

THE CITY OF STONECREST, GEORGIA

CONTRACT FOR

**EVERETT PARK PARKING LOT IMPROVEMENT AND
INSTALLATION OF A KAYAK LAUNCH DOCK**

Effective Date: _____

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CONTRACT FOR SOUTHEAST ATHLETIC COMPLEX DOG PARK AND INCORPORATED GENERAL CONDITIONS

This Agreement is made by and between the **CITY OF STONECREST, GEORGIA**, a municipal corporation of the State of Georgia (the "Owner"), and _____, a corporation created and existing under the laws of the State of Georgia (the "Contractor"), under seal for the Everett Park Parking Lot Improvement and Installation of a Kayak Launch Dock Project within the City of Stonecrest (the "Project"). For and in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the Contractor hereby agree as follows:

ARTICLE I **THE CONTRACT AND THE CONTRACT DOCUMENTS**

1.1 The Contract

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

1.2 The Contract Documents

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

Advertisement for Competitive Sealed Bids/Proposals; Instructions to Offerors; Bid/Proposal Form; Bid Bond; Payment Bond; Performance Bond; Notice of Award; Change Order; Certificate of Substantial Completion; Notice to Proceed.

Documents not enumerated in this Paragraph 1.2 or not otherwise incorporated by reference hereunder are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, Contract Documents, constitute the entire and exclusive agreement between the Owner and the Contractor with reference to the Project. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations and negotiations, if any, between the Owner and Contractor.

1.4 No Privity with Others

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

1.5 Intent and Interpretation

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

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

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

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

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

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

1.5.7 The Contractor shall have a continuing duty to read, carefully study and compare each of the Contract Documents, the Shop Drawings and the Product Data and shall give written notice to the Owner of any inconsistency, ambiguity, error or omission which the Contractor may discover with respect to these documents before proceeding with the affected Work. The issuance, or the express or implied approval by the Owner or the Engineer of the Contract Documents, Shop Drawings or Product Data shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The Owner has requested the Engineer to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated and sufficient for construction. HOWEVER, THE OWNER MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR

CONCERNING SUCH DOCUMENTS. By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated and sufficient for construction, and that the Contractor has not, does not, and will not rely upon any representation or warranties by the Owner concerning such documents as no such representation or warranties have been or are hereby made.

1.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design, shall control the Contractor in dividing the Work or in establishing the extent or scope of the Work to be performed by Subcontractors.

1.6 Ownership of Contract Documents

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

1.7 Hierarchy of Contract Documents

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

ARTICLE II **THE WORK**

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

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

Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows: See **Exhibit A**, which is attached hereto and is incorporated herein by reference.

ARTICLE III **CONTRACT TIME**

3.1 Contract Term

3.1.1 This Agreement shall commence on the effective date of this Agreement and shall terminate absolutely and without further obligation on the part of the Owner at the close of the calendar year in which it was executed, unless renewed pursuant to Paragraph 12.3.

3.2 Time and Liquidated Damages

3.2.1 The Contractor shall commence the Work under this Agreement on the date established by a written Notice to Proceed given by the Owner to the Contractor fixing the date on which the Contract time will commence to run. The Contractor shall achieve Substantial Completion of the Work within _____ calendar days from receipt of the Notice to Proceed (NTP) and Purchase Order (PO), unless another date is provided within the written Notice to Proceed. The number of consecutive calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time."

3.2.2 The Contractor shall pay the Owner the sum of two hundred and fifty (\$250.00) per day for each and every business day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.3 Substantial Completion

3.3.1 "Substantial Completion" shall mean that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use and occupancy of the Work and can utilize the Work for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed

substantially complete, and such partial use or occupancy shall not be evidence of Substantial completion.

3.4 Time is of the Essence

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

ARTICLE IV **CONTRACT PRICE**

4.1 The Contract Price

4.1.1 The Owner shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely and full performance of its obligations hereunder, the total lump sum amount set forth in Paragraph 4.1.2. The lump sum amount set forth in Paragraph 4.1.2 shall not be modified except by Change Order(s) as provided in this Agreement.

4.1.2 The total lump sum amount to be paid by the Owner to the Contractor for the Contractor's limitedly and full performance of its obligations under the Agreement shall not exceed _____ (\$_____). See **Exhibit B** (Cost Estimate) attached hereto and incorporated by reference herein.

ARTICLE V **PAYMENT OF THE CONTRACT PRICE**

5.1 Schedule of Values

5.1.1 For all portions of this Agreement not payable in unit values, within ten (10) calendar days of the effective date hereof, the Contractor shall submit to the Owner and to the Engineer a Schedule of Values allocating the Contract Price to the various portions of the Work. The Contractor's Schedule of Values shall be prepared in such form, with such detail, and supported by such data as the Engineer or the Owner may require to substantiate its accuracy. The Contractor shall not imbalance its Schedule of Values nor artificially inflate any element thereof. The violation of this provision by the Contractor shall constitute a material breach of this Contract. The Schedule of Values shall be used only as a basis for the Contractor's Applications for Payment and shall only constitute such basis after it has been acknowledged in writing by the Engineer and the Owner.

5.2 Payment Procedure

5.2.1 The Owner shall pay the Contract Price to the Contractor as provided below.

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

5.2.3 On or before the 1st day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the 30th day of the month to the Engineer in such form and manner, and with such supporting data and content, as the Owner or the Engineer may require. Therein, the Contractor may request payment for ninety percent (90%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Work plus ninety percent (90%) of that portion of the Contract Price properly allocable to materials or equipment properly stored on-site (or elsewhere if approved in advance in writing by the Owner) for subsequent incorporation in the Work, less the total amount of previous payments received from the Owner. Payment for stored materials and equipment shall be conditioned upon the Contractor's proof satisfactory to the Owner, that the Owner has title to such materials and equipment and shall include proof of required insurance. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has progressed to the level for which payment is requested in accordance with Articles 4 and 5 of this Agreement, that the Work has been properly installed or performed in full accordance with this Contract, and that the Contractor knows of no reason why payment should not be made as requested. Thereafter, the Engineer will review the Application for Payment and may also review the Work at the Project site or elsewhere to determine whether the quantity and quality of the Work is as represented in the Application for Payment and is as required by this Contract. The Engineer shall determine and certify to the Owner the amount properly owing to the Contractor.

5.2.4 The Owner shall make partial payments on account of the Contract Price to the Contractor within thirty (30) days following the Engineer's receipt of each Application for Payment. The amount of each partial payment shall be the amount certified for payment by the Engineer less such amounts, if any, otherwise owing by the Contractor to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Engineer's certification of the Contractor's Application for Payment shall not preclude the Owner from the exercise of any of its rights as set forth in Paragraph 5.3 hereinbelow. PROVIDED, HOWEVER, that when fifty (50) percent of the contract value, including change orders and other additions to the contract value, provided for by the Contract Documents is due, and the manner of completion of the contract Work and its progress are reasonably satisfactory to the Owner, the Owner shall withhold no more retainage. At the discretion of the Owner, and with the approval of the Contractor, the retainage of any subcontractor may be released separately as the subcontractor completes its work. If, however, after discontinuing the retention, the Owner determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level. If retention is resumed by the Owner, the Contractor and subcontractors shall be entitled to resume withholding retainage accordingly. The rights of the Owner set forth herein to retainage are in addition to all of the other rights and remedies of the Owner set forth in this Agreement.

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

5.2.6 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed commit the Owner to repeat the procedure in the future.

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

5.3 Withheld Payment

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

- (a) defective Work not remedied by the Contractor nor, in the opinion of the Owner, likely to be remedied by the Contractor;
- (b) claims of third parties against the Owner or the Owner's property;
- (c) failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) persistent failure to carry out the Work in accordance with the Contract;
- (g) damage to the Owner or third party to whom the Owner is, or may be, liable.

In the event that the Owner makes written demand upon the Contractor for amounts previously paid by the Owner as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand.

5.4 Unexcused Failure to Pay

5.4.1 If within forty-five (45) days after the date established herein for payment to the contractor by the Owner, the Owner, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may, after seven (7) additional days' written notice to the Owner and Engineer, and without prejudice to any other available rights or remedies it may have, stop the Work until payment of those amounts due from the Owner has been received. Any payment not made within forty-five (45) days after the date due shall bear interest at the rate of three percent (3%) per annum.

5.5 Substantial Completion

5.5.1 When the Contractor believes that the Work is substantially complete, the Contractor shall submit to the Engineer and Owner notice that it believes the project has been completed. The Engineer shall then cause the project to be inspected and provide the Contractor with either (1) a list of items to be completed or corrected by the Contractor, or (2) a Certificate of Substantial Completion. When the Engineer on the basis of an inspection determines that the Work is in fact substantially complete, it will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for Project security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Contractor for its written acceptance of the responsibilities assigned to it in such certificate. Upon Substantial Completion of the Work, and execution by both the Owner and Contractor of the Certificate of Substantial Completion, the Owner shall pay the Contractor an amount sufficient to increase total payment to the Contractor to one hundred percent (100%) of the Contract Price less two hundred percent (200%) of the reasonable cost as determined by the Owner for completing all incomplete Work, correcting and bringing into conformance all defective and nonconforming Work, and handling all unsettled claims.

5.6 Completion and Final Payment

5.6.1 When all of the Work is finally complete, and the Contractor is ready for a final inspection, it shall notify the Owner and the Engineer thereof in writing. Thereupon, the Engineer will make final inspection of the Work and, if the Work is complete in full accordance with this Contract and all Contract Documents, and this Contract has been fully performed, the Engineer will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract. Guarantees

required by the Contract shall commence on the date of Final Completion of the Work. If the Engineer is unable to issue its final Certificate for Payment and is required to repeat its final inspection of the Work, the Contractor shall bear the cost of such repeat final inspection(s) which cost may be deducted by the Owner from the Contractor's final payment.

5.6.1.1 If the Contractor fails to achieve final completion within the time fixed therefore by the Engineer in its Certificate of Substantial Completion, the Contractor shall pay the Owner the sum of Two Hundred and Fifty Dollars (\$250.00) per day for each and every calendar day of unexcused delay in achieving final completion beyond the date set forth herein for final completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that final completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving final completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

5.6.2 The Contractor shall not be entitled to final payment unless and until it submits to the Engineer and Owner all documents required by the Contract, including, but not limited to, its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the Engineer or the Owner; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.6.3 The Owner shall make final payment of all sums due the Contractor within thirty (30) days of the Engineer's execution of a final Certificate for Payment.

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

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

ARTICLE VI **THE OWNER**

6.1 Information, Services and Things Required from Owner

6.1.1 If the Contractor requests in writing, the Owner shall furnish to the Contractor, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to the Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, or at all, and shall have no liability, therefore. The Owner shall also furnish surveys, legal limitations and utility locations (if known), and a legal description of the Project site.

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

6.1.3 The Owner shall furnish the Contractor, free of charge, three (3) copies of the Contract Documents for execution of the Work (if applicable). The Contractor will be charged, and shall pay the Owner, Fifty Dollars (\$50.00) per additional set of Contract Documents which it may require.

6.2 Right to Stop Work

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order.

6.3 Owner's Right to Perform Work

6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting of the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due to the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII
THE CONTRACTOR

7.1 The Contractor

7.1.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall perform no part of the Work at any time without adequate Contract Documents or, as appropriate, approved shop Drawings, Product Data or Samples for such portion of the Work. If the Contractor performs any of the Work knowing it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the Engineer, the Contractor shall bear responsibility for such performance and shall bear the cost of correction.

7.2 Compliance with Contract

7.2.1 The Contractor shall perform the work strictly in accordance with this Contract.

7.3 Reasonable Care and Skill

7.3.1 The Contractor shall supervise and direct the Work and warrants that it will perform all services or Work using reasonable care and skill and in workmanlike manner consistent with industry standards. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.4 Warranty

7.4.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality free from faults and defects and in strict conformance with this Contract. All Work not conforming to these requirements may be considered defective.

7.4.2 The standard of care applicable to the Contractor's services shall be the standard of skill and diligence normally employed by businesses performing the same or similar services at the time the Contractor's services are performed. For a twelve (12) month period commencing with the completion of the Work, the Contractor shall re-perform, solely at its own cost and without additional compensation due from the Owner, any services not meeting this standard. The Contractor further warrants that any service it undertakes in the performance of the Work will be adequate and sufficient to accomplish the purposes for which they are performed, and no review or approval thereof by the City shall be deemed to diminish this warranty in any way.

7.5 Permits

7.5.1 The Contractor shall obtain and pay for all permits, inspections, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law, ordinance, or regulation pertaining to the Work.

7.6 Supervision

7.6.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized representative at the site and shall be authorized to receive and accept any and all communications from the Owner or the Engineer.

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

<u>Name</u>	<u>Function</u>

So long as the individuals named above remain actively employed or retained by the Contractor, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Contractor shall be bound by the provisions of this Subparagraph 7.6.2 as though such individuals had been listed above.

7.7 Schedules

7.7.1 The Contractor, within fifteen (15) days of commencing the Work, shall submit to the Owner for their information the Contractor's schedule for completing the Work. Additionally, within fifteen (15) days of commencing the Work, the Contractor shall submit to the Owner and the Engineer a separate shop drawing and submittal schedule detailing the schedule for the submission to the Engineer of all shop drawings (if applicable) submittals, product data and other similar documents. Each of the schedules required herein shall be revised no less frequently than monthly (unless the parties otherwise agree in writing) and shall be revised to

reflect conditions encountered from time-to time and shall be related to the entire Project. Each such revision shall be furnished to the Owner and the Engineer. The schedules, and all revisions, shall be in such form, and shall contain such detail, as the Owner or the Engineer may require. THE PARTIES SPECIFICALLY AGREE THAT ANY FLOAT CONTAINED IN THE SCHEDULES SHALL BELONG TO THE PROJECT AND IN NO EVENT SHALL THE CONTRACTOR MAKE CLAIM FOR ANY ALLEGED DELAY, ACCELERATION, OR EARLY COMPLETION SO LONG AS THE PROJECT IS COMPLETED WITHIN THE CONTRACT TIME. Strict compliance with the requirements of this Paragraph is condition precedent for payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material breach of this Contract.

7.8 Required Documents at the Site

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

7.9 Shop Drawings, Product Data and Samples

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

7.9.2 The Contractor shall not perform any portion of the Work requiring submittal and review of Shop Drawings (if applicable), Product Data or Samples unless and until such submittal shall have been approved by the Engineer. Approval by the Engineer, however, shall not be evidence that Work installed pursuant thereto conforms with the requirements of this Contract.

7.10 Cleaning the Site and the Project

7.10.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

7.11 Access to Work

7.11.1 The Owner and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.12 Indemnity

7.12.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, its officials, officers, employees, agents and representatives from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to injury, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent or willful 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 liability, claim, damage, loss or expense is caused in part by a party indemnified hereunder.

7.12.2 For any claim against any person or entity indemnified under this Paragraph 7.12 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 under this Paragraph 7.12 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 benefits acts or other employee benefits acts.

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

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

7.14 Separate Contracts

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

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 Engineer's Administration

Attachment "E"

8.2.1 The Engineer, unless otherwise directed by the Owner in writing, will perform those duties and discharge those responsibilities allocated to the Engineer as set forth in this Contract. The Engineer shall be the Owner's representative from the effective date of this Contract until final payment has been made. The Engineer shall be authorized to act on behalf of the Owner only to the extent provided in this Contract.

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

8.2.3 The Engineer shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor. The Engineer shall render written or graphic interpretations necessary for the proper execution or progress of the Work with reasonable promptness on request of the Contractor.

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

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

8.2.6 The Engineer will review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Shop Drawings, Product Data and Samples. Such review, approval or other action shall be for the sole purpose of determining conformance with the design concept and information given through the Contract Documents.

8.2.7 The Engineer will prepare Change Orders and may authorize minor changes in the Work by Field Order as provided elsewhere herein.

8.2.8 The Engineer shall, upon written request from the Contractor, conduct inspections to determine the date of Substantial Completion and the date of Final Completion, will receive and forward to the Owner for the Owner's review and records, written warranties and related documents required by this Contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

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

8.2.10 THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS AGREEMENT SHALL IN NO MANNER WHATSOEVER BE CHANGED,

ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ENGINEER. THE CONTRACTOR IS NOT A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN THE OWNER AND THE ENGINEER. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ENGINEER TO THE OWNER.

8.3 Claims by the Contractor

8.3.1 All Contractor claims shall be initiated by written notice and claim to the Owner and Engineer. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.

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

8.3.3 *Claims for Concealed and Unknown Conditions* -- Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven (7) days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner and the Engineer written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition.

8.3.4 *Claims for Additional Costs* -- If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Contractor shall give the Engineer written notice of such claim within seven (7) days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.3.4.1 In connection with any claim by the Contractor against the Owner for completion in excess of the Contract Price, any liability of the Owner shall be strictly limited to direct costs

incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefore in a court of competent jurisdiction.

8.3.5 Claims for Additional Time -- If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by Changes Ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipatable, fire or any causes beyond the Contractor's control, then the date for achieving Substantial completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner and the Engineer, for such reasonable time as the Engineer may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than seven (7) days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Project. In the event the delay to the Contractor is continuing, only one notice and claim for additional time shall be necessary. If the Contractor fails to make such claim as required in this Subparagraph, any claim for an extension of time shall be waived.

8.4 Extension of Contract Time for Unusually Adverse Weather Conditions not Reasonably Anticipated

8.4.1 Pursuant to the provisions of subparagraph 8.3.5 of this Contract, the contract time may be extended upon written notice and claim of the Contractor to the Owner and the Engineer as set forth in such subparagraph and as further set forth herein. It is, however, expressly agreed that the time for completion as stated in the Contract Documents includes due allowance for calendar days on which work cannot be performed out-of-doors.

8.4.2 In addition to the notice requirements set forth in the aforesaid subparagraph 8.3.5, the Contractor agrees that it shall provide written notice to the Owner and the Engineer on the day of any adverse weather not anticipated and for which a request for a time extension has been, or will be, made. Said notice shall state with particularity a description of the adverse weather as well as a description of the nature and extent of any delay caused by such weather. Receipt of this notice by the Owner and the Engineer is a condition precedent to the submission of any claim for an extension of time as provided by subparagraph 8.3.5. Furthermore, as required by subparagraph 8.3.5, the Contractor shall submit a written claim for extension of time within seven (7) days after the occurrence of the adverse weather and such claim shall be supported by such documentation including, but not limited to, official weather reports, as the Owner or the Engineer may be required. To the extent that any of the terms and conditions set forth in this paragraph are in conflict with any of the terms and conditions of subparagraph 8.3.5 as identified herein, the terms and conditions of this paragraph shall govern and control.

ARTICLE IX **SUBCONTRACTORS**

9.1 Definition

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

9.2 Award of Subcontracts

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

9.2.2 All Subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the Owner against the Contractor herein, including those rights afforded to the Owner by Subparagraph 12.2.1 below.

ARTICLE X **CHANGES IN THE WORK**

10.1 Changes Permitted

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

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

10.2 Change Order Defined

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

10.3 Changes in the Contract Price

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

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

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

10.4 Effect of Executed Change Order

10.4.1 The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work, this Contract as

thus amended, the Contract Price and the Contract Time. The Contractor by executing the Change Order waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order.

10.5 Notice to Surety; Consent

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

ARTICLE XI **UNCOVERING AND CORRECTING WORK**

11.1 Uncovering Work

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

11.1.2 If any of the Work is covered in a manner not inconsistent with Subparagraph 11.1.1 above, it shall, if required by the Engineer or Owner, be uncovered for the Engineer's inspection. If such Work conforms strictly to this Contract, costs of uncovering and proper replacement shall by Change Order be charged to the Owner. If such Work does not strictly conform to this Contract, the Contractor shall pay the costs of uncovering and proper replacement.

11.2 Correcting Work

11.2.1 The Contractor shall immediately proceed to correct Work rejected by the Owner as defective or failing to conform to this Contract. The Contractor shall pay all costs and expenses associated with correcting such rejected Work, including any additional testing and inspections, and reimbursement to the Owner for any outside contracted services and expenses made necessary thereby.

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

and completed after Substantial Completion, this one-year obligation to specifically correct defective and nonconforming Work shall be extended by the period of time which elapses between Substantial Completion and completion of the subject Work.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract. Establishment of the one-year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct the Work.

11.3 Owner May Accept Defective or Nonconforming Work

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

ARTICLE XII **CONTRACT TERMINATION**

12.1 Termination by the Contractor

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

12.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of fifteen (15) days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Engineer and the Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 Termination by the Owner

12.2.1 *For Convenience*

12.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.

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

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

12.2.1.4

(a) The Contractor shall submit a termination claim to the Owner and the Engineer specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Engineer. If the Contractor fails to file a termination claim within six (6) months from the effective date of the termination, the Owner shall pay the Contractor, an amount derived in accordance with sub-paragraph (c) below.

(b) The Owner and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent Agreement to the amount due to the Contractor, the Owner shall pay the Contractor the following amounts:

- (i) Contract prices for labor, materials, equipment and other services provided under this Contract;
- (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears the Contractor would have not profited or would have sustained a loss if the entire Contract would

have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any;

- (iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

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

12.2.2 For Cause

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

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

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

12.3 Renewal

12.3.1 Pursuant to O.C.G.A. § 36-60-13, this Agreement shall commence on the effective date of this Agreement and shall terminate absolutely and without further obligation on the

part of the Owner at the close of the calendar year in which it was executed, and at the close of each succeeding calendar year for which it may be renewed following the process outlined in subsection 12.2.3.2 below.

12.3.2 The Owner shall determine no less than forty-five (45) days prior to the end of the calendar year in which the Agreement was executed whether or not said contract shall be renewed for the following calendar year. Such determination shall be made at the sole discretion of the Owner and may depend on factors such as budgeted funding for the following calendar year, performance of the Contractor under the Agreement during the current calendar year, or any other such factors the Owner may choose to consider. The Owner shall notify the Contractor in writing of the Owner's decision to either renew or not renew this Agreement no less than thirty (30) calendar days before the end of the current calendar year.

12.3.3 Notwithstanding anything contained in subsection 12.2.3.2 above, this Agreement shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the Owner under the Agreement.

12.3.4 This Agreement is not deemed to create a debt of the Owner for the payment of any sum beyond the calendar year of execution or, in the event of renewal, beyond each calendar year of renewal.

ARTICLE XIII

OWNER'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

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

13.2 In the event the Owner directs a suspension of performance under Paragraph 13.1 through no fault of the Contractor, the Owner shall pay the Contractor as full compensation for such suspension the Contractor's reasonable costs, actually incurred and paid, of;

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

ARTICLE XIV
INSURANCE

14.1 Insurance

14.1.1 The Contractor will provide minimum insurance coverage and limits as per the following:

Insurance requirements shall be consistent with the Department of Administrative Services, SPD-SP048, as amended.

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence
- \$2,000,000 annual aggregate for Bodily Injury, Personal Injury, and Advertising Injury
- \$1,000,000 per occurrence for Property Damage
- \$1,000,000 each occurrence and \$2,000,000 project aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

Professional Liability Insurance (Errors and Omissions):

Coverage must be afforded for Wrongful Acts in an amount not less than \$1,000,000 each occurrence, and \$2,000,000 annual aggregate.

Business Automobile Liability:

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

Workers' Compensation and Employer's Liability:

Coverage must be afforded per the Worker's Compensation Act in the State of Georgia, Official Code of Georgia Annotated (O.C.G.A.) Title 34, Chapter 9) as amended. Any Contractor performing work on behalf of the City must provide Workers' Compensation insurance in the amount not less than \$100,000 per accident. Exceptions and exemptions will be allowed in accordance with the Department of Administrative Services (SPD-SP048, as amended).

Contractors Pollution Liability Coverage:

For sudden and gradual occurrences and in an amount not less than \$1,000,000 per claim arising out of this Contract, including but not limited to, all hazardous materials identified under the Contract.

Property Coverage (Builder's Risk)

Coverage must be afforded in an amount not less than 100% of the total project cost, including soft costs, with a deductible of no more than \$25,000 each claim. Coverage form shall include, but not be limited to:

- All Risk Coverage including Flood and Windstorm with no coinsurance clause;
- Guaranteed policy extension provision;
- Waiver of Occupancy Clause Endorsement, which will enable the City to occupy the facility under construction/renovation during the activity;
- Storage and transport of materials, equipment, supplies of any kind whatsoever to be used on or incidental to the project; and
- Equipment Breakdown for cold testing of all mechanized, pressurized, or electrical equipment.

14.1.2 The Contractor will file with the Owner Certificates of Insurance, certifying the required insurance coverage below and stating that each policy has been endorsed to provide thirty (30) day notice to the Owner in the event that coverage is cancelled, non-renewed or the types of coverage or limits of liability are reduced below those required. All bonds and insurance coverage must be placed with an insurance company approved by the Owner, admitted to do business in the State of Georgia, and rated Secure ("B+" or better) by A.M. Best Company in the latest edition of Property and Casualty Ratings, or rated by Standard & Poors Insurance Ratings, latest edition as Secure ("BBB" or better). Worker's Compensation self-insurance for individual Contractors must be approved by the Worker's Compensation Board, State of Georgia and/or Self-Insurance pools approved by the Insurance Commissioner, State of Georgia.

ARTICLE XV
MISCELLANEOUS

15.1 Governing Law

15.1.1 The Contract shall be governed by the law of the State of Georgia, exclusive of its choice of law provisions. In the event of any litigation arising from this Contract, venue shall be in any court of competent jurisdiction of the County of DeKalb, Georgia.

15.2 Successors and Assigns

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

15.3 Interpretation

15.3.1 The Parties acknowledge that this Agreement and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

15.4 Severability

15.4.1 If any provision of this Contract shall be deemed invalid or unenforceable by a court of competent jurisdiction, such provision shall be modified to the extent necessary to cure such invalidity or unenforceability; provided, however, if such modification is not possible without creating a material conflict with another provision of this Contract, such invalid or unenforceable provision shall be deemed stricken from this Contract.

15.5 Amendment and Waiver

15.5.1 This Contract may not be amended, modified, or waived except by a writing signed by an authorized representative of each part. No waiver of or any failure or omission to enforce any of the provisions hereof by the Owner shall be construed to be a waiver of the Owner to enforce any such provisions or any other provision(s) of this Contract.

15.6 Notice

15.6.1 Notices. Where a party is required or permitted to give notice to the other pursuant to this Contract, such notice is deemed given: (i) when delivered in hand; (ii) three (3) days after it is mailed by registered or certified United States mail, return receipt requested, postage prepaid to the address listed below; or (iii) one (1) day after it is sent by courier or facsimile transmission if receipt is verified by the receiving party and such notice is addressed to the Party to receive such notice. Any notice required to be given by or on behalf of either party to the other shall be sent to the address specified below, or as such other address as may be specified, from time to time, by notice in the manner herein set forth.

If to the Owner/City:

City Manager
Cathy Turner
City of Stonecrest
3120 Stonecrest Blvd.
Stonecrest, Georgia 30038
Email: Cturner@stonecrestga.gov

With copies to:

City Attorney
Denmark Ashby Matricardi
100 Hartsfield Centre Pkwy.
Ste. 400
Atlanta, Georgia 30354
Email: Wdenmark@damlaw.com

If to the Contractor:

If to the Engineer:

15.7 Time is of the Essence

15.7.1 Time is of the essence for this Contract, the Contract Documents, and all supporting documents.

15.8 Participation in Federal Work Authorization Program

15.8.1 The Contractor shall participate in the federal work authorization program throughout the contract period, as provided in O.C.G.A. §13-10-91. The Contractor shall be required to, at the time of the contract, provide a signed, notarized affidavit, attesting that it has registered with, is authorized to use, and uses the federal work authorization program; it will continue to use the federal work authorization program throughout the contract period; and it will contract for the physical performance of services in satisfaction of such contract only with Subcontractors who present an affidavit containing the above information. Further, to the extent that a Subcontractor is utilized, the Subcontractor's federal work authorization program user identification number and the date of authorization shall be included in the affidavit. Said affidavit shall be attached hereto and incorporated by reference herein as **Exhibit C**.

15.9 Counterparts

15.9.1 This Agreement may be executed in multiple counterparts, each of which shall constitute the original, but all of which taken together shall constitute one and the same Agreement. PDF signatures shall constitute original signatures.

15.10 Captions

15.10.1 The captions appearing herein are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement or any clause or provision hereof.

15.11 Surety

15.11.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased automatically by like amount. The performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and Owner's legal counsel and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

15.12 Interpretation

15.12.1 The Parties acknowledge that this Agreement and all the terms and conditions herein have been fully reviewed and negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to the terms and conditions of this Agreement.

[SIGNATURES CONTAINED ON THE FOLLOWING PAGE]

Attachment "E"

IN WITNESS WHEREOF, this Contract has been signed and delivered by a duly authorized representative of each party as of the last date indicated below.

CITY OF STONECREST, GEORGIA

CONTRACTOR

By: _____
(Signature)

By: _____
(Signature)

(Printed Name and Title)

(Printed Name and Title)

(Date of Execution)

(Date of Execution)

Attest: _____
(SEAL)

Attest: _____
(SEAL)

EXHIBIT A
SCOPE OF WORK

SAMPLE

EXHIBIT B
BID COST PROPOSAL (BID SHEET)

SAMPLE

EXHIBIT C
E-VERIFY AFFIDAVIT

SAMPLE