager Shop Drawings, Product Data, Samples and similar submittals required with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the NJPA Member or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Project Manager without action.
- 10.3. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Detailed Scope of Work and of the Contract Documents.
- 10.4. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Project Manager.
- 10.5. The Work shall be performed in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Manager's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Project Manager in writing of such deviation at the time of submittal and (1) the Project Manager has given written approval to the specific deviation as a minor change in the Work, or (2) a Supplemental Work Order or written notice has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Project Manager's approval thereof.
- 10.6. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Project Manager on previous submittals. In the absence of such written notice the Project Manager's approval of a resubmission shall not apply to such revisions.
- 10.7. The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Detailed Scope of Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Detailed Scope of Work, the NJPA Member will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Project Manager. The NJPA Member shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the NJPA Member has specified to the Contractor all performance and design criteria that such services must satisfy. The Project Manager will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Detailed Scope of Work. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Detailed Scope of Work.

11. CUTTING AND PATCHING

- 11.1. The Contractor shall be responsible for cutting, fitting or patching required to complete the Detailed Scope of Work or to make its parts fit together properly.
- 11.2. The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the NJPA Member or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the NJPA Member or a separate contractor except with written consent of the NJPA Member and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the NJPA Member or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

12. CLEAN UP

- 12.1. The Contractor shall keep the Site and surrounding areas free from accumulation of waste materials or rubbish caused by operations under the Work Order. At completion of the Work, the Contractor shall remove from and about the Site all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.
- 12.2. If the Contractor fails to clean up, the NJPA Member may do so and the cost thereof shall be charged to the Contractor.

13. ACCESS TO THE WORK

The Contractor shall provide the Project Manager access to the Work at all times.

14. ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the NJPA Member and Project Manager harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the NJPA Member or Project Manager. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Project Manager.

15. INDEMNIFICATION

- 15.1. To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance purchased by the Contractor, the Contractor shall indemnify and hold harmless NJPA, the NJPA Member, Project Manager, consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph.
- 15.2. In claims against any person or entity indemnified under this Paragraph by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

16. SUBCONTRACTORS

- 16.1. The Contractor, as soon as practicable after award of the Work Order, shall furnish in writing to the Project Manager the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the Work, along with estimated values to be paid to each Subcontractor. The Project Manager will promptly reply to the Contractor in writing stating whether or not, after due investigation, Contractor has reasonable objection to any such proposed person or entity. Failure of the Project Manager to reply promptly shall constitute notice of no reasonable objection.
- 16.2. The Contractor shall not contract with a proposed person or entity to whom the NJPA Member or Project Manager has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.
- 16.3. If the NJPA Member or Project Manager has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the NJPA Member or Project Manager has no reasonable objection.
- 16.4. Evidence of the Contractor's Good Faith Efforts to utilize local, small and minority businesses and to utilize as many different local, small and minority businesses as possible may be used by NJPA as a factor in considering the responsibility of the Contractor for the exercise of Option Periods, as well as future bids or work under this Contract

17. COORDINATION WITH OTHER CONTRACTORS

- 17.1. The NJPA Member reserves the right to perform construction or operations related to the Work Order with the NJPA Member's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site.
- 17.2. The NJPA Member shall provide for coordination of the activities of the NJPA Member's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the NJPA Member in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the NJPA Member until subsequently revised.

18. REQUEST FOR EXTENSION OF TIME

- 18.1. If the Contractor is delayed at any time in the commencement or progress of the Detailed Scope of Work by an act or neglect of the NJPA Member or Project Manager, or of an employee of either, or of a separate contractor employed by the NJPA Member, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by other causes which the Project Manager determines may justify delay, then the Work Order Completion Time shall be extended for such reasonable time as the Project Manager may determine.
- 18.2. The Contractor agrees to make no claim for damages for the delay in the performance of any Work Order occasioned by any act or omission to act of the NJPA Member, Project Manager or any of their representatives, and agrees that any such claim shall be fully compensated for by an extension of time as provided herein.

19. PARTIAL PAYMENTS

- 19.1. The Contractor may submit a monthly Application for Payment for Work completed to date. The Contractor shall submit Certified Payroll Records, and such other supporting documentation as may be required by the Project Manager. The Project Manager will inspect the work within a reasonable time and the NJPA Member shall make partial payments to the Contractor based on the approved value of completed Work.
- 19.2. The NJPA Member may withhold up to 5% of each payment until final completion of the Work

Order.

- 19.3. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the NJPA Member, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-Subcontractors in a similar manner. In addition, Contractor's failure to promptly pay its Subcontractors is subject to the provisions of the Georgia Prompt Pay Act [O.C.G.A 13-11-1, et. seq.].

20. FINAL PAYMENTS

- 20.1. The Contractor shall notify the Project Manager when the Detailed Scope of Work is complete and ready for final inspection. The Project Manager will promptly make such inspection. If the Project Manager finds the Detailed Scope of Work complete and all final documentation submitted, the Project Manager will notify the Contractor that a final Application for Payment may be submitted.
- 20.2. The Contractor may then submit a final Application for Payment. The Contractor shall submit Certified Payroll Records (as applicable) and such supporting documentation as may be required by the Project Manager. The NJPA Member shall make final payment to the Contractor.
- 20.3. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

21. PARTIAL OCCUPANCY OR USE

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

22. IDENTIFICATION AND SECURITY REQUIREMENTS

The Contractor shall comply with all identification and security requirements that the NJPA Member may establish.

23. PROTECTION OF PERSONS AND PROPERTY

- 23.1. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable

protection to prevent damage, injury or loss to:

- 23.1.1. employees on the Work and other persons who may be affected thereby;
 - 23.1.2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
 - 23.1.3. other property at the Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.
- 23.2. The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
 - 23.3. The Contractor shall erect and maintain, as required by existing conditions and performance of the Detailed Scope of Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying NJPA Member and users of adjacent sites and utilities.
 - 23.4. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.
 - 23.5. The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to acts or omissions of the NJPA Member or Project Manager or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's other obligations included herein.
 - 23.6. The Contractor shall designate a responsible member of the Contractor's organization at the Site whose duty shall be the prevention of accidents. This person shall be the Contractor' superintendent unless otherwise designated by the Contractor in writing to the Project Manager.
 - 23.7. The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

24. HAZARDOUS MATERIALS

- 24.1. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to lead based paint, asbestos or polychlorinated biphenyl (PCB), encountered on the Site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop the Work in the affected area and report the condition to the Project Manager in writing.
- 24.2. The NJPA Member shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the NJPA Member shall furnish in writing to the Contractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the Task of removal or safe containment of such material or substance. The Contractor will promptly reply to the NJPA Member in writing stating whether or not either has reasonable objection to the persons or entities proposed by the NJPA Member. If either the Contractor has an objection to a person or entity proposed by the NJPA Member, the NJPA Member shall propose another to

whom the Contractor has no reasonable objection. When the material or substance has been rendered harmless, the Work in the affected area shall resume upon written agreement of the NJPA Member and Contractor. The Work Order Completion Time shall be extended appropriately.

- 24.3. To the fullest extent permitted by law, the NJPA Member shall indemnify and hold harmless the Contractor, Subcontractors, consultants and their agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described herein and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.
- 24.4. The NJPA Member shall not be responsible for materials and substances brought to the Site by the Contractor unless such materials or substances were required by the Detailed Scope of Work.
- 24.5. If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing the Work as required by the Contract Documents, the NJPA Member shall indemnify the Contractor for all cost and expense thereby incurred.

25. INSURANCE REQUIREMENTS

- 25.1. The Contractor shall procure and maintain, at its own cost and expense, until final acceptance of all the Work covered by this Agreement, the following kinds of insurance:
- 25.1.1. Workers' Compensation Insurance. A policy complying with the requirements of the laws of the State in which the Project is located.
- 25.1.2. General Liability and Property Damage Insurance. A standard general comprehensive liability insurance policy or a commercial general liability insurance policy issued to and covering the liability of the Contractor for all Work and operations under this Agreement, including, but not limited to, contractual and completed operations coverage. The coverage under such policy shall not be less than the following limits: Bodily Injury and Property Damage Liability, \$1,000,000 Each Occurrence, \$2,000,000 Aggregate.
- 25.1.3. Automobile Liability and Property Damage Insurance. A policy covering the use in connection with the Work covered by the Contract Documents of all owned, non-owned and hired vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State in which the Project is located. The coverage under such policy shall not be less than the following limit: Bodily Injury and Property Damage Liability, \$ 1,000,000 Each Occurrence.
- 25.1.4. All Risk Builders Risk Insurance. Where specifically required in the Detailed Scope of Work, the Contractor shall provide, before the Work Order is issued, Builders' Risk Insurance in an amount at least equal to the Work Order Price in a form and by a carrier acceptable to the NJPA Member.
- 25.1.5. Pollution Liability Insurance. If a Project involves asbestos abatement encapsulation or other activities involving hazardous materials, the Contractor, Subcontractor or other party responsible for such Work shall procure and maintain a liability insurance policy issued to and covering the liability, of the Contractor, Subcontractor or other party engaged in the removal, or handling of hazardous materials, for bodily injury, illness, sickness or property damage caused by exposure in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- 25.2. The Contractor shall provide certificates of insurance. Such certificates shall be on a form prescribed by NJPA, shall list the various coverages and shall contain, in addition to any

provisions hereinbefore required, a provision that the policy shall not be changed or cancelled and that it will be automatically renewed upon expiration and continued in force until final acceptance by NJPA, or NJPA Member, of all the work covered by the Agreement, unless NJPA is given fifteen (15) days' written notice to the contrary. Upon request, the Contractor shall furnish NJPA or any NJPA Member with a certified copy of each policy.

- 25.3. All insurance required to be procured and maintained as aforesaid must be procured from insurance companies approved by NJPA.
- 25.4. If at any time any of the above-required insurance policies should be cancelled, terminated or modified so that insurance is not in effect as above required, then, if NJPA shall so direct, the Contractor shall suspend performance of the work. If the said work is so suspended, no extension of time shall be due on account thereof. If said work is not suspended, then NJPA may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor.
- 25.5. Should the awarded Contractor retain a Subcontractor to perform any of the services mentioned herein, it is the Contractor's responsibility to insure that the Subcontractor(s) maintains the same types of insurance coverage in accordance with the requirements and amounts indicated herein.
- 25.6. NJPA, its officers, and employees must be included as a named insured. Any NJPA Member, its officials, officers, and employees must be included as a named insured when so requested by the NJPA Member.

26. LIQUIDATED DAMAGES

- 26.1. If provided for in the Request for Proposal, NJPA may assess liquidated damages for each day after the Work Order Completion Time that the Detailed Scope of Work is not complete.
- 26.2. The liquidated damages shall be equal to 1% of the total Work Order Amount for each calendar day of delay.

27. TESTS AND INSPECTIONS

- 27.1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the NJPA Member, or with the appropriate public authority. The Contractor shall give the Project Manager timely notice of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures.
- 27.2. If the Project Manager, NJPA Member or public authorities having jurisdiction determine that portions of the Work require, through no fault of the Contractor, additional testing, inspection or approval, the Project Manager will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the NJPA Member, and the Contractor shall give timely notice to the Project Manager of when and where tests and inspections are to be made so that the Project Manager may be present for such procedures. Such costs shall be at the NJPA Member's expense.
- 27.3. If such procedures for testing, inspection or approval reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Project Manager's services and expenses shall be at the Contractor's expense.
- 27.4. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Project Manager.
- 27.5. If the Project Manager is to observe tests, inspections or approvals required by the Contract

Documents, the Project Manager will do so promptly and, where practicable, at the normal place of testing.

- 27.6. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

28. GOVERNING LAW

28.1. NJPA's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes, Section 3.736, and other applicable law.

28.2. All claims and controversies between NJPA and Contractor shall be subject to the laws of the State of Minnesota and are to be resolved in Todd County, Minnesota.

29. COMPLIANCE WITH LAWS

In connection with the performance of this Agreement, the Contractor shall comply with all applicable laws, rules and regulations. The parties hereto agree that every provision of law required to be inserted herein be deemed a part hereof. It is further agreed that if any such provision is not inserted or is incorrectly inserted, through mistake or otherwise, this Agreement shall be deemed amended so as to comply strictly with the law.

30. SEVERANCE

If the Contract Documents contains any unlawful provision not an essential part of the Contract Documents and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken without affecting the binding force of the remainder.

31. LICENSE

Contractor shall obtain all licenses required from all public agencies with jurisdiction over the Work and shall keep these documents properly posted at the Site at all times during the performance of the Work.

32. ASSIGNMENT

No right or interest in this Agreement shall be assigned or transferred by the Contractor without prior written consent of NJPA. No delegation of any duty of the Contractor shall be made without prior written consent of NJPA.

33. CLAIMS AND DISPUTES

All claims or disputes between the NJPA Member and Contractor shall be resolved by NJPA.

34. TERMINATION BY NJPA FOR CAUSE

34.1. NJPA may terminate the Contract if the Contractor:

- 34.1.1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- 34.1.2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- 34.1.3. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- 34.1.4. otherwise is guilty of substantial breach of a provision of the Contract Documents.

34.2. If an unpaid balance of one or more Work Orders exceeds the costs of finishing the Work, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance,

the Contractor shall pay the difference to NJPA.

34.3. The NJPA Member may not terminate this Contract between NJPA and the Contractor.

35. NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND AMERICANS WITH DISABILITIES ACT

35.1. The Contractor shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, age, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability if qualified. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex or National origin, sexual orientation, marital status, political affiliation, or physical or mental disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection of training, including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

35.2. The Contractor shall comply with Title I of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, the Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.

36. AUDITS

NJPA may, at any time after reasonable notice, audit Contractor's records to establish total compliance and to verify the prices charged are in accordance with the Agreement. Contractor agrees to provide verifiable documentation and tracking in a timely manner.

37. GRATUITIES

NJPA may cancel this Agreement if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any employee of NJPA, are deemed to be excessive with a view toward securing a contract or with respect to the performance of this contract. However, paying the expenses of normal business meals or travel to meetings as described and allowed by law, which are generally made available to all eligible school and government employees, shall not be prohibited by this paragraph. Samples of software, equipment, or hardware provided to NJPA for demonstration, evaluation or loan purposes are not considered gratuities.

38. STATE OF GEORGIA DOCUMENTS

The contract shall be available to all State of Georgia governmental entities, including but not limited to state authorities, offices, agencies, departments, boards, bureaus, commissioners, institutions, colleges and universities, as well as local government, municipalities, cities, townships, counties and other political subdivisions of the State of Georgia; furthermore, all Work performed through the State of Georgia Department of Administrative Services (DOAS) (should they choose to adopt the contract- See Book 1, Section Two-Instruction to Bidders, Article 22) for all State of Georgia governmental entities, including but not limited to state authorities, offices, agencies, departments, boards, bureaus, commissioners, institutions, colleges and universities, as well as local government, municipalities, cities, townships, counties and other political subdivisions of the State of Georgia, the following State of Georgia General Conditions, State of Georgia Supplementary General Conditions, and State of Georgia Exhibits shall apply.

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SECTION THREE – STATE OF GEORGIA GENERAL CONDITIONS

GC-01. General Conditions. The General Conditions of the Contract, GC-01 thru GC-74, inclusive, bound herein and hereafter referred to as the “State of Georgia General Conditions,” shall govern in the event of any conflict with any other provisions of the Contract Documents unless notice to the contrary shall have been issued by the Owner bearing the imprimatur of the Owner as follows:

“By order of the Owner”

In the event of conflict, the State of Georgia Supplementary General Conditions control over the State of Georgia General Conditions. The Architect has no authority to amend the State of Georgia General Conditions, the State of Georgia Supplementary General Conditions or the State of Georgia Exhibits orally or in writing either expressly or by implication.

GC-02. Legal Compliance. The Contractor shall comply with all laws, rules, regulations, ordinances, and orders of any government agency having jurisdiction in the performance of the Work and shall ensure the compliance of his subcontractors. Without limiting the generality of the foregoing, the following laws are specifically referenced:

- a) The Drug-Free Workplace Act, O.C.G.A. Section 50-24-1, *et. seq.*
- b) Preference for Georgia Supplies, materials, equipment, and agricultural products, O.C.G.A. Sections 50-5-60 through 61.
- c) Preference for Georgia forest products, O.C.G.A. Section 50-5-63.
- d) Preference to local sellers of Georgia products, O.C.G.A. Section 50-5-62.
- e) Standards and Requirements for Construction, Alterations, *etc.*, O.C.G.A. Section 8-2-1 *et. seq.*
- f) Control of Soil Erosion and Sedimentation, O.C.G.A. Section 25-2-1, *et. seq.*
- g) Regulation of Fire and other Hazards, O.C.G.A. Section 25-2-1 *et. seq.* [See Article GC-12(a)]
- h) Regulation of Blasting Operations, O.C.G.A. Section 25-2-1 *et. seq.* and 25-9-1 *et. seq.*
- i) Providing Safe workplace, O.C.G.A. Sections 34-2-10 and 34-7-20. [See Article GC-12(b)]
- j) Underground Gas Pipes, O.C.G.A. Section 25-9-1 *et. seq.* [See Article GC-12(f)]
- k) High Voltage Safety Act, O.C.G.A. Section 46-3-30 *et. seq.* [See Article GC-12(g)]
- l) Access and Use by Physically Handicapped Persons, O.C.G.A. Section 30-3-1 *et. seq.*
- m) Small and Minority Business Enterprises, O.C.G.A. Sections 50-5-120 *et. seq.* and 50-5-130 *et. seq.*
- n) Trading with the State or State Officials, O.C.G.A. Sections 45-10-20 to 45-10-71.
- o) Title VII of the Civil Rights Act
- p) Age Discrimination in Employment Act
- q) Americans with Disabilities Act
- r) Federal Occupational Safety and Health Act, 29 U. S. C. Section 651 *et. seq.* [See Article GC-12(j)]
- s) Federal Emergency Planning and Community Right-to-Know Act, 42 U. S. C. Section 11001 *et. seq.* [See Article GC-12(k)]

GC-03. Trade Names

- a. *No Restriction of Competition.* When reference is made in the Contract Documents to trade names, brand names, or to the names of manufacturers, such references are made solely to indicate that products of that description may be furnished and are not intended to restrict competitive bidding. If it is desired to use products of trade or brand names or of manufacturers’ names which are different from those mentioned in the Contract Documents, the Contractor may submit an application in writing to the Architect requesting approval of such substitution. The Contractor must obtain approval from the Architect prior to incorporating any substitution into the Work.
- b. *Burden of Proof.* The burden of proving acceptability of a proposed product must be accompanied by technical data that the party requesting approval desires to submit in support of his application. The Architect will give consideration to reports from reputable independent testing laboratories, verified experience records showing the reputation of the proposed product with previous users, evidence of

reputation of the manufacturer for prompt delivery, evidence of reputation of the manufacturer for efficiency in servicing its products, or any other written information that is helpful in the circumstances. The application to the Architect for approval of a proposed product must be accompanied by a schedule setting forth in which respects the materials or equipment submitted for consideration differ from the materials or equipment designated in the Contract Documents. The degree of proof required for approval of a proposed product as acceptable for use in place of a named product or named products is that amount of proof necessary to convince a reasonable person beyond all doubt. To be approved, a proposed product must also meet or exceed all express requirements of the Contract Documents.

GC-1. Definitions

- a. *Contract Documents.* The Contract Documents are as defined in Article 1.6 of the IQCC Standard Terms and Conditions.
- b. *Contract.* (To include Purchase Orders, Task Orders, Work Orders and other Supplemental Documents) executed by state and local government entities authorized to make purchases under the IQCC Agreements (GA01-111908 and GA02-111908).
- c. *Subcontractor.* The term subcontractor is as defined in Article 1.21 of the IQCC Standard Terms and Conditions.
- d. *Notices.* Written notice shall be deemed to have been duly served if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered mail to the last business address known to him who gives the notice.
- e. *Work.* The term Work is as defined in Article 1.25 of the IQCC Standard Terms and Conditions.
- f. *Time Limits.* All time limits stated in the Contract Documents or shown on the construction progress schedule are of the essence of the contract. (See also GC-46)
- g. *Applicable Law.* This contract shall be governed by the law of Georgia.
- h. *Specifications.* The term “Specifications” shall include all written matter in the bound volume or on the drawings and any addenda or modifications thereto in addition to all elements of the Technical Specifications as defined in Article 1.23 of the IQCC Standard Terms and Conditions. (See GC-49)
- i. *Order of Condemnation.* An order of condemnation shall be in writing, shall be dated, shall be signed by the Architect, shall be addressed to the Contractor with a copy to the Owner, and shall contain three elements as follows:

FIRST ELEMENT: Description of Work:

- 1. which has been omitted; or
- 2. which is unexecuted as of the date of the order of condemnation, the time for its incorporation into the Work under the construction progress schedule having expired (See also GC-46); or
- 3. which has not been executed in accordance with the methods and materials designated in the Contract Documents.

SECOND ELEMENT: Citation of the provision or provisions of the Contract Documents that has or have been violated.

THIRD ELEMENT: Fixing of a reasonable space of time within which the Contractor shall have made good the deficiency which said space of time shall not be deemed to be an extension of Work Order Completion Time for filing the Notice of Readiness for Final Inspection pursuant to GC-41 nor

shall it be deemed to be authorization for amendment to the construction progress schedule. (See also GC-19, GC-20, and GC-50)

An order of condemnation may be issued for failure of the Contractor to supply enough workmen or enough materials or proper materials. The order of condemnation in such event being based on GC-46, q.v. and upon the definition of Work as set forth under GC-1(e), q.v. (See also GC-26)

- j. *Proceed Order.* The proceed order is a written notice from the Owner pursuant to which the Contractor shall commence physical Work on the site. (See GC-46) A proceed order is a condition precedent to the execution of any Work on the site by the Contractor.
- k. *Work Order.* The term Work Order is as defined in Article 1.26 of the IQCC Standard Terms and Conditions.
- l. *Supplemental Work Order.* The Supplemental Work Order and the term Change Order can be used interchangeably and is the instrument by which adjustments in the Work Order Price are effected pursuant to changes made in accordance with GC-15. The Price Proposal, and the Price Proposal Package applicable to each Supplemental Work Order shall be in compliance with all requirements contained in Article 8 of the IQCC Standard Terms and Conditions. The Architect shall certify to the amount of the adjustment.
- m. *Install, Deliver, Furnish, Supply, Provide and Other Such Words.* Such words mean the Work in question shall be put in place by the Contractor ready for use unless expressly provided to the contrary.
- n. *Article Not Plenary.* This article is not entire, plenary, or exhaustive of all terms used in the State of Georgia General Conditions which require definition. There are definitions of other terms under articles to which the terms are related.
- o. *Grounds for Issuance of Notice of Declaration of Default.* It shall be a sufficient ground for the issuance of a notice of declaration of default that the Contractor has been unfaithful or delinquent in the performance of the contract or any part of it in any respect. Without limitation of the foregoing and without subtracting from any right or defense of the Owner under other provisions of the Contract Documents, the Contractor acknowledges and agrees that it is ipso facto ground for issuance of a notice of declaration of default under the performance bond if the Contractor shall have neglected or failed for any reason to remedy a breach of an order of condemnation within thirty (30) days after the Owner shall have given written notice of said breach to the Contractor and the surety on the performance bond with written demand of the Owner for curing of the delinquency. The Architect does not have authority to declare the Contractor in default.
- p. *Cross-reference and Citations of Articles and Paragraphs of the General Condition.* Cross-references and citations of articles and paragraphs of the State of Georgia General Conditions are for the convenience of the Contractor, Architect and the Owner and are not intended to be plenary or exhaustive nor are they to be considered in interpreting the Contract Documents or any part of the Contract Documents.
- q. *Meaning of Words and Phrases.* Unless the context or the Contract Documents taken as a whole indicate to the contrary, words used in the Contract Documents that have usual and common meanings shall be given their usual and common meanings and words having technical or trade meanings shall be given their customary meaning in the subject business, trade or profession.
- r. *Shop Drawings.* Shop drawings are drawings, schedules, data, catalogue cuts, manufacturers' published recommendations, charts, bulletins, brochures, illustrations, circulars, roughing drawings or formulae distributed by Contractors, subcontractors, manufacturers, materialmen, or suppliers for use in installing Work. (See also GC-53)

- s. *Owner.* The Owner as referred to herein is the state or local government entity that issues the Work Order.
- t. *Architect.* In the absence of a Project Architect, specifically retained by the Owner to perform design services for this project, the term Architect appearing in these documents shall mean Owner or Owner's Representative.
- u. *Contractor.* Contractor is the individual, firm, partnership, corporation, joint venture or other legal entity as defined in Article 1.7 of the IQCC Standard Terms and Conditions.

GC-2. Identification, Correlation, and Intent of Documents. The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The Contract Documents consist of all elements as described in Article 1.6 of the IQCC Standard Terms and Conditions. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. Work not covered in the Contract Documents will not be required unless it is necessary to produce the intended results. [See also GC-1(m), GC-36, GC-37, and GC-45]

GC-3. Complete, Definite, and Clear Instructions and Schedules of Drawings.

- a. *Refinement of Documents.* The Contractor shall do no Work without complete, definite, and clear drawings and specifications (or other form of a Detailed Scope of Work). In the event the Contract Documents are not complete, definite, and clear the Contractor shall make demand upon the Architect in writing for additional instructions and shall furnish the Owner a copy of the aforesaid demand. With reasonable promptness the Architect shall furnish complete, definite, and clear instructions in writing, or by means of drawings, or in writing and by means of drawings. [See also GC-2, GC-14, GC-18 and GC-39] Such additional instructions if given orally shall be confirmed in writing or by drawings or both within a reasonable space of time. Any such additional instructions shall be consistent with the Contract Documents, true developments thereof, and reasonably inferable therefrom. The Work shall be executed in conformity with the aforesaid instructions. The Architect shall furnish the Owner a copy of all additional instructions issued to the Contractor. [See also GC-16 and GC-39]
- b. *Schedules.* The Contractor and the Architect shall jointly prepare a schedule, subject to change from time to time in accordance with the progress of the Work, fixing the dates at which the various detail drawings will be required, and the Contractor shall furnish them in accordance with that schedule. [See also GC-5(b)]

GC-4. Omitted

GC-5. Shop Drawings. The Contractor shall review, approve and submit to the Architect all Shop Drawings, Product Data and Samples required by the Contract Documents for approval. The Work shall be in accordance with approved submittals.

GC-6. Drawings and Specifications at the Site. The Contractor shall keep at the site one copy of all drawings and specifications in good order with all addenda and change orders noted thereon and available to the Architect and to his representative(s).

GC-7. Ownership of Drawings and Models. All drawings, specifications, and copies thereof furnished by the Architect are the property of the Owner. They are not to be used on other Work, and with the exception of one set, are to be returned to the Architect on his request at the completion of the Work. All models are the property of the Owner.

GC-8. Samples. The Contractor shall furnish for approval all samples as directed. The Work shall be in accordance with approved samples.

GC-9. Materials, Appliances, and Employees

- a. *Payment for.* Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation, and other facilities necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. (See also GC-70)
- b. *Quality of Materials and Workmanship.* Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of the quality required by the specifications. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and Work. The burden of proof is on the Contractor. (See also GC-13)
- c. *Quality and Discipline of Employees.* The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the Work assigned to him. (See also GC-14)

GC-10. Royalties and Patents. The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall hold the Owner harmless from loss on account thereof.

GC-11. Surveys, Permits and Regulations

- a. *General.* The Owner shall furnish all surveys unless otherwise specified. Permits and licenses of a temporary nature necessary for the prosecution of the Work shall be obtained and paid for by the Contractor. If the Owner is required to obtain a permit, the Contractor will be reimbursed the actual cost of a filing or permit as part of its Price Proposal paid with the “Reimbursable Item” Task from the Construction Task Catalog without markup (Factor of 1.0650). However, the cost(s) of expediting services or equipment use fees are not reimbursable (see Article 8.1 of the Contract General Conditions) Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be obtained and paid for by the Owner unless otherwise specified. The Contractor shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the Work. If the Contractor observes that the drawings or specifications are at variance therewith, he shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in the contract for changes in the Work. If the Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules or regulations without such notice to the Owner, he shall bear all costs arising therefrom. (See also GC-42)
- b. *Codes*
 - 1) International Building Code, with Georgia State Amendments
 - 2) International Mechanical Code, with Georgia State Amendments
 - 3) International Fuel Gas Code, with Georgia State Amendments
 - 4) International Plumbing Code, with Georgia State Amendments
 - 5) International Electrical Code, with Georgia State Amendments
 - 6) International Energy Conservation Code, with Georgia State Amendments

The latest edition of the above listed codes with all amendments as of the date of the issuance of a Purchase Order shall govern the installation of all Work and is adopted and incorporated into the Contract Documents and made a part thereof by reference, Provided, however: That the drawings and specifications shall be adhered to in all cases where they call for quality of materials, quality of workmanship, or quality of construction which is equal to or in excess of the quality required by the above state codes and Provided also: That there may be no variances from the drawings and specifications except to the extent that the said variances shall be necessary in order to comply with the above stated codes. It shall be the responsibility of the Contractor to familiarize himself with the requirements of the above stated codes. If there are any express requirements in the drawings or specifications which are at variance to the above stated codes, all changes in the Work necessary to

eliminate the said requirements and make the Work conform to the above stated codes shall be adjusted as provided in the contract for changes in the Work.

GC-12. Protection of Work and Property

- a. *Duty to Protect Property.* The Contractor shall continuously maintain adequate protection of all his Work from damage (see also GC-24) and shall protect all other property from damage, injury, or loss arising in connection with the Work regardless of who may be the Owner of said property. He shall make good any such damage, injury, or loss except such as may be directly the result of errors in the Contract Documents or such as shall be caused directly by agents or employees of the Owner. (See also GC-27)
- b. *Safety Precautions.* The Contractor shall comply with the rules and regulations of OSHA and/or the Department of Labor (O.C.G.A. section 34-2-6), and, where not inconsistent with the foregoing, the “Manual of Accident Prevention in Construction” issued by the Associated General Contractors of America, Inc., for safety and prevention of accidents, and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work arising out of and in the course of employment on Work under the contract. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plant, appliances, and methods, and for any damage that may result from their improper construction, maintenance, or operations. He shall erect and properly maintain at all times as required by the conditions and progress of the of the Work proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created by the construction operations. He shall designate a responsible member of his organization on the Work whose duty shall be the prevention of accidents. In the absence of notice to the contrary, filed with the Architect in writing with copy to the Owner, this person shall be the superintendent of the Contractor. (See also GC-14)
- c. *Emergencies.* In an emergency affecting the safety of life or the Work or of adjoining property, the Contractor, without special instruction or authorization from the Architect or Owner, shall act, at his discretion, to prevent such threatened loss or injury. Any remuneration claimed by the Contractor on account of emergency Work shall be determined in accordance of GC-15 of the State of Georgia General Conditions.
- d. *Blasting.* In the absence of an express provision in the contract permitting blasting, there shall be no blasting. If blasting is permitted under the contract and under the law which is applicable to the premises [including but not limited to O. C. G. A. Sections 25-8-1 *et. seq.* and 25-9-1 *et. seq.*], such blasting shall in all events be done in such manner as to prevent all scattering. [See also Article GC-27]
- e. *Rain Water, Surface Water, and Back-up.* The Contractor shall protect all Work, including but not limited to excavations and trenches, from rain water, surface water, and back-up of drains and sewers. The Contractor shall furnish all labor, pumps, shoring, enclosures, and equipment necessary to protect and to keep the Work free of water. [See GC-02(f)]
- f. *Underground Gas Pipe Law.* The Contractor by signing the contract acknowledges that he is fully aware of the contents and requirements of O.C.G.A. Section 25-9-1 *et. seq.*, and any amendments and regulations pursuant thereto, (the preceding requirements being hereinafter referred to as the “underground gas pipe law”), and the Contractor shall comply therewith. The Contractor acknowledges that the Contractor is the “person” defined in the above-mentioned underground gas pipe law (a) who will engage in the activities which are regulated thereby, (b) who is required to examine maps filed pursuant thereto, (c) who is required to give written notices to gas companies in accordance therewith, (d) who is required to receive written statements from gas companies as prescribed thereby, and (e) who is to perform and do certain things referred to therein only after observing the precautions with respect to underground gas pipes and facilities which are prescribed therein. These provisions of the contract do not repeal the restrictions under Subparagraph (d) of GC-12 of the State of Georgia General Conditions nor do they limit or reduce the duty of the Contractor otherwise owed to the Owner, to other parties, or to both. The Contractor agrees that the foregoing

provisions supplement GC-12 and GC-27 of the State of Georgia General Conditions. The Contractor agrees and acknowledges that any failure on his part to adhere to the underground gas pipe law shall not only be a violation of law but shall also be a breach of contract and a specific violation of the provision under GC-12 of the State of Georgia General Conditions which pertains to safety precautions.

- g. *High Voltage Act.* The Contractor by signing the contract acknowledges that he is fully aware of the contents and requirements of O.C.G.A. Section 46-3-30 *et. seq.* and any amendments thereto, and Rules and Regulations of the Commissioner of Labor pursuant thereto (the preceding requirements being hereafter referred to as the “high voltage act”), and the Contractor shall comply therewith. The signing of the contract shall also confirm on behalf of the Contractor that he:
1. has visited the Site pursuant to GC-15(d) of the State of Georgia General Conditions and has taken into consideration the location of all electric power lines on and adjacent to all areas onto which the Contract Documents require or permit the Contractor either to work, to store materials, or to stage operations; and
 2. has obtained from the Owner of the aforesaid electric power lines advice in writing as to the amount of voltage carried by the aforesaid lines.

The Contractor agrees that he is the “person or persons responsible for the Work to be done” as referred to in the high voltage act and that accordingly the Contractor is solely “responsible for the completion of the safety measures which are required by Section 3 of the high voltage act before proceeding with any Work.” The Contractor agrees that prior to the completion of precautionary measures required by the high voltage act he will neither bring nor permit the bringing of any equipment onto the site (or onto any area or areas onto which the Contract Documents require or permit the Contractor to work, to store materials, or to stage operations) with which it is possible to come within eight feet of any high voltage line as defined in the high voltage act, and the Contractor assumes complete and sole responsibility for any accident or accidents which may occur as a result of contact with a high voltage line or lines pursuant to operations arising out of performance of the contract. The foregoing provisions apply to power lines located (a) on the site and (b) on any area or areas onto which the Contract Documents require or permit the Contractor either to work, to store materials, or to stage operations, or (c) within working distance for equipment or materials being used on (a) and (b) above. These provisions of the contract do not limit or reduce the duty of the Contractor otherwise owed to the Owner, to other parties, or to both. The Contractor agrees that the foregoing provisions supplement GC-12 and GC-27 of the State of Georgia General Conditions. The Contractor agrees and acknowledges that any failure on his part to adhere to the high voltage act shall not only be a violation of law but shall also be a breach of contract and a specific violation of the provision under GC-12 of the State of Georgia General Conditions which pertains to safety precautions. The Contractor is notified that the Rules and Regulations promulgated by the Commissioner of Labor under date of January 11, 1967, contain a statement under Section 12 that...

“The Division of Inspection of the Department of Labor will act in an advisory capacity to any person, firm, or corporation contemplating any operations near high voltage lines as defined in the Act...”

- h. *Building Construction Safeguards.* The Contractor acknowledges and agrees that he is the person responsible under the law and that he is the person EMPLOYING or directing others to perform labor within the meaning of O.C.G.A. Section 34-1-1 *et. seq.* He acknowledges and agrees likewise that he will comply with the aforesaid law.
- i. *Dust Control.* Dust-proof enclosures or partitions for protection wherever dusty or dirty Work is performed and dampening of debris to avoid dusting when removed shall be provided and included as a cost of the work.

- j. *Occupational Safety and Health Act.* Contractor, by signing the contract, acknowledges that he is aware of and familiar with the contents and requirements of the Federal Occupational Safety and Health Act of 1970, 29 U. S. C. Section 651 *et. seq.*, as amended.
- k. *Emergency Planning and Community Right-to-Know Act.* Contractor, by signing the contract, acknowledges that he is aware of and familiar with the contents and requirements of the Federal Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Section 11001 *et. seq.*, as amended.

GC-13. Inspection of Work

- a. *Access to Work.* The Architect and his representatives shall at all times have access to the Work wherever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and for inspection. [See also GC-9]
- b. *Notice to Architect from Contractor Prior to Covering Work.* If Detailed Scope of Work, the specifications, the Architect’s instructions (either in the specifications or issued later in writing), laws, ordinances or any public authority require any Work to be specially tested or approved, the Contractor shall give the Architect timely notice in writing of its readiness for inspection, and if the inspection is by any authority other than the Architect, of the date fixed for such inspection. (See also GC-58) Inspections by the Architect shall be made promptly and where practicable at the source of supply. If any Work should be covered without approval or consent of the Architect, it must, if required by the Architect, be uncovered for examination at the Contractor’s expense. (See also GC-58)
- c. *Re-examination or Re-testing of Work Covered pursuant to Consent of Architect.* Re-examination or re-testing of questioned Work covered pursuant to consent of the Architect may be ordered by the Architect, and if so ordered the Work must be uncovered by the Contractor. If such Work be found in accordance with the Contract Documents the Owner shall pay the cost of re-examination and replacement or of re-testing. If such Work be found not in accordance with the Contract Documents the Contractor shall pay such cost unless he shall show that the defect in the Work was caused by another Contractor, and in that event the Owner shall pay such cost. Re-examination or re-testing under the terms of GC-13(c) applies only to Work which has been covered with consent of the Architect. Work covered without consent of the Architect must be uncovered for examination as provided under GC-13(b).
- d. *Inspection Does Not Relieve Contractor.* Under the Contract Documents the Contractor has assumed the responsibility of furnishing all services, labor and materials for the entire Work in accordance with such documents. No provisions of this article nor any inspection of the Work by the Owner, representatives of the Owner, resident engineer inspector, clerk-of-the-works, engineers employed by the Architect, representatives of the Architect, or the Architect shall in any way diminish, relieve, or alter said responsibility and undertaking of the Contractor; nor shall the omission of any of the foregoing to discover or to bring to the attention of the Contractor the existence of any Work or materials injured or done not in accordance with said Contract Documents in any way diminish, relieve, or alter such obligation of the Contractor nor shall the aforesaid omission diminish or alter the rights or remedies of the Owner as set forth in the Contract Documents. The resident engineer inspector has no power to make decisions, to accept or reject Work, or to consent to the covering of Work. The resident engineer inspector owes no duty to the Contractor. (See also GC-38, GC-41, and GC-60)
- e. *False Start.* In the event notice of readiness pursuant to GC-13(b), above, shall have been issued prematurely by the Contractor, his action shall be deemed to be a “false start”, and the Contractor shall be liable for the damage resulting from the aforesaid false start, including but not limited to the salary, professional fees, and travel and living expenses of the person or parties inconvenienced by the aforesaid false start. [See also GC-41 for further example of “false start”]

GC-14. Superintendence and Supervision by Contractor

- a. *Superintendent of Contractor.* The Contractor shall keep on his Work during its progress and until the final certificate has been executed by the Architect a competent superintendent and any necessary assistants, all satisfactory to the Architect. The superintendent shall not be changed except with the consent of the Architect unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence, and all directions given to the superintendent shall be as binding as if given to the Contractor. [See also GC-9, GC-12, GC-15(c) and GC-60]
- b. *Supervision by Contractor.* The Contractor shall supervise and direct the Work, using his best skill and attention and he shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. [See also GC-40 and GC-41]

GC-15. Changes in the Work

- a. *Owner's Right to Make Changes.* The Owner, without invalidating the Contract, may order Changes in the Work consisting of additions, deletions, or modifications, the Work Order Price and the Work Order Completion Time being adjusted accordingly. The Contractor hereby expressly agrees that the Contractor shall have no right to a claim for damages or extended overhead because of changes made by the Owner. Such Work is hereinafter designated "change" or "changes". All such changes shall be performed under the conditions of the original contract except that any claim for extension of time caused thereby shall be adjusted at the time of signing of the Supplemental Work Order. All such changes in the Work shall be authorized only by written Supplemental Work Order/Change Order signed by the Owner.
- b. *Cost to Owner for Change.* The cost or credit to the Owner from a change in the Work shall be determined as follows:
 - 1. By Unit Prices contained in the Construction Task Catalog multiplied by the appropriate quantities and multiplied by the appropriate Adjustment Factors.
 - 2. The process for submitting a supplemental Work Orders pricing change Work shall be as described in Article 8.7.2 of the IQCC Standard Terms and Conditions.
- c. *Changes Forbidden without Consent of Owner.* Neither the Architect nor the Contractor shall make any change whatsoever in the Work without authorization or order of the Owner in writing except in emergency. The Work Order Price and the Work Order Completion Time may be changed only by written Change Order.
- d. *Existing Conditions.* By signing or accepting a Purchase Order the Contractor represents that it has visited the Site and familiarized itself with the local conditions under which the Work is to be performed. The Owner does not undertake to represent or warrant site or local conditions.
- e. *Time of Submission of Claims ["Statement of Claim"].* Budgeting and cash flow being of material importance to the Owner, no claim of the Contractor on account of any change or on account of any alleged negligence of the Architect or Owner whether said claim shall be accrued or prospective, shall be valid unless a "statement of claim" in full accompanied by vouchers and other supporting data shall have been filed with the Owner by the Contractor not later than thirty (30) days after receipt of written request thereof by the Contractor from the Owner, time being of the essence. The "statement of claim" shall contain a concise and clear recital of the ground or grounds on the basis of which the claim is asserted, including a designation of the provision or provisions of the Contract Documents on which the claim is based. The statement of claim shall indicate the dollar amount of the claim.

GC-16. Claims

- a. *Extra Cost.* If the Contractor maintains that any instructions by drawings or otherwise involve extra cost to the Owner under this Contract, he shall give the Owner and the Architect written notice thereof within a reasonable time after the receipt of such instructions, and in any event before proceeding to execute any change except in emergency endangering life of property. The allowances to the Contractor shall then be as provided under GC-15. No claim for extra cost shall be valid unless so made.
- b. *Damages.* If either party to this Contract should suffer damage in any manner because of any wrongful act of neglect of the other party or of anyone employed by the other party, then he shall be reimbursed by the other party for such damage. No claim of the Contractor for damages shall be valid unless written notice thereof shall have been received by the owner by registered mail within fifteen (15) days after occurrence of the event on which the claim is based. (See also GC-15, GC-39 and GC-41).
- c. *Protests.* All reference to arbitration are deleted from the Contract Documents. Decisions of the Architect shall be rendered in all cases where provided for under the State of Georgia General Conditions of the Contract, but no decision of the Architect shall deprive the Owner or the Contractor of any form of redress which may be available under the laws of the State of Georgia to contracting parties. Any decision of the Architect shall be final and binding on the Contractor unless the Contractor shall have given written notice of protest to the Owner by registered mail within ten days of the receipt of the decision.

GC-17. Deductions for Uncorrected Work. If the Architect and Owner deem it inexpedient to correct Work injured or done not in accordance with the contract, an equitable deduction from the contract price shall be made therefore; but there is no duty on the part of the Owner to accept any Work injured or done not in accordance with the methods and materials designated in the Contract Documents, nor does the Contractor have the right to demand that there shall be acceptance of Work injured or done not in accordance with the methods and materials designated in the Contract Documents.

GC-18. Delays and Extensions of Time

- a. *Grounds.* If the Contractor is delayed at any time in the progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in transportation, adverse weather conditions not reasonably anticipatable, unavoidable casualties, or any causes beyond the Contractor's control, then the Work Order Completion Time shall be extended by Change Order for such reasonable time as the Architect may determine. The Contractor expressly agrees that the Contractor's sole remedy for such delay shall be an extension of Work Order Completion Time and that the Contractor shall make no demand for damages or extended overhead.
- b. *Filing of Claim.* No such extension shall be made for delay occurring more than ten (10) days before claim thereof is made in writing to the architect with copy to the Owner. In the case of a continuing cause of delay, only one claim is necessary, but no claim for a continuing delay shall be valid unless the contractor, within ten days from the cessation of the delay, shall have given notice in writing to the architect, with copy to the Owner, as to the amount of additional time claimed.
- c. *Delay in Furnishing Drawings (See also GC-5).* If no schedule or agreement stating the dates upon which drawings or approval of shop drawings shall be furnished is made, then no claim for delay shall be allowed on account of failure of the architect to furnish drawings or approval of shop drawings until two weeks after demand thereof and not then unless such claim be reasonable.
- d. *No Damages for Delay.* In the event of any delay, not the fault of the Contractor, the Contractor shall be entitled to an extension of time for completion only, and shall not be entitled to any additional payment on account of such delay. Without limiting the foregoing, except as otherwise specifically provided under GC-15 or GC-22, the Contractor shall not be entitled to payment or compensation of any kind from the Owner for direct, indirect or impact damages, including but not limited to costs of

acceleration arising because of hindrance or delay from any cause whatsoever, whether such hindrances or delays be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery by the contractor of damages for hindrances or delays due solely to fraud or bad faith on the part of the Owner or his agents.

GC-19. Correction of Work

- a. The Contractor shall promptly correct any Work rejected by the Architect as defective or as failing to conform to the Contract Documents whether observed before or after Completion and whether or not fabricated, installed or completed, and shall correct any Work found to be defective or nonconforming within a period of one year from the Date of Completion of the Contract or within such longer period of time as may be prescribed by law or the terms of any applicable special warranty required by the Contract Documents. The provisions of this Article apply to Work done by Subcontractors as well as to Work done by direct employees of the Contractor. [See GC-1(i)]

- b. *Remedy of the Owner for Breach of Order of Condemnation.* If the contractor does not make good a deficiency within a reasonable space of time fixed in an order of condemnation, the Owner may:
 - 1. Remove the condemned Work and store it at the expense of the contractor. If the contractor does not pay the expenses of such removal and storing within ten days after receipt of written demand of the Owner, the Owner may upon three days' notice in writing to the contractor sell such materials at private sale or at auction and shall account for the net proceeds thereof after deducting all proper costs incurred by the Owner; and

 - 2. Supply omitted Work, perform unexecuted Work, replace and re-execute Work not done in accordance with the methods and materials designated in the Contract Documents and deduct the cost thereof from any payment then or thereafter due the contractor, Provided: That the architect shall approve the amount charged to the contractor. (See also GC-21)

The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies. Time limits stated in orders of condemnation are of the essence of the contract.

GC-20. Correction of Work after Final Payment. Neither (1) the final certificate, (2) nor any decision of the architect, (3) nor payment, (4) nor any provision in the contract shall relieve the Contractor of responsibility for faulty materials, faulty workmanship, or omission of contract Work, and he shall remedy any defects or supply any omissions resulting therefrom and pay for any damage to other Work resulting therefrom. The Owner shall give notice of observed defects or omissions with reasonable promptness. The Contractor shall within the space of time designated in orders of condemnation and without expense to the Owner, correct, remedy, replace, re-execute, supply omitted Work, or remove from the premises all Work condemned by the architect. The Contractor shall give prompt notice in writing to the architect, with copy to the Owner, upon completion of the supplying of any omitted Work or the correction of any Work condemned by the architect. In the absence of said notice, it shall be and is presumed under this contract that there has been no correction of the condemned Work or supplying of omitted Work. If the Contractor does not remove, make good the deficiency, correct, or remedy faulty Work, or supply any omitted Work within the space of time designated in orders of condemnation without expense to the Owner, the Owner, after ten days' notice in writing to the Contractor, may remove the Work, correct the Work, remedy the Work or supply omitted Work at the expense of the Contractor. In case of emergency involving health, safety of property, or safety of life the Owner may proceed at once. Correction of defective Work executed under the plans and specifications or supplying of omitted Work whether or not covered by warranty of a subcontractor or materialmen, remains the primary, direct responsibility of the Contractor. The foregoing obligation of the Contractor shall remain in effect until the same shall have been extinguished by operation of the statute of limitations. As additional security for the fulfillment of such obligation, but in no way limiting the same, the Contractor warrants and guarantees (1) that all Work executed under the plans and specifications shall be free from defects of materials or workmanship for a period of one year from the date

of the final certificate of the architect, and (2) that for not less than one year from the date of the final certificate of the architect, or for such greater space of time as may have been designated in the specifications, products of manufacturers shall be free from defects of materials and workmanship. Whenever written guaranties or warranties are called for, the Contractor shall furnish the aforesaid for such period of time as may be stipulated. The aforesaid instruments shall be in such form as to permit direct enforcement by the Owner against any subcontractor, materialmen, or manufacturer whose guaranty or warranty is called for, and the Contractor agrees that:

- a. The Contractor is jointly and severally liable with such subcontractors, materialmen, or manufacturers.
- b. The said subcontractors, materialmen, or manufacturers are agents of the Contractor for purposes of performance under this article, and the Contractor, as principal, ratifies the warranties or guaranties of his aforesaid agents by the filing of the aforesaid instruments with the Owner. The Contractor as principal is liable for the acts or omissions of his agents.
- c. Service of notice on the Contractor that there has been breach of any warranty or guaranty will be sufficient to invoke the terms of the instrument, Provided: That the Owner shall have furnished the Contractor with a copy of notice served on the subcontractor, materialmen, or manufacturer.
- d. The Contractor will bind his subcontractor, materialmen, and manufacturers to the terms of this article.

The calling for or the furnishing of written warranties shall in no way limit the contractual obligation of the Contractor as set forth hereinabove. The remedies stated in this article are in addition to the remedies otherwise available to the Owner, do not exclude such other remedies, and are without prejudice to any other remedies. [See also GC-1(i), GC-25, and GC-60]

GC-21. The Owner's Right to Do Work. If the Contractor should neglect to prosecute the Work properly or fail to perform any provision of this contract, the Owner, after three days' written notice to the Contractor may without prejudice to any other remedy he may have (including without limitation remedies against the Contractor's surety), make good the deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor, provided, however, that the Architect shall approve the amount charged to the Contractor. (See also GC-19 and GC-22)

GC-22. Right of the Owner to Terminate Contract. If the Contractor defaults or persistently fails or neglects to carry out the Work in accordance with Contract Documents or fails to perform any provisions of the Contract, the Owner may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor or, at its option that sufficient cause exists to justify such action, may terminate the Contract and take possession of the site and of all materials, equipment, tools and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever method it may deem expedient, and if the unpaid balance of the sum of all Work Order Price(s) exceeds the expense of finishing the Work, such excess shall be paid to the Contractor, but if such expense exceeds such unpaid balance, the Contractor shall pay the difference to the Owner.

GC-23. Contractor's Right to Stop Work or Terminate Contract. If the Owner fails to make payment for a period of thirty (30) days after receipt of proper pay request, the Contractor may, upon seven (7) additional days written notice to the Owner, terminate the Contract and recover from the Owner payment for all Work executed.

GC-24. Application for Payments

- a. *Periodical Estimates and Receipts.* Each Purchase Order shall be billed separately. The Contractor shall submit to the Architect in accordance with a form to be supplied by the Owner [specimen of which will be supplied to the Contractor on request] an application [sometimes herein designated "periodical estimate"] for each payment, and, if requested by the Owner or Architect, receipts or other vouchers, showing his

payments for materials and labor, including payments to subcontractors as required by GC-37. (See also GC-32 and GC-50)

- b. *Initial Breakdown and Periodical Payments.* If payments are made on valuation of Work done, such application shall be submitted at least ten days before each payment falls due, and the Contractor shall, before the first application, submit to the Architect a schedule of values of the various parts of the Work, including quantities, aggregating the total sum of the contract, divided in such manner as to facilitate payments to subcontractors in accordance with GC-37, on a form to be furnished by the Owner with a complete breakdown of the contract price so arranged and so itemized as to meet the approval of the Architect and, if requested, supported by such evidence as to its correctness as the Architect may direct. The schedule designated herein the “initial breakdown” [specimen of which will be supplied to the Contractor on request], when approved by the Architect shall be used as a basis for certificates of payment, unless it be found to be in error. In applying for payments, the Contractor shall submit a statement based upon this schedule on a periodical estimate form to be supplied by the Owner [specimen of which will be supplied to the Contractor], and, if requested by the Architect or Owner, itemized in such form and supported by such evidence as the Architect or Owner may direct showing the Contractor’s right to the payment claimed on the periodical estimate.
- c. *Materials Storage.* If payments are made on account of materials delivered and suitably stored at the site but not incorporated in the Work, they shall, if required by the Owner or the Architect, be conditional upon submission by the Contractor of bills of sale or such other procedure as will establish the Owner’s title to such material or otherwise adequately protect the Owner’s interest. (See also GC-28 and GC-32) The Contractor is responsible for the existence, protection, and, if necessary, replacement of materials until execution of the final certificate of the Architect. (See also GC-12, GC-25, and GC-41) The Owner shall not pay for any materials stored off site.

GC-25. Certificate of Payments

- a. *Issuance.* If the Contractor has made application for payment as provided under GC-24, the Architect shall not later than the date when each payment falls due issue to the Contractor a certificate for such amount as he decides to be properly due or state in writing his reasons for withholding a certificate.
- b. *Effect.* No certificate issued, nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the Owner shall be an acceptance of any Work or materials not in accordance with the Contract Documents. (See also GC-20) The making of the final payment shall constitute a waiver of all claims by the Owner other than those arising from unsettled liens, from faulty Work appearing after final payment, or from requirements of the specifications or drawings. Acceptance of the final payment shall operate as and shall be a release to the Owner from all claims of any kind or character under the contract except for such specific amount or amounts as may have been withheld to cover the fair value of any incomplete Work which has been certified by the Architect as incomplete through no fault on the part of the Contractor.
- c. *Date and Rate of Payment.* Progress/Partial payments and Final payment will be made in accordance with Articles 19 and 20 respectively of the Contract General Conditions. The date and rate of payment are subject to GC-26. Sums retained pursuant to the present article are and remain the property of the Owner until such time as the Contractor shall have become entitled to receive payment of such retainage by (a) furnishing the remainder of the *quid pro quo* under the contract and (b) complying in full with the terms of the contract.

GC-26. Payments Withheld. The Architect may withhold or, on account of subsequently discovered evidence, nullify the whole or a part of any certificate to such extent as may be necessary to protect the Owner from loss on account of:

- a. Defective Work not remedied. (See also GC-19)
- b. Claims filed or reasonable evidence indicating probable filing of claims.
- c. Failure of the Contractor to make payments properly to subcontractor or for materials or labor. (See

- also GC-9 and GC-37)
- d. A reasonable doubt that the contract can be completed for the balance then unpaid.
 - e. Damage to another contractor or to some third party. (See also GC-12)
 - f. Failure to maintain a rate of progress in accordance with the construction progress schedule. [See also GC-1(i), GC-25(c), and GC-46]
 - g. Failure to supply enough skilled workmen or proper materials. (See also GC-1 and GC-19)

When the above grounds are removed, payment shall be made for amounts withheld because of them. At the option of the Owner adherence to the construction progress schedule shall be a condition precedent to the right of the Contractor to demand payment of a periodical estimate. No omission on the part of the Owner to exercise the aforesaid option shall be construed to be a waiver of breach of the construction progress schedule or acquiescence therein, and the Owner may exercise its option from time to time and as often as may be expedient.

GC-27. Indemnification, Insurance and Hazards

- a. *Responsibility.* The Contractor shall be responsible to the Owner from the time of the signing/acceptance of the Purchase Order or from the beginning of the first Work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the Work by the Contractor, or any of its subcontractors, its agents, employees or others working at the direction of the Contractor or on its behalf, regardless of who may be the owner of the property. (See also GC-12)
- b. *Indemnification Agreement.* Contractor hereby agrees to indemnify and hold harmless the Owner, the State of Georgia and its departments, agencies and instrumentalities and all of their respective officers, members, employees and directors (hereinafter collectively referred to as the “Indemnitees”) from and against any and all claims, demands, liabilities, losses, costs or expenses, including attorneys’ fees, due to liability to a third party or parties, for any loss *due to* bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this contract or any act or omission on the part of the Contractor, its agents, employees or others working at the direction of Contractor or on its behalf, or due to any breach of this contract by the Contractor, or due to the application or violation of any pertinent Federal, State or local law, rule or regulation. This indemnification extends to the successors and assigns of the Contractor. This indemnification obligation survives the termination of the contract and the dissolution or, to the extent allowed by law, the bankruptcy of the Contractor. If and to the extent such damage or loss (including costs and expenses) as covered by this indemnification is paid by the State Tort Claims Trust Fund, the State Authority Liability Trust Fund, the State Employee Broad Form Liability Fund, the State Insurance and Hazard Reserve Fund, and other self-insured funds (all such funds hereinafter collectively referred to as the “Funds”) established and maintained by the State of Georgia Department of Administrative Services Risk Management Division (hereinafter “DOAS”) the Contractor agrees to reimburse the Funds for such monies paid out by the Funds.
 - 1. This indemnification applies where the Indemnitees are partially responsible for the situation giving rise to the claim, provided however, that this indemnification does not apply to the extent of the sole negligence of the Indemnitees.
 - 2. This indemnification does not extend beyond the scope of this contract and the Work undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred directly by the Indemnitees due to breach or default by the Indemnitees under the terms and conditions of this contract.
 - 3. DOAS, Risk Management will endeavor to notify affected insurers of claims made against the State which fall within this indemnity. In the event of litigation, the Attorney General will endeavor to keep the Contractor and its general liability insurer as named on the insurance certificate informed regarding the claims and settlement. [See GC-27.2.2(c) below]

c. Insurance Requirements

1. *Insurance Certificates.* Within 10 (ten) days of an Owner approving a Work Order for construction services, the Contractor shall, prior to the commencement of Work, procure the insurance coverages identified below (when performing work for State of Georgia User Agencies) at the Contractor's own expense. When performing work for other Georgia public entities utilizing the contract, the Contractor may be subject to other insurance requirements, including different policy limits and issuance of a Purchase Order to the Contractor will be conditional upon the Contractor complying with such requirements. The Contractor shall furnish the Owner an insurance certificate listing the Owner as the certificate holder:
 - a) Name and address of authorized agent
 - b) Name and address of insured
 - c) Name of insurance company(ies)
 - d) Description of policies
 - e) Policy Number(s)
 - f) Policy Period(s)
 - g) Limits of liability
 - h) Name and address of Owner as certificate holder
 - i) Project Name and Number
 - j) Signature of authorized agent
 - k) Telephone number of authorized agent
 - l) Mandatory forty-five day notice of cancellation / non-renewal (See GC-27.2(a) below)
 - m) Evidence of Insurance Coverages shall be provided on a form acceptable to the Owner

2. *Policy Provisions.* Each of the insurance coverages required below (i) shall be issued by a company licensed by the Insurance Commissioner to transact the business of insurance in the State of Georgia for the applicable line of insurance, and (ii) shall be an insurer (or, for qualified self insureds or group self insureds, a specific excess insurer providing statutory limits) with a Best Policyholders Rating of "A-" or better and with a financial size rating of Class V or larger. Each such policy shall contain the following provisions:
 - a) The insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire until forty-five (45) days after the Owner has received written notice thereof as evidenced by return receipt of registered letter or until such time as other insurance coverage providing protection equal to protection called for in this contract shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to Contract as shall have been designated by Contract Number and Name in said notice.
 - b) The policy shall not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents or other representatives ("Separation of Insureds").
 - c) Each Insurer is hereby notified that the statutory requirement that the Attorney General of Georgia shall represent and defend the Indemnities remains in full force and effect and is not waived by issuance of any policy of insurance. In the event of litigation, any settlement on behalf of the indemnities must be expressly approved by the Attorney General. The contractor and its insurance carrier may retain, but are not obligated to retain, counsel to assist with the defense of the Indemnitees, in which case there will be mutual cooperation between the Attorney general and such counsel.
 - d) Self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed \$100,000.00.

3. *Insurance Coverages.* The Contractor also agrees to purchase and have the authorized agent state on the insurance certificate that the following types of insurance coverages, not inconsistent with the policies and requirements of O.C.G.A. § 50-21-37, have been purchased by the Contractor. The minimum required coverages and liability limits are as follows:

a) *Workers’ Compensation Insurance.* The Contractor agrees to provide Workers’ Compensation coverage in accordance with the statutory limits as established by the General Assembly of the State of Georgia. A group insurer must submit a certificate of authority from the Insurance Commissioner approving the group insurance plan. A self-insurer must submit a certificate from the Georgia Board of Worker’s Compensation stating the Contractor qualifies to pay its own worker’s compensation claims. The Contractor shall require all subcontractors performing Work under this contract to obtain an insurance certificate showing proof of Workers’ Compensation Coverage and shall submit a certificate on the letterhead of the Contractor in the following language prior to the commencement of Work:

“This is to certify that all subcontractors performing Work on this project are covered by their own workers’ compensation insurance or are covered by the Contractor’s worker’s compensation insurance.”

b) *Employers’ Liability Insurance.* The Contractor shall also maintain Employer’s Liability Insurance Coverage with limits of at least:

- i. Bodily Injury by Accident – \$1,000,000 each accident; and
- ii. Bodily Injury by Disease – \$1,000,000 each employee.

The Contractor shall require all subcontractors performing Work under this contract to obtain an insurance certificate showing proof of Employers Liability Insurance Coverage and shall submit a certificate on the letterhead of the Contractor in the following language prior to the commencement of Work:

“This is to certify that all subcontractors performing Work on this project are covered by their own Employers Liability Insurance Coverage or are covered by the Contractor’s Employers Liability Insurance Coverage.”

c) *Commercial General Liability Insurance.* The Contractor shall provide Commercial General Liability Insurance (1993 ISO Occurrence Form or equivalent) which shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

Coverage	Limit
1. Premises and Operations.....	\$ 1,000,000.00 per Occurrence
2. Products and Completed Operations	\$ 1,000,000.00 per Occurrence
3. Personal Injury	\$ 1,000,000.00 per Occurrence
4. Contractual.....	\$ 1,000,000.00 per Occurrence
5. General Aggregate	\$ 2,000,000.00 per Project

Additional Requirements for Commercial General Liability Insurance:

- i. The policy shall name as additional Insureds the officers, members, and employees of the Owner and the State of Georgia, but only with respect to claims that arise out of

contractor's negligence in performing the Work or the additional insured's general supervision of such operations, including completed operations under this contract, but only for such claims for which the Georgia Tort Claims Act, O.C.G.A. 50-21-20 *et seq.* is not the exclusive remedy.

- ii. The coverage extended to the additional insureds for any claims not covered by the Georgia Tort Claims Act shall be no broader than the coverage extended to the Contractor and is not expanded to cover claims and losses that are not insurable under the contractor's policy.
 - iii. The policy or policies must be on an "occurrence" basis.
 - iv. The policy must include separate aggregate limits per project.
- d) *Commercial Business Automobile Liability Insurance.* The Contractor shall provide Commercial Business Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

Additional Requirements for Commercial Business Automobile Liability Insurance:

- i. The policy shall name as additional Insureds the officers, members, and employees of the Owner and the State of Georgia, but only with respect to claims that arise out of contractor's negligence in performing the Work or the additional insured's general supervision of such operations under this contract, but only for such claims for which the Georgia Tort Claims Act, O.C.G.A. 50-21-20 *et seq.* is not the exclusive remedy.
 - ii. The coverage extended to the additional insureds for any claims not covered by the Georgia Tort Claims Act shall be no broader than the coverage extended to the Contractor and is not expanded to cover claims and losses that are not insurable under the contractor's policy.
- e) *Commercial Umbrella Liability Insurance.* The Contractor shall provide a Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employers' Liability to satisfy the minimum limits set forth herein. The minimum amount of Umbrella limits required above the coverages and minimum limits state in GC-27.2.3(a), (b), (c) and (d) shall be:

Minimum Combined Primary Liability and Excess Umbrella Limits of:

\$2,000,000 per Occurrence
\$4,000,000 Aggregate

Additional Requirements for Commercial Umbrella Liability Insurance:

- i. The policy shall name as additional Insureds the officers, members, and employees of the Owner and the State of Georgia, but only with respect to claims that arise out of contractor's negligence in performing the Work or the additional insured's general supervision of such operations under this contract, but only for such claims for which the Georgia Tort Claims Act, O.C.G.A. 50-21-20 *et seq.* is not the exclusive remedy.
- ii. The coverage extended to the additional insureds for any claims not covered by the Georgia Tort Claims Act shall be no broader than the coverage extended to the

Contractor and is not expanded to cover claims and losses that are not insurable under the contractor's policy.

iii. The policy must be on an "occurrence" basis.

f) *Builders Risk Insurance.* Contractor shall provide an a Builder's Risk Policy to be made payable to the Owner and Contractor, as their interests may appear. The policy amount should be equal to 100% of the contract sum, written on a 1991 Causes of Loss. Special Form, or its equivalent. All deductibles shall be the sole responsibility of the Contractor, and in no event shall the amount of any deductible exceed \$10,000.00. The policy shall be indorsed as follows:

"The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:"

i. Furniture and equipment may be delivered to the insured premises and installed in place ready for use; and

ii. Partial or complete occupancy by Owner; and

iii. Performance of work in connection with construction operations insured by the Owner, by agents or lessees or other contractors of the Owner, or by contractors of the lessee of the Owner.

In the event that the contract is for renovation, addition or modification of an existing structure and Builders Risk Insurance is not available, the Owner will accept an Installation Floater Insurance Policy with the above endorsements [GC-27.2.3(f)] in lieu of the Builders' Risk Insurance Policy. Such floater must insure loss to materials and equipment prior to acceptance by Owner and must be on an ALL RISK BASIS with the policy written on a specific job site.

g) *Disposition of Insurance Documents.* Prior to commencing Work, one certificate of insurance with all endorsements attached must be deposited with Owner for each insurance policy required.

h). *When the nature of the Work dictates,* at the sole discretion of the Owner, the Owner may require insurance coverages and limits that are in excess of those listed above (i.e. when "hot work" is part of the Detailed Scope of Work, when hazardous material abatement is part of the Detailed Scope of Work, or when Work is on or in the vicinity of railroad tracks, etc.). The Contractor's compliance with such increased insurance requirements will be a condition of the Owner with regard to issuing a Purchase Order and the Contractor shall be required to furnish said insurance at its own expense and shall furnish the Owner an insurance certificate evidencing such required coverages and limits.

4. *Termination of Obligation to Insure.* Unless otherwise expressly provided to the contrary, the obligation to insure as provided herein shall not terminate until the Architect shall have executed the final certificate. (See GC-20, GC-24, GC-29, and GC-71 and Article 5, Form of Contract)

5. *Failure of Insurers.* The Contractor is responsible for any delay resulting from the failure of his insurance carriers to furnish proof of proper coverage in the prescribed form.

GC-28. Affidavits. Before receiving any portion of the retainage (see also GC-24 and GC-32), the Contractor will be required to furnish a non-influence affidavit as shown in State of Georgia Exhibit A and a statutory affidavit in the exact form as shown in State of Georgia Exhibit B.

GC-29. Bonds on Roofs and Walls. *Not applicable.*

GC-30. Performance Bond and Payment Bond. Within 10 (ten) days of an Owner approving a Work Order for construction services, the Contractor shall furnish both a performance bond and payment bond for all Work Orders with a dollar value equal to or greater than \$100,000. The Obligee of the bonds shall be the Owner that has requested the work. For State of Georgia User Agencies, said bonds shall be provided on the forms as set forth in State of Georgia Exhibit C and State of Georgia Exhibit D. For other Georgia public entities utilizing the contract, the bonds shall be on forms as directed by and/or acceptable to each Owner.

Both the performance bond and payment bond shall each be equal to 100% of the Work Order Price to secure performance of the contractor and payment of all claims for materials furnished and/or labor performed in the performance of the Work Order, respectively.

The surety must be licensed to do business in the State of Georgia, and the surety must in addition be acceptable to the Owner. [NOTE]: To avoid inconvenience, the Contractor should communicate to the Owner, in advance of the bonds being issued, the surety he expects to use so that the Owner can give an advance determination of the surety's acceptability.

For all Work Orders with a Work Order Price less than \$100,000 performed for State of Georgia User Agencies it will be at the Owner's sole discretion as to whether a performance and/or payment bond will be required. For other Georgia public entities utilizing the contract, the waiver of bonding requirements for jobs with a Work Order Price less than \$100,000 shall be at the discretion of the Owner and subject to additional limitations imposed by all applicable, laws, statutes, codes, and/or policies..

GC-31. Marked-up Construction Documents. Prior to demand for payment of retainage, the Contractor shall provide a complete set of Marked-up Construction Documents to the Architect, which set shall reflect all changes caused by addenda, field changes, Change Orders, or observed changes by the Contractor or subcontractor(s) for the purpose of the Architect's issuance of Record Documents to the Owner.

GC-32. Liens. Neither the final payment nor any part of the retained percentage shall become due until the Contractor, if required, shall deliver to the Owner a complete release of all liens or claims arising out of this contract, or receipts in full in place thereof and, if required in either case, an affidavit that so far as he has knowledge or information the releases and receipts include all labor and materials for which a lien or claim could be filed; but the Contractor may, if any subcontractor or claimant refuses to furnish a release or receipt in full, furnish a bond satisfactory to the Owner to indemnify the Owner against any lien or claim. If any lien or claim remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all moneys that the latter may be compelled to pay in discharging such lien or claim, including all costs and a reasonable attorney's fee. (See also GC-24, GC-25, and GC-28)

GC-33. Assignment. Neither party to the contract shall assign the contract or sublet it as a whole nor shall the Contractor assign any moneys due or to become due to him hereunder.

GC-34. Mutual Responsibility of Contractors. Should the Contractor cause damage to any separate Contractor on the Work the Contractor agrees, upon due notice, to settle with such Contractor by agreement if he will so settle. If such separate Contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall notify the Contractor who shall defend such proceedings at his own expense, and if any judgment against the Owner shall arise therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner.

GC-35. Separate Contracts. The Owner reserves the right to perform Work related to a Project with its own forces, and to award separate contracts in connection with other portions of a Project or other Work on the site under these or similar Conditions of the Contract. The Contractor shall afford other Contractors

reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly regulate, schedule, connect, and coordinate his Work with theirs.

GC-36. Subcontractors, Materialmen, Suppliers and Employees

- a. *Subcontractor.* A Subcontractor is a person or entity who has a direct contract with the Contractor to perform any of the Work at the site.
- b. *Submission of List.* As required in Article 8.6 of the IQCC Standard Terms and Conditions, the Contractor, shall furnish to the Owner in writing the names of Subcontractors for each of the principal portions of the Work. The Contractor shall not employ any Subcontractor to whom the Owner may have a reasonable objection. The Contractor shall not be required to contract with anyone to whom he has a reasonable objection. The contract requires each Subcontractor, to the extent of the Work to be performed by the Subcontractor, (1) to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor, all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner, and (2) allow to the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.
- c. *Warranty of Contractor.* The Contractor warrants that the subcontractors selected by him are reputable, skilled, reliable, competent, qualified in the trade or field in which they are to perform on the applicable project, and thoroughly familiar with applicable codes.
- d. *Certification On Account Of.* The Architect shall, on request furnish to any subcontractor, wherever practicable, evidence of the amounts certified on his account.
- e. *Contractor Responsible for Acts and Omissions of Subcontractors, Materialmen, Suppliers and Employees.* The Contractor agrees that he is as fully responsible for the acts and omissions of his subcontractors, materialmen, suppliers, and employees and of persons either directly or indirectly employed by them as he is for the acts and omissions of persons directly employed by him.
- f. *No Contract Between Owner and Any Subcontractor, Materialman, Supplier or Employee.* Nothing contained in the Contract Documents shall create any contractual relation between the Owner and any subcontractor or between the Owner and any materialman, supplier, or employee of the Contractor or his subcontractors. [See also Article GC-02, GC-37, GC-45, and GC-60]

GC-37. Relationship of Contractor and Subcontractors

- a. *Obligations of Each.* The Contractor agrees to bind every subcontractor and every subcontractor agrees to be bound by the terms of the Contract Documents insofar as they are applicable to his Work.
- b. *Owner Not Obligated to Any Subcontractor.* There is no obligation on the part of the Owner to pay to or to see to the payment of any sums to any (1) subcontractor, (2) materialman, (3) supplier, (4) laborer, (5) employee, or (6) claimant as defined in the payment bond. [See also GC-36(d)]
- c. *Incorporation of Terms in Subcontracts.* The Contractor agrees that failure on his part to incorporate in all subcontracts an express provision in accordance with GC-37(a) above, shall be deemed to be and is a breach of an essential covenant.

GC-38. Architect

- a. *Supervision.* The Architect shall have general supervision and direction of the Work except in respect to safety as stated under GC-12 and except as qualified by GC-13 and GC-60 of the State of Georgia General Conditions. He is the agent of the Owner only when in special instances he is authorized in

writing by the Owner so to act, and in such instances he shall, upon request, show the Contractor written authority. He has authority to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the contract.

- b. *Interpreter and Impartial Judge.* As the Architect is, in the first instance, the interpreter of the conditions of the contract and the judge of its performance, he shall side neither with the Owner nor with the Contractor but shall use his powers under the contract to enforce its faithful performance by both.

GC-39. Architect’s Decisions

- a. *Promptness.* The Architect shall make decisions with reasonable promptness after presentation of evidence on (1) any claim of the Owner or Contractor, (2) a demand of the Owner or Contractor for a decision on any matter relating to the execution or progress of the Work, or (3) a demand of the Contractor or Owner for interpretation of or additional instructions with respect to the Contract Documents.
- b. *On Artistic Effect.* The Architect’s decisions in matters relating to artistic effect shall be final if within the terms of the Contract Documents.

GC-40. Measurements and Dimensions. Before ordering material or doing Work which is dependent upon coordination with building conditions, the Contractor shall verify all dimensions, elevations, grades, and pitch by taking measurements at the building and shall be responsible for the correctness of same. No consideration will be given to any claim based on differences between the actual dimensions and those indicated on the drawings. Any discrepancies between the drawings and/or the specifications and the existing conditions shall be referred to the Architect for additional instructions before any Work affected thereby is given.

GC-41. Notice of Readiness for Final Inspection. When the Contractor is ready for a final inspection, he shall give notice to the Architect and a copy to the Owner in the following words:

“The Work on the contract for the [show name of improvement or project as it appears in the Purchase Order] having been fully completed except as stipulated herein below, it is requested that a final inspection be made promptly by the Architect. The following Work is incomplete through no fault of the Contractor [list any Work which the Contractor regards as a proper exception] “

No final inspection shall be made until such time as the Architect has received a letter in the exact form indicated above and a copy thereof has been received by the Owner. In the event the Contractor shall have issued the “Notice of Readiness for Final Inspection” prematurely [hereinafter referred to as “false start”] he shall be liable for the damage resulting from the aforesaid false start including but not limited to the salaries, professional fees, and travel and living expenses of the persons or parties inconvenienced by the aforesaid false start. The Contractor agrees that he may not defend or excuse any deviation from the Contract Documents on the ground (a) that the deviation was not brought to his attention by another person or party or other persons or parties or (b) that a subcontractor is or subcontractors are at fault.

GC-42. Use of Premises. The Contractor shall confine his plant, his apparatus, the staging and storage of materials, the operations of his forces, and the Work to limits indicated by law, ordinances, permits, or the Contract Documents and shall not unreasonably encumber the premises with his materials. The Contractor shall not load or permit any part of the Work to be loaded with weight that will endanger its safety. The Contractor shall enforce the Architect’s instructions regarding signs, advertisements, fires and smoking. (See also GC-11)

- GC-43. Cutting, Patching and Fitting.** The Contractor shall do all cutting, fitting, or patching of his Work that may be required to make its several parts come together properly and fit. (See also GC-03, GC-40, and GC-53)
- GC-44. Cleaning Up.** The Contractor shall at all time keep the premises free from accumulations of waste material or rubbish caused by his employees or Work. At the end of each working day, Contractor shall leave the premises in a broom clean condition and remove all trash and debris. The Contractor shall provide such mats, drop cloths, etc., as shall be necessary to protect the surrounding areas from soil or damage. Any damage to existing work shall be repaired or replaced in accordance with Article 12 of the State of Georgia General Conditions. At the completion of the Work he shall remove all his rubbish from and about the building and all his tools, scaffolding, and surplus materials and shall leave his Work “broom-clean” or its equivalent, unless more exactly specified. In case of dispute the Owner may remove the rubbish and charge the cost to the Contractor as the Architect shall determine to be just. (See also GC-12 and GC-27)
- GC-45. Specification Arrangement.** The specifications are separated into numbered and titled divisions for convenience of reference. Neither the Owner nor the Architect assumes any responsibility for defining the limits of any subcontracts on account of the arrangement of the specifications. Notwithstanding the appearance of such language in the various divisions of the specifications as, “The Plumbing Contractor”, “The Electrical Contractor”, “The Roofing Contractor”, etc., the Contractor is responsible to the Owner for the entire contract and the execution of all of the Work referred to in the Contract Documents. No partial sets of documents shall be issued by the Architect. (See also C-03, GC-02, GC-36, and GC-37)
- GC-46. Commencement, Prosecution and Completion.** The Contractor will be required (a) to commence Work under this contract within ten days after date of written notice from the Owner to proceed [See GC-1(j)], (b) to prosecute the Work with faithfulness and energy (c) to install the various parts of the Work with equal steps shown on the construction progress schedule and at the same rate shown on the construction progress schedule to be furnished pursuant to GC-50 and (d) to complete the Work within the time stipulated in the proposal form as adjusted by any extensions of time provided for under GC-15 and GC-18. Commencement of Work shall mean actual physical Work on the site. [See Also GC-1(f) and GC-1(i)] In the event the Contractor shall be delinquent in respect to compliance with the time limits established in the construction progress schedule, he shall, within seven days after receipt of written demand of the Owner, commence working not less than a twelve hour day and no less than six days a week until such time as he shall have brought the amount of Work in place into compliance with the construction progress schedule. Fulfillment of this requirement as to overtime Work (hereinafter referred to as “recovery of lost time required of the Contractor for his breach of covenant as to time”) shall not relieve the Contractor from liability for breach of the covenant as to time [Article GC-1(f) of State of Georgia General Conditions]. For account of recovery of lost time required of the Contractor for his breach of covenant as to time the Contractor shall be entitled to no claim against the Owner for any payment, repayment, reimbursement, remittance, remuneration, compensation, profit, cost, overhead, expense, loss expenditure, allowance, charge, demand, hire, wages, salary, tax, cash, assessment, price, money, bill, statement, dues, recovery, restitution, benefit, recoupment, exaction, injury or damages. (See also GC-25 and GC-26)
- GC-47. Alternates.** Unless otherwise stipulated all alternates are deductive. If a price is not provided for all alternates the Contractor’s Price Proposal may be determined non-responsive and not considered for award.
- GC-48. Omitted.**
- GC-49. Conflicts.** The following principles shall govern the settlement of disputes which may arise over conflicts in the Contract Documents: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large-scale drawings and small-scale drawings, the larger scale shall govern; (c) as between drawings and specifications, the requirements of the specifications shall govern; and (d) as between the form of agreement and the specifications, the requirements of the form of agreement shall govern. Conflicts noted shall be reported to the Architect. The principles set forth herein shall not alter provisions of GC-2 of the State of Georgia General Conditions.

- GC-50. Progress Reports.** Within such reasonable space of time as the Owner shall designate in writing, the Contractor shall submit to the Owner such schedule of quantities and costs, construction progress schedules, payrolls, bills, vouchers, correct copies of all subcontracts, statements, reports, correct copies of all agreements, correspondence, and written transactions with the surety on the performance bond which have any relevance to the work, estimates, records, and other data as the Owner may request concerning Work performed or to be performed under this contract. When requested by the Owner, the Contractor shall give the Owner access to accounts relating to the foregoing. The above reports shall include but are not limited to (a) written notice of dates by which specified Work will have been completed, (b) written notice of dates by which condemned Work shall have been made good, (c) written notice that condemned Work has been made good, (d) written notice as to the date or dates by which Work which has not been performed with equal steps and at the same rate required by the construction progress schedule shall have been brought into conformity with the construction progress schedule, (e) date by which any undisputed claim of a subcontractor, materialman, or laborer shall have been paid, (f) written advice regarding the nature and amount of any disputed claim of a subcontractor, materialman, or laborer, and (g) information regarding Work performed upon demand of the Owner pursuant to GC-15. Prior to submitting the first periodical estimate (see GC-24), the Contractor shall have furnished to the Owner and the Architect a construction progress schedule (based on Work in place only) in accordance with the style and format of a specimen to be furnished by the Owner [copies of which specimen will be furnished to the Contractor on request]. (See also GC-1(i), GC-19, GC-20, GC-26, and GC-46)
- GC-51. Drug-Free Work Place Act.-** The Contractor acknowledges that he is fully aware of the contents and requirements of O.C.G.A. 50-24-1 *et. seq.* The Contractor, upon submission of a Price Proposal in connection with this contract, does thereby certify that he and his subcontractors are and will remain in compliance with the aforesaid act.
- GC-52. Trading with the State Statute.-**In submitting a Price Proposal, the Contractor certifies that the provisions of law contained in O. C. G. A. Sections 45-10-20 to 45-10-71 prohibiting officials and employees of the state from engaging in certain transactions with the state and state agencies, have not and will not be violated in any respect in regard to this contract.
- GC-53. Manufacturer’s Recommendations.** In the event the contract shall require that given Work or materials shall be installed in accordance with the manufacturer’s recommendations or requirements, the Contractor shall obtain for his use at the site in executing the Work copies of the bulletin, circular, catalogue, or other publication of the manufacturer bearing the title, number, edition, date, etc., [hereinafter referred to as the “doctrine”] designated in the contract.
- GC-54. Keys.** Keys with tags indicating number and/or description of door or room each key is intended to fit attached to each key shall be delivered to the Owner. Contractor shall prepare and furnish with the keys an itemized key schedule in quintuplicate listing the door or room number and/or description, serial number of key, and number of keys being delivered for each door or lock.
- GC-55. Operation and Maintenance Data and Instructions.** The Contractor shall furnish proper instructions to the lessee of the Owner in the presence of the Architect concerning operation and maintenance of all mechanical and electrical equipment. The Contractor shall give notice in writing to the Architect with copy to the Owner at least fifteen days prior to the date on which it is proposed to give instructions to the lessee.
- GC-56. Space Conditions.** All pipes passing through floors, walls, and ceilings shall be installed with sufficient space between them to permit installation of pipe insulation and floor, wall, and ceiling plates without cutting of insulation or plates. The Contractor shall locate all equipment that must be serviced, operated, or maintained in fully accessible positions.
- GC-57. Cash Allowances.** The Contractor shall include in its Price Proposal all allowances named in the Contract Documents.

GC-58. Testing Services. Laboratories for testing services shall be selected by, engaged by, and responsible to the Architect. This article does not apply to verification of design mix on concrete. (See also GC-13 and GC-65)

GC-59. Drilling Samples and Log of Drilling Wells. Not used.

GC-60. Contractor’s Warranty as to Performance. The Contractor warrants that he is familiar with the codes applicable to the Work and that he has the skill, knowledge, competence, organization, and plant to execute the Work promptly and efficiently in compliance with the requirements of the Contract Documents. The Contractor having the obligation to keep a competent superintendent on the Work during its progress, to employ only skilled mechanics, and to enforce strict discipline and good order among his employees, the Contractor, himself, is responsible for seeing that the Work is installed in accordance with the Contract Documents. The Contractor warrants to the Owner that all materials and equipment incorporated in the Work will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements may be considered defective. (See also GC-09, GC-13, GC-14, GC-15, GC-20, GC-36, GC-38, and GC-39)

GC-61. Warranty and Guaranty. The Contractor warrants and guarantees that all Work executed under the Contract Documents shall be free from defects of materials or workmanship for a period of one year from the date of Completion.

GC-62. Mechanical Systems, Retainage Pending Balancing of. Not used.

GC-63. Water Heaters. Not used.

GC-64. Effect of Addenda, Amendments, Bulletins, Deletions, Omissions, and Change Orders. No special implication, interpretation, construction, connotation, denotation, import, or meaning shall be assigned to any provision of the Contract Documents because of changes created by the issuance of any (1) addendum, (2) amendment, (3) bulletin, (4) notice of deletion, (5) notice of omission, or (6) change order other than the precise meaning that the contract documents would have had if the provision thus created had read originally as it reads subsequently to the (1) addendum, (2) amendment, (3) bulletin, (4) notice of deletion, (5) notice of omission, or (6) change order by which it was created.

GC-65. Concrete Specifications. “Standard Minimum Concrete Specifications,” October 1963, revised May 1976, revisions approved jointly by the Georgia Branch, The Associated General Contractors of America, and Georgia Concrete and Products Association, Inc., successors to Georgia Ready-Mix Concrete Association are adopted as a minimum requirement.

GC-66. Fire Marshal Inspections.

- a. *General.* The State Fire Marshal may make inspections at any time. It shall be the responsibility of the Contractor to request inspections at 80% completion and for 100% inspection and Certificate of Occupancy. Requests shall be in writing with a copy to the Owner and Architect. (Confirm lead time for inspection.)
- b. *Jurisdiction.* The facilities are under the jurisdiction of State Official Code of Georgia annotated 25-2-13 (O.C.G.A.)
- c. 80% and 100% Inspections: The basic definitions for 80% and 100% inspections are as follows:
 1. 80% Field Review–The structural components are in place and open for review of the fire safety components. NOTE: Structural components include the following: fire walls, vertical shafts, stairways, smoke stops, hazardous area separation, roof and ceiling assemblies, corridor and door width, and HVAC system.

2. 100% Completion–The building is ready to occupy and qualifies for a Certificate of Occupancy.

- d. *Applications for 80% Inspection and 100% Inspection and Certificate of Occupancy.* The applications for inspection are included hereinafter.

GC-67. Certificates of Manufacturers for Major Components. Not used.

GC-68. Forms and Specimens. - The forms and specimens attached as State of Georgia Exhibits are incorporated by reference herein and shall be executed in substantial conformance as required or convenient in describing obligations under the Contract Documents.

GC-69. Copies of Notices to Owner. Wherever the State of Georgia General Conditions provide that a copy of any notice, request, or demand filed with the Architect by the Contractor shall be furnished to the Owner, such notice, request or demand shall not become effective until the Owner's copy shall have been received by the Owner. No notice in writing or orally to the Architect or to the resident engineer inspector is notice to the Owner unless copy of the aforesaid notice in writing shall have been properly served upon the Owner at the address shown in Article SGC-01 of the State of Georgia Supplementary General Conditions. [See also GC-01(d), GC-15, GC-18, and GC-39]

GC-70. Utilities. Except for the cost of connection, the Owner shall furnish without cost to the Contractor all water and electricity as presently available at the site required to do the Work. The Contractor shall make connection to utilities at locations agreeable to the Owner.

GC-71. Not Used

GC-72. Contractor Performance Evaluation Questionnaire. (See State of Georgia Exhibit G)

- a. The Contractor Performance Evaluation Questionnaire is a method the State of Georgia intends to use to encourage contractors to perform their contractual responsibilities to complete contracts in a timely manner and at the quality level specified in the Contract Documents.
- b. The Contractor's retainage on the current contract could be affected by the performance rating the contractor is issued. A performance evaluation of unsatisfactory may result in the contractor's retainage remaining at 10% or being reinstated to 10% from the lump sum. Upon correction of the deficiencies which led to the unsatisfactory rating, the Contractor's retention may be reduced to a lump sum or reinstated back to a lump sum.
- c. Performance evaluations will be issued, depending upon project duration, when 50% completion has been attained, at the time of final acceptance of a project or at any time that the Owner determines that the Contractor's performance is deemed to be unsatisfactory.
- d. Performance evaluation ratings of outstanding, satisfactory and unsatisfactory can be issued.
- e. The issuance or failure to issue a performance evaluation questionnaire does not affect the State's right to seek redress from the Contractor for Work not in compliance with the Contract Documents or for latent defects.
- f. The contractors ratings may influence the owner's decision regarding all aspects related to awarding future work to the Contractor.

GC-73. Employment of Georgia Citizens and Use of Georgia Products. Since the Work provided for in this contract is to be performed in Georgia, it is the wish of the Owner that materials and equipment manufactured or produced in Georgia shall be used in the Work and that Georgia citizens shall be employed in the Work at wages consistent with those being paid in the general area in which the Work is to be performed. This desire on the part of the Owner is not intended to restrict or limit competitive bidding

or to increase the cost of the Work; nor shall the fulfillment of this desire be asserted by the Contractor as an excuse for any noncompliance or omission to fulfill any obligation under the contract.

GC-74. Georgia Income Tax Incentives. Contractors interested in taking advantage of the Georgia income tax incentives provided for by the Official Code of Georgia Annotated 48-7-38 relative to the use of minority subcontractors in the performance of contracts awarded by the State of Georgia should contact the State Small and Minority Business Coordinator at the following address:

Governor's Small Business and Entrepreneurial Office
Georgia Department of Economic Development
75 Fifth Street, NW, Suite 1200
Atlanta, Georgia 30308
Telephone: (404) 962-4000
Fax: (404) 962-4001

STATE OF GEORGIA SUPPLEMENTARY GENERAL CONDITIONS

SGC-01. The State of Georgia General Conditions are amended / clarified as follows:

A. *Article GC-1. Definitions.*

1. Sub-paragraph (s), Owner, is further defined as follows:

- a) The Owner as referred to herein is state or local government entity that issues the Work Order and/or Purchase Order.
- b) The address of the Owner to which all correspondence regarding this Contract should be addressed is:

Department of Administrative Services
State Purchasing Division
Attn: Willie Moon/404.656.0931
200 Piedmont Avenue SE, Suite 1308, West Tower
Atlanta, Georgia 30334-9010

- c) The address of the Owner to which all deliveries regarding this Project should be addressed is: See Work Order and/or Purchase Order

2. Sub-paragraph (t), Architect is further defined as follows:

- a) In the absence of a Project Architect, specifically retained by the Owner to perform design services for this project, the term Architect appearing in these documents shall mean Owner or Owner's Representative.

SGC-02. Notices. Prior to any shut-down of any system (electrical, mechanical, etc.), Contractor shall supply not less than five (5) working days notice to the Architect with a copy to the Owner. No shutdown of any system shall occur until the Contractor has received permission from the Owner in writing.

SGC-03. Working Hours. The Contractor shall perform all Work, make all deliveries and have access to work areas between 7:30 A.M. and 5:00 P.M. Monday through Friday and, upon written permission of the Owner, may make deliveries and have access to work areas at any hour of any day.

SGC-04. Building Occupancy

a. Contractor recognizes and agrees that portions of the building are occupied by State employees performing essential tasks necessary to the efficient operation of State government. Consequently, Contractor agrees that he shall perform his Work in such a manner as to provide the least possible disruption to the occupants of the building. Accordingly, the Contractor agrees to the following stipulations, but without limitation:

- 1. The Contractor and its personnel shall not use the passenger elevators for transportation of equipment, supplies, goods and material unless otherwise agreed to in writing by the Owner.
- 2. The Contractor's employees may (if approved in writing by the Owner) use toilets designated by the Owner in the building. Temporary toilets will not be allowed on the site, unless approved in writing by the Owner. The Contractor shall be responsible for maintaining the toilet or toilets in a clean, sanitary condition. If, in the opinion of the Owner, the Contractor fails to keep the designated toilet or toilets in a clean and sanitary condition, the Owner shall direct the Contractor to maintain a full-time person in the toilet or toilets at no additional cost to the Owner to ensure that the toilet or toilets are maintained in a clean and sanitary condition.

3. The Owner will not provide parking space for the Contractor or Contractor's employees, unless otherwise agreed to in writing by the Owner, except for vehicles which are loading or unloading goods, equipment, supplies and materials in the loading area. Contractor shall not block any loading dock area or permit its employees to park in this area.
4. Unless otherwise directed by the Owner, no project or advertising signs of any description will be allowed. Contractor shall provide directional and warning signs at protective barricades to assure safe passage of pedestrians in and near areas of Work.
5. The Contractor shall generally be prohibited from entering areas of the building except where Work is in progress. Work and access shall cause as little disruption to building occupants as possible. The Contractor shall give a minimum of five (5) working days advance notice and shall receive permission from the Owner for building access other than during normal business hours.
6. Contractor shall be responsible for the proper attire and actions of all workmen at all times. Any improper attire or action by any person is cause for immediate dismissal of the offending person from the site and project.
7. Contractor shall remove an employee (or any person working on behalf of the Contractor) upon notice that such person does not meet the requirements of the Contract or upon notice the Owner does not want such person (with or without cause) working on the Owner's premises.

SGC-05. Fire Prevention

- a. Contractor shall take adequate and reasonable precautions to protect Work against damage by fire and smoke. For example, without limitation, Contractor shall:
 1. Provide fire extinguishers in readily accessible locations.
 2. Periodically inspect fire extinguishers, remove discharged extinguishers immediately and replace with new or recharged extinguishers.
 3. Keep one fire extinguisher within five (5) feet of any welding or open flame operations.
 4. Remove oil-soaked and paint-soaked materials, including paper and rags, from building daily, and more frequently as necessary, to eliminate danger of fire.
 5. Not permit workmen to smoke during operations involving combustible adhesives, solvents, mastics, or other fire hazard materials.

SGC-06. Sales Tax. Unless otherwise provided in the Contract Documents, the Contractor shall pay all sales, consumer, use and other similar taxes, which were legally enacted at the time the Order was executed with the Contractor.

SGC-07. Defective Work. If the Contractor fails to correct defective Work or persistently fails to carry out the Work in accordance with the Contract Documents, the Owner, by written order, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

SGC-08. Third Party Beneficiaries. Contractor acknowledges, stipulates and agrees that the owner is a public authority performing an essential public function by means of the Contract. Failure of Contractor to comply with this Contract may cause general and special or consequential damages to Owner or to officers, agencies, commissions, departments, instrumentalities or other entities of the State of Georgia,

which will occupy the completed Work or which provide governmental services or supplies to them. By way of illustration and not limitation, breach or repudiation of the Contract may cause the need to crowd other premises, to extend occupancies of other premises or to occupy unsatisfactory premises. Contractor shall be liable for damages under this Contract not only to Owner but also to, and as third party beneficiaries of its Contract, the State of Georgia, or to any officer, agency, commission, department, instrumentality or entity of the State of Georgia, which is to occupy the Work or which performs a governmental function for the same and whose costs or burden is increased by a breach in the Contract. This Contract contemplates general and special or consequential damages not only to Owner but to such third party beneficiaries (“State beneficiaries”). Liability to third party beneficiaries shall be without regard to whether Owner has breached any duty of its own to third party beneficiaries, and neither Contractor nor its surety shall have any right of subrogation against Owner or the State or other third party beneficiaries.

SGC-09. Hazardous Material. A Hazardous Material is any substance or material identified as of the date of the issuance of the respective purchase Order as hazardous under any governmental law, rule, or regulation, or otherwise subject to governmental requirements concerning handling, disposal, and/or cleanup. Unless otherwise directed in the Detailed Scope of Work applicable to each Work Order, the Contractor shall not be required to perform any Work related to hazardous materials encountered at the Site. The Contractor is fully responsible for any Hazardous Materials brought on the Site by any party, other than the Owner, who has a contractual relationship with the Contractor to perform Work under the Contract Documents. If the Contractor knows of the presence of hazardous materials in any form existing on or delivered to the Site, the Contractor shall immediately notify the Architect and the Owner as to the quantity and nature of the hazardous material.

SGC-10. Material Storage. Should the Owner provide limited storage space in the work area, Contractor assumes full, complete and nondelegable responsibility for the security of the equipment so stored and for determining that the material stored in this area will not overload the floor system. Any damage to the structure as a result of the Contractor overloading the floor shall be repaired by the Contractor at no cost to the Owner.

SGC-11. Inspection of Existing Facilities prior to Commencing Work

- a. The Contractor shall give a notice in writing to the Architect, prior to commencing Work for the purpose of arranging for a joint inspection by (a) the Architect, (b) the Contractor and (c) the authorized representative of the Owner, during the course of which inspection the three parties to the joint inspection shall prepare a schedule identifying and showing the location of any damage to the existing work which is ascertainable by inspection. The schedule shall be prepared in four counterpart originals each of which shall be dated and signed on behalf of each part to the joint inspection. An executed and dated counterpart original shall be filed with: (a) the Architect, (b) the Contractor and (c) the authorized representative of the Owner.
- b. It is agreed that the preparation of the schedule is for the benefit of the Contractor and is intended to enable him to have the protection afforded by a record of such existing damage as is visually ascertainable. The Contractor shall have no responsibility to repair any damage that shall appear on the above-mentioned schedule nor shall he be responsible for repairing any existing damage which was not ascertainable by visual inspection or which was not the result of negligence on his part. Subsequently to the signing of the above-mentioned schedule the Contractor shall be responsible for repairing any damage except as noted.

SGC-12. Notification to Owner when Contractor Visits Site after Final Inspection

- a. When the Contractor’s representative visits the job site after the final inspection to perform specific Work such as maintenance service, seasonal balance, or to correct a deficiency, the Contractor shall notify the Owner not less than 48 hours prior to the date on which they will visit the site, except under an emergency condition.

- b. The Contractor shall visit the designated office of the Owner to notify the Owner that the Contractor is on the site prior to visit, thereby enabling the Owner representative to accompany the Contractor, should they so desire while the Contractor is on each project site.
- c. A copy of the notification shall be provided to the Architect with the intent of the site visit. After the Contractor has completed the site visit, he shall give a written report to the Architect within five (5) days of the actions taken and any incomplete Work yet to be performed.

SGC-13. Indoor Air Quality. The building will be in use and occupied during construction. Contractor shall schedule Work and provide temporary ventilation and/or isolation to insure that fumes from welding, other construction tasks, and out-gassing from construction materials do not migrate to occupied areas.

SGC-14. Pre-construction Meeting. After issuance of a Purchase Order, and if requested by the Owner, a Pre-construction meeting shall be held between the Owner, the Contractor and the Architect to review each project and set up the approximate work sequence schedule. . The Contractor shall submit a project safety plan to the Architect for review a minimum of five (5) days prior to the Pre-construction conference. If no Pre-construction meeting is required The Contractor shall submit a project safety plan to the Architect for review a minimum of five (5) days prior to commencement of Work at the Site, Notwithstanding this review, Contractor retains full, complete and total responsibility for all job related safety.

SGC-15. Immigration Reform Compliance. The Contractor hereby certifies its compliance with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act OCGA 13-10-90 et.seq. Contractor certifies that Contractor has registered at <https://www.vis-dhs.com/EmployerRegistration> to verify information of all new employees in order to comply with the Immigration Reform and Control Act of 1986 (IRCA), D.L. 99-603 and the Georgia Security and Immigration Compliance Act. Contractor further certifies that it shall execute any affidavits required by the rules and regulations issued by the Georgia Department of Labor set forth at Rule 300-10-1-.01 et.seq. Contractor warrants that it has included a similar provision in all written agreements with any subcontractors engaged to perform services under this Contract.

SGC-16. Georgia Security and Immigration Compliance Act Affidavit. The Contractor shall complete and return the Georgia Security and Immigration Compliance Act Affidavit, provided as State of Georgia Exhibit F, to the Owner.

SECTION FOUR – STATE OF GEORGIA EXHIBITS

STATE OF GEORGIA - EXHIBIT A
(Specimen, To be provided separately on each Purchase Order)

NON-INFLUENCE AFFIDAVIT

COUNTY OF _____

STATE OF _____

I do solemnly swear on my oath that as to the Purchase Order Number _____ dated ,
_____ 20_____, between _____
_____ and _____

(NAME OF CONTRACTOR)

the Owner I have no knowledge of the exertion of any influence or the attempted exertion of any influence on the firm on behalf of which this affidavit is made in any way, manner, or form in the purchase of materials, equipment, or other items involved in construction, manufacture, or employment of labor under the aforesaid contract by any employee, officer, or agent of the Owner, or any person connected with the State Government of Georgia in any way whatsoever.

This _____ day of _____, 20_____.

(L.S.)

Signature

Title

Firm

COUNTY OF _____

STATE OF _____

Personally before me, the undersigned authority, appeared _____
(NAME OF PERSON SIGNING THE
AFFIDAVIT)

who is known to me to be an official of the firm of _____ who, after being duly
(NAME OF CONTRACTOR)

sworn, stated on his oath that he had read the above statement and that the same is true and correct.

Notary Public

My Commission expires _____

This _____ day of _____, 20_____.

STATE OF GEORGIA - EXHIBIT B
(Specimen, to be provided separately on each Purchase Order)

STATUTORY AFFIDAVIT

COUNTY OF _____ STATE OF _____

FROM: _____

Contractor

TO: _____

Owner

Re: Purchase Order entered into the ____ day of _____, 20__, between the above-mentioned parties for the construction of Project No. _____ located at _____

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned hereby certifies that all Work required under the above contract has been performed in accordance with the terms thereof, that all materialmen, subcontractors, mechanics, and laborers have been paid and satisfied in full, and that there are no outstanding claims of any character [including disputed claims or any claims to which the Contractor has or will assert any defense] arising out of the performance of the contract which have not been paid and satisfied in full except as listed herein below:

[INSTRUCTIONS- ENTER THE WORD "NONE" OR LIST THE NAMES OF CLAIMANTS AND THE AMOUNT CLAIMED BY EACH]

2. The undersigned further certifies that to the best of his knowledge and belief there are no unsatisfied claims for damages resulting from injury or death to any employees, subcontractors, or the public at large arising out of the performance of the contract, or any suits or claims for any other damage of any kind, nature, or description which might constitute a lien upon the property of the Owner.

3. The undersigned makes this affidavit for the purpose of receiving final payment in full settlement of all claims against the Owner arising under or by virtue of the contract, and acceptance of such payment is acknowledged as a release of the Owner from any and all claims arising under or by virtue of the contract.

This ____ day of _____, 20____.

_____(L.S.)

Signature

Title

Firm

COUNTY OF _____ STATE OF _____

Personally before me, the undersigned authority, appeared _____, who
(NAME OF PERSON SIGNING AFFIDAVIT)

is known to me to be an official of the firm of _____ who, after being duly
(NAME OF CONTRACTOR)

sworn, stated on his oath that he had read the above statement and that the same is true and correct.

_____ Notary Public, My commission expires _____

This ____ day of _____, 20__

**STATE OF GEORGIA - EXHIBIT C
(Specimen)**

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That _____
as _____
(Legal Name and Address of Contractor)

principal (hereinafter referred to as "Contractor") and

_____ as _____ (Legal title and address of Surety)
surety (hereinafter referred to as "Surety"), are held and firmly bound unto _____ as Obligee
(hereinafter referred to as "Owner"), in the amount of \$ _____,
to which payment Contractor and Surety bind themselves, their heirs, executors, administrators, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with Owner bearing date of _____,
for PROJECT NO. _____ in accordance with drawings and specifications prepared by
_____, which said contract is incorporated herein by reference and made a part
hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Contractor shall promptly
and faithfully perform and comply with the terms and conditions of said contract; and shall indemnify and save
harmless the Owner against and from all costs, expenses, damages, injury or loss to which said Owner may be
subjected by reason of any wrongdoing, including patent infringement, misconduct, want of care or skill, default or
failure of performance on the part of said Principal, his agents, subcontractors or employees, in the execution or
performance of said contract, then this obligation shall be null and void; otherwise it shall remain in full force and
effect.

1. The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes,
extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract
or to the Work to be performed thereunder, or the specifications or drawings accompanying same shall in any wise
affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time
or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work or
to the specifications or drawings.

2. If pursuant to the Contract Documents the Contractor shall be declared in default by the Owner under the
aforesaid Contract, the Surety shall promptly remedy the default or defaults or shall promptly perform the Contract
in accordance with its terms and conditions. It shall be the duty of the Surety to give an unequivocal notice in
writing to the Owner within twenty-five (25) days after receipt of a declaration of default of the Surety's election
either to remedy the default or defaults promptly or to perform the contract promptly, time being of the essence. In
said notice of election, the Surety shall indicate the date on which the remedy or performance will commence, and it
shall then be the duty of the Surety to give prompt notice in writing to the Owner immediately upon completion of
(a) the remedy and/or correction of each default, (b) the remedy and/or correction of each item of condemned Work,
(c) the furnishing of each omitted item of Work, and (d) the performance of the contract. The Surety shall not assert
solvency of its Principal as justification for its failure to give notice of election or for its failure to promptly remedy
the default(s) or perform the contract.

3. Supplementary to and in addition to the foregoing, whenever the Owner shall notify the Surety that the Owner has notice that the Contractor has failed to pay any subcontractor, materialman, or laborer for labor or materials certified by the Contractor as having been paid for by the Contractor, the Surety shall, within 30 days of receipt of such notice, cause to be paid any unpaid amount for such labor or materials.

4. It is expressly agreed by the Principal and the Surety that the Owner, if he desires to do so, is at liberty to make inquiries at any time of subcontractors, laborers, materialmen, or other parties concerning the status of payments for labor, materials, or services furnished in the prosecution of the Work.

5. The Surety agrees that other than as is provided in this bond it may not demand of the Owner that the Owner shall (a) perform any thing or act, (b) give any notice, (c) furnish any clerical assistance, (d) render any service, (e) furnish any papers or documents, or (f) take any other action of any nature or description which is not required of the Owner to be done under the Contract Documents.

6. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner named herein or the legal successors of the Owner.

Signed and sealed this _____ day of _____ A. D. 20_____.

IN THE PRESENCE OF:

_____(SEAL)
(Principal)

(Title)

_____(SEAL)
(Surety)

(Title)

STATE OF GEORGIA - EXHIBIT D
(Specimen)

PAYMENT BOND

THIS BOND IS EXECUTED TOGETHER WITH ANOTHER BOND IN FAVOR OF THE OWNER AS OBLIGEE CONDITIONED UPON PERFORMANCE OF THE CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

That _____ as
(Legal Title and Address of Contractor)

Principal (hereinafter referred to as "Contractor"), and

_____ as Surety
(Legal title and address of Surety)

(hereinafter referred to as "Surety"), are held and firmly bound unto _____ as obligee

(hereinafter referred to as "Owner"), for the use and benefit of claimants defined, hereinafter, in the amount of

(\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, (Insert Contact Price)

administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden Principal has entered into a contract with Owner dated _____ for Project

No. _____ in accordance with drawings and specifications prepared by

_____ which contract is incorporated herein by reference and made a part hereof, and

is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly make payment to all claimants as hereinafter defined, for all labor and materials supplied in the prosecution of the Work provided for in said Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

1. The said Surety to this bond, for value received, hereby stipulates and agrees that no change or changes, extension of time or extensions of time, alterations or addition or additions to the terms of the contract or to the Work to be performed thereunder, or the specifications or drawings accompanying same shall in any wise affect its obligation on this bond, and it does hereby waive notice of any such change or changes, extension of time or extensions of time, alteration or alterations or addition or additions to the terms of the contract or to the Work or to the specifications or drawings.

2. A claimant is defined as any subcontractor and any person supplying labor, materials, machinery, or equipment in the prosecution of the Work provided for in said contract.

3. Every person entitled to the protection hereunder and who has not been paid in full for labor or materials furnished in the prosecution of the Work referred to in said bond before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him, or materials or equipment or machinery was furnished or supplied by him for which such claim is made, or when he has completed his subcontract for which claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of the commencement of such action and to prosecute such action to final execution and judgment for the sum or sums due him; provided, however, that any person having direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have the right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the day on which such person did or performed the last of the labor, or furnished the last of the materials or machinery or equipment for which such claim is made, stating with substantial accuracy the amount claimed and the name of the

party to whom the materials were furnished or supplied or for whom the labor was performed or done; provided further that nothing contained herein shall limit the right of action to said 90-day period. Notice may be served by depositing a notice, registered mail, postage prepaid, duly addressed to the contractor at any place he maintains an office or conducts his business, or his residence, in any post office or branch post office or any letter box under the control of the Post Office Department, or notice may be served in any manner in which the sheriffs of Georgia are authorized by law to serve summons or process. Every suit instituted under this section shall be brought in the name of the claimant without the Owner being made a party thereto. The official who has the custody of said bond is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such Work and payment therefor has not been made, or that he is being sued on any such bond, a copy of such bond and the contract for which it was given, certified by the official who has custody of said bond; this copy shall be primary evidence of said bond and contract and shall be admitted in evidence without further proof. Applicants shall pay for such certified copies and such certified statements such fees as the official fixes to cover the cost of preparation thereof, but in no case shall the fee exceed the fees which the clerks of the superior courts are permitted to charge for similar copies.

4. No action can be instituted on this bond after one year from the date of the final certificate of the architect.
5. Further, this bond shall be considered the same as a bond furnished under Section 13-10-1 *et seq.*, of the Code of Georgia, as amended, and all provisions of law pertaining to bonds furnished under said Section shall pertain hereto.

Signed and sealed this _____ day of _____ A.D. 20_____.

IN THE PRESENCE OF:

_____(SEAL)
(Principal)

(Title)

_____(SEAL)
(Surety)

(Title)

STATE OF GEORGIA - EXHIBIT E

(NOT USED)

STATE OF GEORGIA - EXHIBIT F

GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT

Project No. and Name: GA01-111908-WTI
Indefinite Quantity Construction Agreement

Construction Professional: Weatherproofing Technologies, Inc.

STATE OF GEORGIA; COUNTY OF _____:

CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the _____ has registered with and is participating in a federal work authorization program*, in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the _____, Contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the _____ at the time the subcontractor(s) is retained to perform such service.

EEV / E-Verify™ User Identification Number

BY: Authorized Officer or Agent
(Contractor Name)

Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN
BEFORE ME ON THIS THE

_____ DAY OF _____, 200_

Notary Public

[NOTARY SEAL]

My Commission Expires:

*any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603

STATE OF GEORGIA - EXHIBIT G
(Specimen - to be completed by the Owner separately for each Purchase Order)

CONTRACTOR PERFORMANCE EVALUATION QUESTIONNAIRE

FINAL REPORT INTERIM REPORT, _____% COMPLETE

Facility (Owner): _____ Project Number: _____

Project: _____

Description: _____

Contractor: _____
Legal Name and Address

When Organized _____ State Incorporated _____ Type _____
(Corporation., Partnership, Sole Proprietorship)

Federal I.D. No. _____ or S. S. No. _____ Georgia Resident: YES ___ NO ___

The full names of persons interested in the foregoing project as principals are as follows:

(1) _____
Check One: President () Partner () Owner ()

(2) _____
Check One: Vice President () Secretary () Partner ()

Original Contract Amount: \$ _____ Date of Award: _____

CO's _____ Total CO's \$ _____ Original Contract Completion Date: _____

Final Contract Amount \$ _____ Revised Contract Completion Date: _____

Owner Acceptance Date: : _____ Punch List Completion Date _____

Final Payment Date: _____

Contractor's Overall Performance Rating:

4 = Outstanding

2 = Satisfactory

0 = Unsatisfactory

Remarks: (Attach additional sheets or documentation if necessary)

EVALUATED BY:

REVIEWED BY:

Name and Title

Name and Title

Signature

Signature

Date

Date

NATIONAL JOINT POWERS ALLIANCE®
 Book 2 – IQCC Standard Terms and Conditions and Contract General Conditions

**STATE OF GEORGIA - EXHIBIT G
 PAGE 2**

PERFORMANCE EVALUATION OF CONTRACTOR			
	PERFORMANCE CATEGORY	RATING	REMARKS
1	Project Mobilization		
2	Environmental Protection		
3	Compliance / Submission of Labor Reports		
4	Job Site Safety		
5	Knowledge and Compliance with Applicable Codes		
6	Contract Management		
7	Adherence to Project Schedule		
8	Quality of Superintendence/Supervision		
9	Coordination of Trades/Subcontractors		
10	Submittal Reviews by Contractor		
11	Submittal Timeliness		
12	Subcontractor Management/Scheduling		
13	Mechanical Systems		
14	Electrical Systems		
15	Adherence to Plans/Specifications		
16	Maintenance/Operation Manuals		
17	O&M Equipment Demonstrations		
18	Cooperation with Inspectors		
19	As Built Drawings		
20	Cooperation with Owner/User		
21	Change Orders		
22	Job Site Appearance/Clean-up		
23	Project Status at Punch List Inspection		
24	Completion of Punch List		
25	Punch List Size		
26	Timeliness of Project Completion		
27	Quality of Construction		
28	Submission of Close Out Data		
CODE RATING: 4 = Outstanding 2 = Satisfactory 0 = Unsatisfactory (Explain all outstanding or unsatisfactory ratings)			

**STATE OF GEORGIA EXHIBIT G
 PAGE 3**

PERFORMANCE EVALUATION OF CONTRACTOR'S SUB-CONTRACTORS			
SUB-CONTRACTOR (NAME AND WORK PERFORMED)	RATING	REMARKS	
A.			
B.			
C.			
D.			
E.			

CODE RATING: 4 = Outstanding 2 = Satisfactory 0 = Unsatisfactory (Explain all outstanding or unsatisfactory ratings)

1. This evaluation of the contractor's performance should be completed upon completion of each project. At the Agency's discretion, a report of the contractor's performance can be done at any time during each project.
2. Copies of all performance evaluations (pages 1, 2 & 3) are to be sent to the Georgia State Financing and Investment Commission, to the attention of the Procurement Division.
3. Interim and Final Unsatisfactory Evaluation Reports will be used to determine whether contractors are responsible bidders on future bids and in possible suspension or debarment proceedings.

For all Work performed through the State of Georgia Department of Administrative Services (DOAS) by both State of Georgia User Agencies or other public entities within the State of Georgia using stimulus funding under the American Recovery and Reinvestment Act (ARRA), the ARRA General Conditions (Exhibit H) and ARRA Supplementary General Conditions (Exhibit I) shall apply.

State of Georgia - Exhibit H

American Recovery and Reinvestment Act (ARRA) GENERAL CONDITIONS

Contractor agrees that in consideration of receipt of Federal ARRA funds, it will comply with all of the terms, conditions, requirements and limitations as set forth below:

AGC-01. Revisions to Requirements

Contractor acknowledges that these Special Conditions may be revised pursuant to ongoing guidance from the relevant federal agency regarding requirements for ARRA funds. Contractor agrees to abide by any such revisions upon receipt of written notification from the Commission or Owner of the revisions, which will automatically become a material part of this Contract, without the necessity of either party executing any further instrument.

AGC-02. Registrations and Identification Information

Contractor must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with ARRA funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

If applicable, the Contractor agrees to separately identify to each subcontractor, and document at the time of award of contract or approval of application and at the time of disbursement of funds, the Statewide Contract award number, EZIQC Work Order, and amount of ARRA funds.

AGC-03. Reporting Requirements

No later than 5 days after the end of each calendar quarter, or more frequently as directed by the Commission or the Owner, the Contractor shall submit a report, on a web based database, to the Georgia Environmental Facilities Authority (GEFA), that contains:

- (1) The total amount of recovery funds received;
- (2) The amount of recovery funds received that were obligated and expended to projects or activities under the Statewide Contract (SWC90818). If required by GEFA or the Owner, Contractor shall submit backup documentation for expenditures of ARRA funds, including such items as timecards, payroll, and invoices.
- (3) Detailed information on any subcontracts awarded by the Contractor must include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.
- (4) A description of the overall purpose and expected outcomes or results of the orders issued under the contract, including significant deliverables and, if appropriate, associated units of measure.
- (5) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of orders issued under the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers all orders issued under the contract (or portion thereof) funded by the Recovery Act.

(6) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and only address the impact on the contractor's workforce. At a minimum, the contractor shall provide—

(A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR 2.101). This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(B) An estimate of the number of jobs created and jobs retained by the prime contractor, in the United States and outlying areas. A job cannot be reported as both created and retained.

(7) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract/order is awarded if—

(A) In the Contractor's preceding fiscal year, the Contractor received—

(i) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

(8) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(9) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is over \$25,000 and not subject to reporting under paragraph 9, the contractor shall require the subcontractor to provide the information described in (A), (I), (J), and (K) below to the contractor for the purposes of the quarterly report. The contractor shall advise the subcontractor that the information will be made available to the public as required by Section 151 of the Recovery Act. The contractor shall provide detailed information on these first-tier subcontracts as follows:

(A) Unique identifier (i.e. DUNS Number , Tax ID) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(B) Name of the subcontractor.

(C) Amount of the subcontract award.

(D) Date of the subcontract award.

(E) The applicable North American Industry Classification System (NAICS) code.

(F) Funding agency.

(G) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(H) Subcontract number (the contract number assigned by the prime contractor).

(I) Subcontractor's physical address including street address, city, state, and

country. Also include the nine-digit zip code and congressional district if applicable.

(J) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(K) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

- (i) In the subcontractor's preceding fiscal year, the subcontractor received—
 - (a) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
 - (b) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and
- (ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

AGC-04. Definitions

“Contract,” as defined in FAR 2.101, means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, et seq. For discussion of various types of contracts, see FAR Part 16.

“First-tier Subcontract” means a subcontract awarded directly by a prime contractor whose contract is funded by the Recovery Act.

“Jobs Created” means an estimate of those new positions created and filled, or previously existing unfilled positions that are filled, as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“Jobs Retained” means an estimate of those previously existing filled positions that are retained as a result of funding by the American Recovery and Reinvestment Act of 2009 (Recovery Act). This definition covers only prime contractor positions established in the United States and outlying areas (see definition in FAR 2.101). The number shall be expressed as “full-time equivalent” (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the contractor. For instance, two full-time employees and one part-time employee working half days would be reported as 2.5 FTE in each calendar quarter.

“Total Compensation” means the cash and noncash dollar value earned by the executive

during the contractor's past fiscal year of the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

AGC-05. General

These special terms and conditions incorporate one or more clauses by reference, with the same force and effect as if they were given in full text. The full text of a clause may be accessed electronically at one of these website addresses: <http://farsite.hill.af.mil/> or <http://www.acquisition.gov/FAR/>

- **FAR 52.226-3** Convict Labor (June 2003)
- **FAR 52.226-4** Contract Work Hours and Safety Standards Act -- Overtime Compensation. (Jul 2005)
- **FAR 52.226-5** Davis-Bacon Act (Jul 2005)
- **FAR 52.226-7** Withholding of Funds (Feb 1988)
- **FAR 52.226-8** Payrolls and Basic Records (Feb 1988)
- **FAR 52.222-9** Apprentices and Trainees (Jul 2005)
- **FAR 52.222-10** Compliance with Copeland Act Requirements (Feb 1988)
- **FAR 52.222-11** Subcontracts (Labor Standards) (Jul 2005)

AGC-06. FAR 52.203-15 Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Mar 2009)

(1) The Contractor shall post notice of employees rights and remedies for whistleblower protections provided under section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(2) The Contractor shall include the substance of this clause including this paragraph (2) in all subcontracts.

AGC-07. Buy American - Use of American Iron, Steel, and Manufactured Goods – Section 1605 of the American Recovery and Reinvestment Act of 2009

Recipients may not use any funds obligated under this award for the construction, alteration,

maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States unless the Agency waives the application of this provision (ARRA Sec. 1605).

(a) **Definitions.** As used in this award term and condition—

Designated country—

- (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

- (2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

- (3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods—

- (1) Is wholly the growth, product, or manufacture of a designated country; or

- (2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good—(1) Is wholly the growth, product, or manufacture of the United States; or (2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin

of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Iron, steel, and manufactured goods.

(1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

None

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) (1) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.*

(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than

designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)***
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

* List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

** Include other applicable supporting information.

***Include all delivery costs to the construction site.

AGC-08. Wage Rate Requirements (ARRA)

Subject to further clarification issued by the Office of Management and Budget, and notwithstanding any other provision of law and in a manner consistent with other provisions of ARRA, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this award shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code (ARRA Sec. 1606).

Davis Bacon Wage Rates for the State of Georgia may be accessed at the following website: <http://www.gpo.gov/davisbacon/ga.html> Heavy Construction Wage Rates are to be used in the performance of projects awarded under this agreement.

AGC-09. Limit on Funds (ARRA)

None of the funds appropriated or otherwise made available in ARRA may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool (ARRA Sec. 1604).

AGC-10. Disclosure of Fraud or Misconduct

Each recipient or sub-recipient awarded funds made available under the ARRA shall promptly refer to the USDA Office of Inspector General any credible evidence that a principal, employee,

agent, contractor, sub-recipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. To implement the [FAR rule on Contractor Disclosures](#) (effective December 12th, 2008), USDA has a web-based form (<http://www.usda.gov/oig/contractorform.htm>) that allows the Contractor or Recipient to notify, in writing, the USDA Office of the Inspector General, whenever the contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor or Recipient has committed a violation of the civil False Claims Act or a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations in connection with the award, performance, or closeout of a contract or any related subcontract. If you wish to provide information that does not fall within these guidelines, please visit the Office of Inspector General, USDA web site at www.usda.gov/oig and/or e-mail the USDA OIG hotline at usda_hotline@oig.usda.gov.

AGC-11. Drug-Free Workplace

The Contractor agrees to provide the certification set out below. If it is later determined that the contractor knowingly rendered a false certification, or otherwise violated the requirements of the Drug-Free Workplace Act, the Commission, in addition to any other remedies available, may take action authorized under the Drug-Free Workplace Act.

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacturing, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a contractor directly engaged in the performance of work under a contract, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the contract and who are on the contractor's payroll. This definition does not include workers not on the payroll of the contractor (e.g., volunteers, even if used to meet a matching requirements; consultants or independent contractors not on the contractor's payroll; or employee of subcontractors in covered workplaces).

Certification:

(1) The contractor certifies that it will or will continue to provide a drug-free workplace by:

(A) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(B) Establishing an ongoing drug-free awareness program to inform employees about-

(i) The danger of drug abuse in the workplace;

(ii) The grantee's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(C) Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by paragraph (A);

(D) Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notifying the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such a conviction;

(E) Notifying the Commission in writing, within ten calendar days after receiving notice under paragraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(F) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (D)(ii), with respect to any employee who is so convicted-

(i) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(ii) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(G) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F).(H) Agencies shall keep the original of all disclosure reports in the official files of the agency.

(2) The contractor may provide a list of the site(s) for the performance of work done in connection with a specific project or other agreement.

**AGC-12. Certification Regarding Debarment, Suspension, and Other Responsibility Matters –
Primary Covered Transactions, (7 CFR 3017)**

(1) The contractor certifies to the best of its knowledge and belief, that it and its principals:

(A) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(B) Have not within a three-year period preceding this bid been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(C) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (A)(ii) of this certification; and

(D) Have not within a three-year period preceding this application/bid has one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the primary contractor is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this agreement.

AGC-13. Examination of Records

The contractor agrees to give to the Commission or the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to this contract. The contractor also agrees to retain all records related to this contract for a period of three years after completion of the terms of this contract.

AGC-14. Environmental Requirements

The Contractor shall comply with all applicable federal, state, and local environmental and historic preservation requirements and shall provide any information requested by the Commission to ensure compliance with applicable laws.

AGC-15. Certification Regarding Lobbying (7 CFR 3018) (Applicable if this contract exceeds \$100,000)

The contractor certifies to the best of their knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of an agency, Member of Congress, and officer or employer of Congress, or a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

AGC-16. Clean Air and Water Certification

(Applicable if this agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c) and is listed by EPA, or is not otherwise exempt.)

The contractor certifies as follows:

(1) Any facility to be utilized in the performance of this proposed agreement is _____, is not _____, listed on the Environmental Protection Agency List of Violating Facilities.

(2) To promptly notify the Commission prior to the signing of this contract by the Commission, of the receipt of any communication from the Director, Office of Federal Activities, U.S.

Environmental Protection Agency, indicating that any facility which he proposes to use for the performance of the agreement is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(3) To include substantially this certification, including this subparagraph (3), in every nonexempt subagreement.

AGC-17. Clean Air and Water Clause

(Applicable only if the agreement exceeds \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 1857c-8(c)(1) or the Federal Water Pollution Control Act (33 U.S.C. (1319(c)) and is listed by EPA or the agreement is not otherwise exempt.)

(1) The contractor agrees as follows:

(A) To comply with all the requirements of section 114 of the Clean Air Act as amended (42 U.S.C. 1857, et seq., as amended by Public Law 91-604) and section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq., as amended by Public Law 92-500), respectively, relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, respectively, and all regulations and guidelines issued thereunder before the signing of this contract by the Commission.

(B) That no portion of the work required by this agreement will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was signed by the Commission unless and until the EPA eliminates the name of such facility or facilities from such listing.

(C) To use their best efforts to comply with clean air standards and clean water standards at the facilities in which the agreement is being performed.

(D) To insert the substance of the provisions of this clause in any nonexempt sub-contract, including this subparagraph (1)(D).

(2) The terms used in this clause have the following meanings:

(A) The term "Air Act" means the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Public Law 91-604).

(B) The term "Water Act" means Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Public Law 92-500).

(C) The term "clean air standards" means any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, or other requirements which are contained in, issued under, or otherwise adopted pursuant to the Air Act or Executive Order 11738, an applicable implementation plan as described in section 110(d) of the Clean Air Act (42 U.S.C. 1857c-5(d)), and approved implementation procedure or plan under section 111(c) or section 111(d), respectively, of the Air Act (42 U.S.C. 1857c-6(c) or (d), or an approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 1857c-7(d)).

(D) The term "clean water standards" means any enforceable limitation, control, condition, prohibition, standards, or other requirement which is promulgated pursuant to the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by a local government to ensure compliance with per treatment regulations as required by section 307 of the Water Act (3 U.S.C. 1317).

(E) The term "compliance" means compliance with clean air or water standards. Compliance shall also mean compliance with the scheduled or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or any air or water pollution control issued pursuant thereto.

(F) The term "facility" means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations, owned leased, or supervised by a contractor, to be utilized in the performance of an agreement or sub-agreement. Where a location or site of operations contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

AGC-18. Nondiscrimination Provisions

The Contractor covenants and agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this Agreement. Accordingly, and to the extent applicable, the Contractor covenants and agrees to comply with the following:

(1) On the basis of race, color or national origin, in Title V I of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by applicable regulations.

(2) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 (3 CFR, 1964-1965 Comp. pg. 339), as implemented by applicable regulations.

(3) On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by applicable regulations.

(4) On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by applicable regulations.

(5) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by applicable regulations.

AGC-19. Flow Down Requirement

Contractor must include these ARRA Terms and Conditions in any subcontract.

AGC-20. ARRA Compliance Certificate

The Contractor must complete in its entirety, sign and notarize the Application for Payment, Compliance Certificate of the Construction Professional (Exhibit A-1) for all requests for payment made to the Georgia Environmental Facilities Authority (GEFA). This form must accompany (as an attachment) all requests for payment/invoices submitted to GEFA for ARRA funded (in whole or in part) projects.

THIS FORM MUST ACCOMPANY ALL REQUESTS FOR PAYMENT/INVOICES

EXHIBIT# A-1



**AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)
GEORGIA ENVIRONMENTAL FACILITIES AUTHORITY (GEFA)**

APPLICATION FOR PAYMENT

COMPLIANCE CERTIFICATE OF THE CONSTRUCTION PROFESSIONAL

Application No _____ Date _____

Project No.	
Project Name	

This Compliance Certificate confirms that in performance of the work requested for payment and in compliance with the construction contract/purchase order between the parties dated ____/____/____ the undersigned has fully complied with all aspects of the intent and requirements of the contracted work funded by the American Recovery and Reinvestment Act of 2009 (ARRA).

Furthermore, the undersigned does hereby confirm that failure to comply in all matters related to the ARRA shall result in the revocation of the awarded contract/purchase order and will require repayment of all funds disbursed to the contractor. In addition and without limitations, the Georgia Environmental Facilities Authority (GEFA) as Owner shall have the ultimate authority to approve or refuse payment for any portion of the Application for Payment submitted by the construction professional.

In summary, the undersigned as the contractor (construction professional) representative certifies that the Invoice for Payment attached hereto meets all requirements of the Statewide Contract including any resultant Purchase Order/s between the company, Weatherproofing Technologies INC, the State of Georgia and its Authorized Users. It is further understood that failure to comply with any of the requirements set forth in contract may be sufficient grounds for termination, recoupment of all payments and collection of damages.

Duly executed this _____ day of 20____ by:

Signature

Title

NOTARY

Sworn to and subscribed before me this _____ day of _____, 20____.

Notary Public

My Commission Expires _____



**AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)
& GEORGIA ENVIRONMENTAL FACILITIES AUTHORITY (GEFA)**



**SUPPLEMENT TO APPLICATION FOR PAYMENT
COMPLIANCE CERTIFICATE**

Application No _____ Date _____

Project/ECM No.	
Project Name	

The Contractor's execution of this Compliance Certificate, in conjunction with the corresponding Application for Payment [Georgia State Financing and Investment Commission (GSFIC) Form GSFIC-AD-105 (01-03-08)] attached hereto, represents affirmation that all work performed and included in Application for Payment No. ____ is in compliance with the requirements of the American Recovery and Reinvestment Act of 2009 (ARRA) as contained in a contract dated ____/____/____ between GEFA and _____.

Furthermore, the contractor does herein acknowledge that failure to comply with all ARRA requirements as contained in the above referenced contract may result in the revocation of the awarded contract and may require repayment of funds paid to the contractor. In addition and without limitations, the Georgia Environmental Facilities Authority (GEFA) as Owner shall have the ultimate authority to approve or refuse payment for any portion of the Application for Payment submitted by the contractor that is found to not be in compliance with ARRA.

Duly executed this _____ day of 20____ by:

Signature

Title

Print Name

ARRA Compliance Certificate

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State of Georgia - Exhibit I

American Recovery and Reinvestment Act (ARRA) SUPPLEMENTARY GENERAL CONDITIONS

These additional Terms and Conditions address the American Recovery and Reinvestment Act of 2009 and are made a part of the statewide contract and any resultant purchase order/s issued under the contract to which it is attached, and each of the terms and conditions set forth hereafter are incorporated in and made a part of the resulting contract or purchase order as if fully set forth therein.

ASGC-01. American Recovery and Reinvestment Act of 2009.

The Work contemplated hereby is funded pursuant to the American Recovery and Reinvestment Act ("ARRA"). As a condition of the funding, the federal government requires certain reports regarding the use of the funds. The responsibility for providing such reports may be delegated by the recipients to the sub-recipients of the awards. As such, the Department of Administrative Services, State of Georgia hereby delegates reporting responsibility to Contractor, and the award for the Work is made on the condition that Contractor agrees to abide by all requirements of ARRA, including the reporting requirements for sub-recipients. Receipt of funds by Contractor under this Contract and any resultant Purchase Order/s is contingent upon Contractor's compliance with those reporting requirements. The reporting requirements include, but are not necessarily limited to, the following:

- a) Contractor shall acquire or update their DUNS (Dun & Bradstreet) number and register with the Central Contractor Registration (CCR) if applicable;
- b) Contractor shall report the total amount of ARRA funds received pursuant to all promulgated rules and regulations;
- c) Contractor shall report the amount of funds received that were expended or obligated to projects or activities, including unobligated balances to facilitate reconciliations.

ASGC-02. The American Recovery and Reinvestment Act of 2009 (ARRA) (Public Law 111-5) Award Term

Unless otherwise specified, ARRA funding is one-time funding.

ASGC-03. Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5)

- (a) This statewide contract requires the Contractor to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this statewide contract. Information from these reports will be made available to the public.
- (b) The reports are due on the 10th day of April, July, October, and January for each preceding quarter in which the Contractor receives the assistance award funded in whole or in part by the Recovery Act.
- (c) Contractor must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.
- (d) The Contractor shall report the information described in this section using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

ASGC-04. Protecting State and Local Government and Contractor Whistleblowers under Section 1553 of the American Recovery and Reinvestment Act of 2009, (Public Law 111-5)

A. Department of Administrative Services, State of Georgia and Contractor agree and acknowledge that an employee of any non-Federal employer receiving funds pursuant to ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency (such as the New Mexico Attorney General's Office), a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency or their representatives, information that the employee reasonably believes is evidence of:

- 1) Gross mismanagement of an agency contract or grant relating to ARRA funds;
- 2) A gross waste of ARRA funds;
- 3) A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
- 4) An abuse of authority related to the implementation or use of ARRA funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition or negotiation of a contract) or grant, awarded or issued relating to ARRA funds.

B. Contractor shall post notice of the rights and remedies provided under this section. The notice of rights shall be the same as or equivalent to the example poster at:

<http://www.recovery.gov/Contact/ReportFraud/Documents/Whistleblower+Poster.pdf>

C. Contractor will ensure that any subcontractor that provides any products or services in connection with this statewide contract is informed of this requirement and Contractor shall require all subcontractors to comply with the requirement as a condition of its subcontracting agreement.

ASGC-05. Civil Rights Obligations

While ARRA has not modified awardees' civil rights obligations, which are referenced in the NIH Grants Policy Statement, these obligations remain a requirement of Federal law. Contractors and subcontractors receiving ARRA funds or other Federal financial assistance must comply with Title VI of the Civil Rights Act of 1964 (prohibiting race, color, and national origin discrimination), Section 504 of the Rehabilitation Act of 1973 (prohibiting disability discrimination), Title IX of the Education Amendments of 1972 (prohibiting sex discrimination in education and training programs), and the Age Discrimination Act of 1975 (prohibiting age discrimination in the provision of services). For further information and technical assistance, please contact the HHS Office for Civil Rights at (202) 619-0403, OCRmail@hhs.gov, or <http://www.hhs.gov/ocr/civilrights/>.

ASGC-06. Disclosure of Fraud or Misconduct

Each contractor or subcontractor awarded funds made available under the ARRA shall promptly refer to the HHS Office of Inspector General any credible evidence, known by the contractor or subcontractor that a principal, employee, agent, contractor, subcontractor, or other person has submitted a false claim as defined by the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. The HHS Office of Inspector General can be reached at <http://oig.hhs.gov/fraud/hotline>

ASGC-07. Buy American Provisions for Construction Services

A. If applicable, Contractor will comply with Division A, Section 1605 of ARRA regarding Buy American Provisions, regarding use of American iron, steel, and manufactured goods.

(a) None of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

B. If applicable, Contractor shall require all subcontractors to comply with the requirement as a condition of its subcontracting agreement.

ASGC-08. Wage Rate Requirements for Construction Services

A. If applicable, Contractor will comply with Division A, Section 1606 of ARRA regarding wage rate requirements.

Notwithstanding any other provision of law and in a manner consistent with other provisions in this Act, all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and section 3145 of title 40, United States Code.

B. If applicable, Contractor will comply with Division B, Section 1601 of ARRA regarding application of certain labor standards to projects financed with certain tax-favored bonds.

Subchapter IV of chapter 31 of the title 40, United States Code, shall apply to projects financed with the proceeds of—

(1) any new clean renewable energy bond (as defined in section 54C of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(2) any qualified energy conservation bond (as defined in section 54D of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

(3) any qualified zone academy bond (as defined in section 54E of the Internal Revenue Code of 1986) issued after the date of the enactment of this Act,

- (4) any qualified school construction bond (as defined in section 54F of the Internal Revenue Code of 1986), and
- (5) any recovery zone economic development bond (as defined in section 1400U-2 of the Internal Revenue Code of 1986).

C. If applicable, Contractor shall require all subcontractors to comply with the requirement. as a condition of its subcontracting agreement.

ASGC-09. Non-Compliance with ARRA Reporting Requirements

A. If any part of this Agreement is funded pursuant to the American Recovery and Reinvestment Act ("ARRA"), Contractor agrees to abide by sections ASGC-01 through ASGC-08 above.

B. Failure of Contractor or any subcontractor to Contractor to comply with the reporting requirements, through material omission, knowingly reporting false data, or failure to comply with reporting deadlines, may result in withholding of payment.

ASGC-10. Reporting Requirements As They Relate to Measurement and Verification

A. Each project or energy conservation measure awarded funding by GEFA through the ARRA-funded State Agency Facilities Retrofit will need to include some form of measurement and verification (M&V) plan of execution and implementation for the achieved or projected energy savings. **The exact method utilized for measurement and verification shall be as determined and pre-approved** by the State of Georgia governmental entity utilizing the EZIQC contract from the most appropriate method outlined in the International Performance Measurement and Verification Protocol (IPMVP) 2007 Vol. 1. The Contractor will assist the State of Georgia governmental entity with gathering, producing, or creating, data and technical information and then formatting it for reporting to GEFA and the Federal Government. The required measurement and verification data and technical information may include or compare as baseline or final data product manufacturer provided specifications data, engineering calculations, measurement via metering, or other methods or sources. The delineation of Contractor's specific responsibilities with regard to M&V responsibilities and the related reporting will be set forth in the Detailed Scope of Work applicable to each Work Order. M&V responsibilities will be unique for each Work Order.

B. The Contractor understands and accepts that each State of Georgia governmental entity receiving funding as described herein must submit an M&V plan to GEFA for approval prior to issuing a Purchase Order under the Statewide EZIQC Contract. The Detailed Scope of Work may be modified to incorporate any revisions to the M&V plan by GEFA with respect to Contractor responsibilities. The Contractor will be given the opportunity to modify its Price Proposal accordingly, if the M&V plan modifications impact the responsibilities of the Contractor, and thus the Detailed Scope of Work.