



## CITY OF ATLANTA

Kasim Reed  
Mayor

SUITE 1900  
55 TRINITY AVENUE, SW  
ATLANTA, GA 30303  
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DEPARTMENT OF PROCUREMENT  
Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP,  
CIPC, CISCC, CIGPM  
Chief Procurement Officer  
[asmith@atlantaga.gov](mailto:asmith@atlantaga.gov)

December 22, 2015

Dear Potential Bidders:

**Re: FC-8471, Annual Contract for Milling, Resurfacing and Associated Activities**

Attached is one (1) copy of **Addendum Number 6**, which is hereby made a part of the above-referenced project.

For additional information, please contact Mr. James E. Crenshaw, Contracting Officer, Senior, at (404) 865-8816 or by email at [jecrenshaw@atlantaga.gov](mailto:jecrenshaw@atlantaga.gov).

Sincerely,



Adam L. Smith

ALS/jec



**ADDENDUM NO. 6**

This Addendum No. 6 forms a part of the Invitation to Bid and modifies the original solicitation package and any prior Addenda as noted below and is issued to incorporate the following:

1. **Draft Agreement:**

The draft agreement found in Part II, Exhibit A is hereby removed and replaced with a new draft agreement dated December 22, 2015, and attached here to as attachment No. 1.

2. **Revised due date:**

The Bid due date has been extended to **Tuesday January 5, 2016.**

The last day for questions was Friday, October 23, 2015 at 1:00 P.M. EDT.

**The Bid due date HAS been modified and Bids are now due on Tuesday, January 5, 2016 and should be time stamped in no later than 2:00 P.M. EST and delivered to the address listed below:**

Adam L. Smith, Esq., CPPO, CPPB, CPPM,  
CPP, CIPC, CISCC, CIGPM  
Chief Procurement Officer  
Department of Procurement  
55 Trinity Avenue, S. W.  
City Hall South, Suite 1900  
Atlanta, Georgia 30303

**\*\*All other pertinent information is to remain unchanged\*\***

**FC-8471, Annual Contract for Milling,  
Resurfacing and Associated Activities  
Addendum No. 6  
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**Acknowledgment of Addendum No. 6**

Bidders must sign below and return this form with Bid to the Department of Procurement, 55 Trinity Avenue, City Hall South, Suite 1900, Atlanta, Georgia 30303 as acknowledgment of receipt of this Addendum.

This is to acknowledge receipt of Addendum No. 6 for **FC-8471, Annual Contract for Milling, Resurfacing and Associated Activities** on this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Legal Company Name of Proponent

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Attachment No. 1**

**Draft Agreement**

## ANNUAL CONSTRUCTION SERVICES AGREEMENT

THIS CONSTRUCTION SERVICES AGREEMENT ("Agreement") is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2013, (the "Effective Date") by and between THE CITY OF ATLANTA ("Owner" or the "City"), and \_\_\_\_\_ ("Contractor").

The City and Contractor agree as follows:

### 1. DEFINITIONS

The following terms have the meaning assigned:

**"Agreement Documents"** means this Agreement and its Exhibits, Appendices, Work Orders, Change Orders, Documentation, Drawings, and Specifications, including

Construction Services Agreement  
Exhibit A- General Scope of Services  
Exhibit A.1- Compensation and Fee Schedule  
Exhibit A.2- Work Orders  
Exhibit B- Legislation  
Exhibit C- Supplement Conditions and Technical Specifications  
Exhibit D- Additional Contract Documents  
Appendix A- Office of Contract Compliance  
Appendix B- Insurance and Bonding Requirements

**"Agreement Term"** has the meaning set forth in Article 2, unless otherwise expressly amended or changed, pursuant to the City's authorized approval in conformance with the City of Atlanta Code of Ordinances and applicable law.

**"Changes"** has the meaning set forth in Article 8.

**"Change Order"** has the meaning set forth in Article 8.

**"City Representative"** has the meaning set forth in Article 6.

**"Claim"** means any demand, contention, or assertion seeking additional time or money under the terms of this Agreement. Claims by the Contractor must be made in writing and contain all of the following or such Claims are released: (a) a narrative statement describing the amount and bases of the Claim; (b) the precise number of days claimed as a result of any delay; and (c) a detailed calculation of the precise amount of additional compensation claimed with all required supporting Documentation.

**"Documentation"** has the meaning set forth in Article 4.

**"Drawings"** include, without limitation: all renderings, technical and design drawings, specifications, plans, layouts, diagrams, illustrations, descriptions, calculations, schedules, graphs, performance charts, shop drawings; as-built drawings; all graphic or pictorial material needed to show locations, dimensions, elevations, sections, and details; all documents necessary to fix and describe the size, quality and composition of the Project (or parts thereof); supplier operating and maintenance manuals, recommended spare parts lists, documents required to support permitting and licensing, and any other data pertinent to operation of the Project.

**"Emergency Work"** has the meaning set forth in Article 2.

**"Final Completion"** means that point in time where the City has confirmed to the Contractor in writing that the Services required by a Work Order have achieved Substantial Completion, Contractor has completed all punch-list items associated with a Work Order, and Contractor has provided all Documentation required by the Agreement Documents and Work Orders for Final Completion.

**"Final Payment"** means the final amount of compensation due under a Work Order or this Agreement (as applicable) and shall not become due until Contractor satisfies all of the requirements of Article 9.

**"Minimum Quantity"** means one dollar (\$1.00) in United States Currency, which is the minimum amount of Services that shall be ordered by the City pursuant to this Agreement.

**"Project"** means or refers to the Project(s) specifically identified in Work Orders issued pursuant to this Agreement.

**"Services"** means the specific tasks and activities to be performed by Contractor as identified in a Work Order issued pursuant to this Agreement, as well as all ancillary and incidental tasks and activities not expressly identified in a Work Order but which are reasonably necessary to be performed in order to complete the tasks and activities expressly identified in a Work Order.

**"Standard"** has the meaning set forth in Article 6.

**"Substantial Completion"** as applicable to a Work Order, means that point in time in which the Services that are the subject of a Work Order are capable of being used for their intended purpose and comply with all of the requirements of Article 9, the Specifications, and the other Agreement Documents.

**"Total Sum"** means the total maximum amount of compensation for which all Work Orders may potentially be issued pursuant to this Agreement. Contractor's entitlement to payment under this Agreement shall not exceed the Total Sum.

**"Work"** means all the Services specified, indicated, shown, or contemplated by the Agreement Documents and applicable Work Orders, as well as the furnishing by Contractor of all materials, equipment, labor, methods, processes, construction, manufacturing, tools, plants, design, supplies, power, water, transportation and any other things necessary or incidental to complete such Services in accordance with the Agreement Documents and applicable Work Orders that will ensure a functional and complete Project(s).

**"Work Order"** means an order executed by the City, substantially in the form and substance provided in Exhibit A to this Agreement that specifies the Services to be provided by Contractor to the City, the agreed amount of payment for such Services, and the time limitations for completing the Services.

**"Work Order Commencement Date"** means the date identified in a notice to proceed and/or a Work Order issued by the City, which instructs the Contractor to start the performance of Services required by a Work Order. The times for Substantial Completion and Final Completion will be measured from the Work Order Commencement Date.

**"Work Product"** has the meaning set forth in Article 6.

## 2. SERVICES.

2.1 In General. The City desires to obtain from Contractor the Services described generally on Exhibit A attached and as further described on Work Orders (individually, a "Work Order" and, collectively, the "Work Orders") that may be executed from time to time between the Parties, pursuant to this Agreement.

The Services to be provided by Contractor are those ordered by the City that are reflected in a Work Order executed by the City. The City agrees that it shall order the Minimum Quantity of Work from the Contractor pursuant to this Agreement. Contractor agrees to provide to City the Services per the Agreement Documents and each Work Order issued by the City. Each Work Order will include at least the following:

- a reference to this Agreement;
- the Work Order Commencement Date;
- the required dates of Substantial and/or Final Completion of the Services, as applicable;
- the Services to be provided by the Contractor;
- required deliverables and submittals;
- the amounts payable and payment schedule for the Services; and
- any additional provisions applicable to the Services.

Except as provided for Emergency Work, no Work Order will become effective until it has been executed by an authorized representative of the City. A Work Order issued pursuant to this Agreement will be substantially in the form of **Exhibit A.2** hereto. All approved Work Orders shall be incorporated by reference into this Agreement.

2.1.1 **Emergency Work.** In some cases, the City may require emergency Services to be performed by the Contractor, which pose an imminent threat to the public health, safety, general welfare or the City's water or wastewater system ("Emergency Work"). In such cases, the City's Authorized Representative shall notify the Contractor by email or other written communication the type and scope of work needed under the circumstances. Once notified, Contractor shall immediately mobilize and begin Services, as is necessary to remediate the emergency conditions. Payment for such Services shall be in accordance with Option 1, pursuant to Section 4.1.1.

2.1.2 **Authorization.** If applicable, this Agreement is authorized by legislation adopted by the City, which is attached as **Exhibit B**.

2.2. The Total Sum of payments by City under this Agreement shall not exceed \$\_\_\_\_\_ during the first year in which this Agreement is effective. For each subsequent year that this Agreement is effective, City shall provide written notice to Contractor of the amount of funding allocated to this Agreement for such calendar year (each annual maximum amount, including the funding for the first year, shall be the "Annual Maximum Payment Amount"). In addition, each Work Order shall specify a maximum payment amount (the "Work Order Maximum Payment Amount") applicable to the Services to be performed under such Work Order.

2.3 Work Orders under this Agreement may be issued by City without further legislative approval under Code section 2-1111, if the legislation authorizing this Agreement provides for such issuance. In such circumstances, the Work Order may be executed by the City's Chief Procurement Officer, head of the affected using agency or other appropriate designee on behalf of City. City, at its sole discretion, may unilaterally issue Work Orders for Services for which charges are established in this Agreement. Contractor shall promptly proceed with the Services set forth in any such Work Order. If City solicits a proposal from Contractor for a Work Order, Contractor shall submit its proposal with a Work Order containing all the necessary terms and executed by Contractor. Work Orders may be issued or executed during the term of this Agreement that contain a service performance period that extends beyond the term; provided, however, that no Work Order may be issued or executed under this Agreement subsequent to the expiration or termination of the term.

2.4 City makes no representations or warranties about the quantity of services that will be requested or charges that will be paid under this Agreement. Any quantity of Services or amount of charges set forth in this Agreement are estimates only.

2.5 Initial Term. The initial term of this Agreement will be \_\_\_years. This Agreement shall commence on the Effective Date and end on [\_\_\_\_]. The initial term of the Agreement and any renewal term(s) are collectively referred to as the "Term".

2.6 Renewal Terms. City shall have the right in its sole discretion to renew this Agreement for [\_\_\_\_] additional one-year terms. If City desires to exercise an option to renew, it will submit legislation authorizing such renewal for consideration by City's Council and Mayor prior to the expiration of the prior term. The legislation will establish that the date of such renewal will be the day immediately following the expiration day of the prior term.

If such legislation is enacted, City will notify service provider of such renewal, at which time service provider shall be bound to provide Services during such renewal term, without the need for the parties to execute any further documents evidencing such renewal, it being acknowledged by service provider that its initial execution of this Agreement is deemed its agreement to continue to provide Services during any renewal term.

### 3. COMPENSATION

3.1 Compensation for Services will be based upon agreed unit prices as set forth in the fee schedule attached as **Exhibit A.1**. No payment to Contractor shall exceed Annual Maximum Payment Amount; Work Order Maximum Payment Amount; the Total Sum; or the hourly rates, materials, reimbursable expenses and other payment terms identified in Exhibit A.1. All costs of items associated with the Work and incidentals necessary for the proper and timely completion of the Work shall be considered as included in the unit prices attached as **Exhibit A.1**. Payment for all Work in accordance with the unit prices identified in **Exhibit A.1** shall be full compensation for all labor, materials, equipment, methods, processes, construction manufacturing, tools, plants, designs, supplies, power, water transportation and any other things necessary or incidental to furnish, install, construct, and test the Work covered under the applicable unit price. The unit prices set forth in Exhibit A.1 are inclusive of all taxes, levies, duties and assessments of every nature in connection with the Services ("Taxes"). Services for which there is no price schedule set forth in **Exhibit A.1** shall be considered incidental to the Work and no compensation shall be allowed.

3.2 Contractor acknowledges and agrees that if the quantities originally contemplated under the Agreement Documents are materially changed so that application of such unit prices to quantities of the Work performed will cause substantial inequity to the City, the applicable unit prices shall be equitably adjusted pursuant to Article 8. For purposes of this Article 3.2, a change in quantities may be considered material if such change is greater than or equal to forty percent (40%) more than the quantities set forth in the Agreement Documents.

3.3 No money shall be paid by the City upon any claim, debt, demand or account whatsoever, to any person, firm, or corporation who is in arrears to the City for taxes, or any other debt or claim, and the City shall be entitled to counterclaim and/or offset any such debt, claim, demand or account in the amount of taxes so in arrears or other debts or claims of the City, and no assignment or transfer of such debt, claim, demand, or account after the said taxes are due or after any such debt or claim is asserted by the City, shall affect the right of the City to so offset the said taxes, debts, or other obligations against the same. Contractor agrees that the City shall be allowed to setoff and recoup any claim or demand that it may have against Contractor (or any of its constituent members if Contractor is a joint venture) whether such claim or demand is liquidated or unliquidated. Contractor further agrees that in the event it assigns or sells any amounts due or to become due under this Agreement, notice to the City of such assignment or sale shall not affect the City's rights of setoff or recoupment against Contractor for claims subsequently arising from this Agreement or any other contract with the City. Any assignee or purchaser of any amounts due Contractor under this Agreement shall be bound to these provisions and shall assume the risk of subsequently arising claims of setoff or recoupment.

#### 4. TERMS OF PAYMENT

4.1 Payment to the Contractor will be made according to one of the following methods identified in this Article 4. Work Orders issued pursuant to this Agreement will identify the method of payment selected by the City. Selection of the applicable payment options identified in Articles 4.1.1 and 4.1.2 is in the City's sole discretion. In the event that a Work Order does not expressly state the procedure for payment selected by the City, then Contractor will be entitled to payment in accordance with Article 4.1.1. Contractor shall prepare and submit to City invoices for payment for all Services in accordance with the Work Order, which shall include such detail and format as the City may reasonably require.

##### Payment Methods

4.1.1 Option 1, Payment Upon Final Completion: Subject to the City's right to offset payment and its rights to withhold payment set forth in Article 4.4, Contractor shall be entitled to full payment for a Work Order sixty (60) days after achieving Final Completion of the Services required by a Work Order based upon a lump sum based upon time and materials and calculated from the labor and materials categories set forth in **Exhibit A**. Contractor agrees to execute such payment application forms and release of claim forms as the City may require as a condition precedent to the City's obligation to make any payment to Contractor.

4.1.2 Option 2, Progress Payments: If the City elects to pay Contractor in accord with this Article 4.1.2, then upon issuance of a Work Order, Contractor shall submit to the City monthly invoices for Services performed. Each invoice shall be accompanied by a payment application identifying the applicable Work Order, such time sheets, daily reports, receipted invoices, invoices with check vouchers attached, Contractor's interim and final releases of lien and bond rights (as applicable), Contractor's sub-tier contractor interim and final releases of lien and bond rights (as applicable), Contractor's verification of quantities delivered pursuant to Work Order(s), all Drawings required by a Work Order, all documents, work product, and information required by the Specifications, and such other records as the City may reasonably request for the purpose of verifying the accuracy of the invoice (collectively "Documentation"). Subject to the City's right to offset payment and its rights to withhold payment set forth in Article 4.4, payment to Contractor will be made less applicable retention within thirty (30) days of receipt of all supporting Documentation required by the Agreement Documents. Contractor agrees to execute such payment application forms and release of claim forms as the City may require as a condition precedent to the City's obligation to make any payment.

4.2 This Article 4 completely supersedes the Georgia Prompt Pay Act as it relates to Owner payments and any modifications or successors to the Georgia Prompt Pay Act to the fullest extent allowed by law. Contractor acknowledges and agrees that payment shall be in accordance with the provisions of this Agreement and expressly waives its right to assert entitlement under O.C.G.A. § 13-1-11, *et. seq.* to the full extent permitted by law. Should the City fail to issue payment for undisputed amounts within ninety (90) days of approval, annual interest on the payment amount may accrue at the Prime Rate, plus one percent (1%). The Prime Rate shall be based on that published in the Wall Street Journal on the first business day of January or June, whichever has most recently passed, of the current year.

4.3 The City may decline to approve payment and may withhold any payment, in whole or in part because of: (a) defective work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of the contractor to promptly make payments to sub-tier contractors; (d) reasonable evidence that the Work cannot be completed for the Total Sum; (e) reasonable evidence that the Services will not be completed within the time required by a Work Order; (f) failure to carry out the Services in accordance with the requirements of the Agreement documents; (g) failure to comply with the insurance and bonding requirements of the Agreement Documents; (h) Contractor's insolvency or reasonable evidence that contractor fails to pay its debts as they come due; (i) liquidated damages due in accordance with article 9; or (j) a material failure of the contractor to comply with

any of the requirements of the agreement documents. No full or partial payment of any invoice or any use of Services constitutes acceptance of any Services.

4.4 Any Disputes concerning payment shall be resolved in accordance with Article 16.

**5. CONTRACTOR'S ACCOUNTING RECORDS AND THE CITY'S RIGHT OF AUDIT**

Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement. The City shall be afforded reasonable access to Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, memoranda, records of delivered quantities, daily reports, job cost reports, and such other data relating to this Agreement during normal business hours at the location where such documents are stored by Contractor. The Contractor shall preserve all such related documentation for a period of two (2) years after the expiration of the Agreement Term. The City shall have the right to audit the books and records related to this Agreement at any time. Contractor shall provide access to its books and records associated with this Agreement within 72 hours of the City's provision of written notice to Contractor.

**6. OBLIGATIONS OF THE CONTRACTOR**

6.1 Contractor will perform all Services in a timely and professional manner, consistent with the Standard. Contractor shall not be deemed to be an agent of the City for any purpose but shall in all events be an independent contractor exercising control over its Services and the manner in which they are performed

6.2 Contractor will not perform any Services until the City directs Contractor in writing to proceed. Unless otherwise specified in a Work Order, the execution of a Work Order by the City shall constitute notice and authorization to Contractor to proceed in strict accordance with the Agreement Documents.

6.3 Contractor will perform Services under this Agreement with the highest degree of skill and diligence normally practiced by contractors performing the same or similar services as are being performed by Contractor under this Agreement and under any Work Order in accordance with all applicable federal, state, local laws, ordinances, rules, regulations, and lawful orders ("Standard"). Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and shall coordinate all portions of the Work under the Agreement Documents

6.4 Contractor shall enforce strict discipline, professionalism, and good order among Contractor's employees and sub-tier contractors. The City may, after provision of written notice to Contractor, require Contractor to remove from the Work any employee the City deems incompetent, unprofessional, or otherwise objectionable, including any employee of Contractor's sub-tier contractors.

6.5 Unless otherwise provided in the Agreement Documents, Contractor shall secure and will provide all permits, licenses, and other applicable legal documents required for Contractor's performance of the Work required by the Agreement Documents. In no event will Contractor's failure to timely secure permits, licenses, and/or other applicable legal documents serve as a basis for a Claim under this Agreement.

6.6 Key Personnel and Key Subcontractors. The following persons are identified by the Contractor as its key personnel that will provide the Work and Services required by the Agreement Documents:

6.6.1 Key Personnel:

(a) \_\_\_\_\_;

(b) \_\_\_\_\_; and

(c) \_\_\_\_\_.

6.6.2 Key Subcontractors:

(a) \_\_\_\_\_;

(b) \_\_\_\_\_; and

(c) \_\_\_\_\_.

6.6.3 Contractor shall not transfer, reassign or replace Key Personnel and/or Key Subcontractors identified in Articles 6.6.1 and 6.6.2, except as the result of retirement, voluntary resignation, involuntary termination for cause in Contractor's sole discretion, illness, disability, or death, during the term of this Agreement without the prior written approval from the City.

6.7 Suspension of the Work. The City may, by written notice to Contractor, suspend at any time the performance of any or all of the Work to be performed under this Agreement. Contractor shall be entitled to request an extension of time pursuant to Article 8 in the event the City issues a suspension notice per this Article 6.7. Unless the suspension notice directs otherwise, upon receipt of a suspension notice Contractor must:

6.7.1 immediately discontinue suspended Work on the date and to the extent specified in the notice;

6.7.2 place no further orders or subcontracts for materials, services or facilities with respect to suspended Work, other than to the extent required in the notice; and

6.7.3 take any other reasonable steps to minimize costs associated with the suspension.

6.8 The City shall designate to the Contractor in writing a representative(s) (the "City Representative") who shall serve as primary interface and the single point of communication for the provision of Services; have day-to-day interaction with Contractor to address issues relating to this Agreement; and to the extent provided under applicable laws and the City's Code of Ordinances, have the authority to execute any additional documents or Change Orders on behalf of City. Any Work, document, or item to be submitted or prepared by Contractor hereunder shall be subject to the review of the City Representative. The City Representative may disapprove, if in the City Representative's sole opinion the Service, Documentation, Drawing or item is not in accordance with the requirements of the Agreement Documents or sound professional principles, or is impractical, uneconomical or unsuited for the purposes for which the Service, document or item is intended. If any of the said items or any portion thereof are so disapproved, Contractor shall revise and/or correct the Work so that it meets the approval of the City Representative at no additional cost to the City. The "City Representative" may also be referred to as the "City Engineer."

6.9 Contractor shall diligently perform the Services required by a Work Order within the time required by the Work Order notwithstanding any disputes or disagreements with City. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as City may otherwise direct pursuant to this Agreement. Contractor's failure or refusal to work through disputes in accordance with this Article 6.9 shall be deemed a material default under this Agreement, which will entitle the City to immediately rely upon Contractor's sureties to cure said default.

6.10 Except as otherwise expressly provided in this Agreement, all Drawings, Documentation, reports, information, data, specifications, computer programs, technical reports, operating manuals and similar work or other documents, all deliverables, and other work product prepared or authored by Contractor or any of its sub-tier

contractors exclusively for the City under this Agreement, and all intellectual property rights associated with the foregoing items (collectively, the "Work Product") shall be and remain the sole and exclusive property of the City. Any of Contractor's or its sub-tier contractors' works of authorship comprised within the Work Product (whether created alone or in concert with City or a third party) shall be deemed to be "works made for hire" and made in the course of Services rendered and, whether pursuant to the provisions of Section 101 of the U.S. Copyright Act or other applicable law, such Work Product shall belong exclusively to City. Contractor and its sub-tier contractors grant the City a non-exclusive, irrevocable, global, perpetual, transferable, fully paid up, royalty free license to all Work Product not exclusively developed for City under this Agreement.

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

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

6.10.3 To the extent exclusive title or complete and exclusive ownership rights in any Work Product created by Contractor may not originally vest in City by operation of applicable law, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the City all rights, title and interest in the Work Product.

6.10.4 Without any additional cost to the City, Contractor and its personnel shall promptly give City all reasonable assistance and execute all documents the City may reasonably request to enable the City to perfect, preserve, enforce, register and record its rights in all Work Product. Contractor irrevocably designates City as Contractor's agent and attorney-in-fact to execute, deliver and file, if necessary, any documents necessary to give effect to the provisions of this Article 6.10 and to take all actions necessary, in Contractor's name, with the same force and effect as if performed by Contractor.

6.11 Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury, or loss to: (a) all employees on the Work and all other persons who may be affected thereby; (b) all the Work and materials to be incorporated therein, whether in storage or not, under the care, custody, or control of Contractor or any of Contractor's sub-tier contractors; (c) other property at the site where the Work is being performed or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and (d) the Work of the City or other separate contractors.

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

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

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

6.11.4 Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by Contractor, any subcontractor, any sub-tier contractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, except damage or loss attributable solely to the acts or omissions of the City and not attributable to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under Article 7 and **Exhibit A** or other provisions of the Agreement Documents.

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

6.11.6 In any emergency affecting the safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury or loss.

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

6.11.8 Contractor acknowledges that it is fully aware of appropriate and safe procedures regarding high voltage lines, including the contents and requirements of Official Code of Georgia Annotated § 46-3-30 through § 46-3-39, Safeguards Against Contact with High Voltage Lines, any amendments thereto and rules and regulations issued pursuant thereto, and Contractor shall fully comply therewith. Contractor agrees that any failure on its part to adhere to appropriate procedures and said laws, rules and regulations shall not only be a violation of the law but shall also be a breach of Agreement.

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

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

6.11.11 The provisions, terms and conditions of this Article 6 are in no way intended to limit the general requirements or the applicability of laws relating to Work conditions, safety or accident prevention and no specific provision or combination of specific provisions in any provision of Article 6 or in any other parts of the Agreement Documents shall be deemed to limit the obligations or responsibility of Contractor contained in general provisions with respect thereto or in laws, statutes, acts, rules or regulations which are applicable to Contractor but which are not specifically referred to in any part of the Agreement Documents.

## **7. INSURANCE AND BONDING**

The Contractor shall procure and maintain, at its own cost, during the term of this Agreement the Insurance and Bonds Required by **Appendix B**.

## 8. CHANGES AND CLAIMS

8.1 Owner shall have the right at any time during the progress of the Work to increase or decrease the Services required by a Work Order or the time required for delivery of the Services (a "Change") pursuant to this Agreement. Any modification to a Work Order or this Agreement shall be set forth in a Change Form executed by the City and the Contractor, which documents the parties' mutual agreement as to the effect of the Change, the modification of the scope of the Work Order, and/or the amount of time required by a Work Order. It is expressly agreed that, except in an emergency endangering life or property, no additions or changes to the Work shall be made except upon written order of Owner, and Owner shall not be liable to Contractor for any extra labor, materials, or equipment furnished without such written order. No officer, employee, or agent of Owner is authorized to direct any extra or changed work by verbal order nor is Contractor authorized to proceed with any Work upon verbal order that results in a modification to the time or price of a Work Order.

8.2 The unit prices set forth in **Exhibit A.1** shall not be subject to modification pursuant to this Article. Except as provided by applicable law, in no event will a Change Order exceed the Total Sum authorized by the City pursuant to this Agreement.

8.3 Subject to the limitations set forth in Article 17, Contractor shall provide written notice to the City of any Claim within seven (7) calendar days of the occurrence of the event giving rise to the Claim, as well as (a) a narrative statement describing the amount and bases of the Claim; (b) the precise number of days claimed as a result of any delay or impact to the Work; and (c) a detailed calculation of the precise amount of additional compensation claimed with all required supporting Documentation. The failure of the Contractor to file any Claim within the time limits prescribed herein or in the form or manner as required hereby shall be deemed a material prejudice to the interests of the City and shall constitute a waiver and release of the Claim and the right to file or thereafter prosecute the same.

## 9. TIME

9.1 The Parties acknowledge that TIME IS OF THE ESSENCE for performance of the obligations required by this Agreement.

9.2 Contractor shall commence work and proceed diligently with the services, in accordance with the time specified by a work order. Contractor shall achieve substantial completion and final completion of the services required by a work order within the times set forth in a work order. Even if the work is otherwise in compliance with the performance schedule, the city may, at any time, unilaterally or by agreement with contractor by change order, direct contractor to accelerate the work, by among other things, establishing additional shifts, paying or authorizing overtime, or providing additional equipment. In this event, the city's sole liability to contractor shall be to pay any shift differential, premium, or overtime payments to workers or field supervisors actually incurred over and above contractor's normal rates and overtime charges for equipment. Any adjustment to the Work Order Maximum Payment Amount shall be implemented by Change Order.

9.2.1 When Contractor believes that the Services that are the subject of a Work Order are substantially complete, Contractor shall prepare a list of items and deliverables to be completed or corrected. The City may review the list of items and deliverables to be completed or corrected prepared by the Contractor and review the Services within a reasonable time after receipt of written notice from the Contractor and modify this list to include additional items. After Contractor has completed or corrected items necessary for achieving Substantial Completion it shall notify the City in writing. Thereafter, the City will review the Services and notify the Contractor in writing whether the Services have achieved Substantial Completion, as applicable.

9.2.2 If applicable, upon achieving Substantial Completion of the Services, as required by a Work Order, the Contractor will identify all punch-list items necessary for achieving Final Completion of the Work and provide this

information to the City. After completion of all punch-list items and delivery of all Documentation necessary for Final Completion of a Work Order, the Contractor shall forward written notice to the City that the Services are ready for final review and acceptance and shall also forward a final application for payment. When the City finds that the Services are acceptable and fully completed in accordance with the Agreement Documents, the City will issue a certificate for Final Payment that will approve the Final Payment due the Contractor under an applicable Work Order.

9.2.3 Neither Final Payment nor retention shall become due until the Contractor submits to the City the following: (a) an affidavit that all payrolls and other indebtedness connected with the Work have been paid or otherwise satisfied; (b) consent of Contractor's surety to Final Payment; and (c) any Drawings and Documentation required by a Work Order.

9.2.4 The acceptance of Final Payment by Contractor shall constitute a complete waiver and release of all claims against the City by Contractor.

9.3 In the event Contractor fails to achieve either Substantial Completion or Final Completion within the time required by a Work Order, then Contractor or its sureties shall pay to the City the following amounts upon demand:

Applicable Range of Estimated Work Order Amount	Substantial Completion Liquidated Damages	Final Completion Liquidated Damages
0 to \$50,000		
\$50,000.01 - \$100,000		
\$100,000.01 - \$250,000		
\$250,000.01 - \$500,000		
\$500,000.01 - \$1,000,000		
Over \$1,000,000.00		

9.3.3 The amounts set forth in Articles 9.3.1 and 9.3.2 shall be referred to herein as "Liquidated Damages." The amount of such charges is hereby agreed upon as a reasonable estimate of the probable loss of the City in the event Contractor fails to achieve the Substantial Completion and/or the Final Completion requirements of Work Orders. The Liquidated Damages are fixed per this Article 9 because of the difficulty of ascertaining the exact amount of losses the City will actually incur as a result of Contractor's delayed completion of a Work Order.

9.4 No payment(s) made, payment application(s) approved, partial use of the Services, or complete use of the Work by the City shall be deemed an acceptance of Services that do not conform to the requirements of the Agreement Documents.

**10. FAILURE TO PERFORM AND TERMINATION FOR DEFAULT.**

10.1 If Contractor (a) fails or refuses to proceed with or to perform its Work in accordance with the Agreement Documents, (b) fails or refuses to perform properly or abide by any terms, covenants, conditions or provisions contained in this Agreement or (c) fails or refuses to obey laws, ordinances, regulations or other codes of conduct,

Owner shall have the right to terminate Contractor's right to proceed under this Agreement. If Owner determines that Contractor has not remedied and cured the default or defaults in its performance within seven (7) calendar days following receipt by Contractor of written notice of said default or defaults or such shorter period as the circumstances may justify, in which case such shorter period shall be identified in Owner's written notice, then Owner may, at its option, without releasing or waiving its rights and remedies against the Contractor's sureties and without prejudice to any other right it may be entitled to hereunder or by law, terminate Contractor's right to proceed under a Work Order or this Agreement and take possession of the Work and all materials, tools, equipment and appliances of Contractor, take assignment of all of Contractor's subcontracts and purchase orders, and complete Contractor's Work by whatever means, methods or agency which Owner may, in its sole discretion, choose. In the event that Contractor's right to proceed has been terminated, Contractor agrees that it shall not be entitled to receive any further payment until after the Work has been completed. Moreover, all monies expended and all of the costs, losses, damages and extra expenses, including all management, administrative and other direct and indirect expenses (including attorneys' fees, arbitrator's fees, filing fees, expert fees, and all other costs and expenses associated with the default) incurred by Owner incident to such completion, shall be deducted from any amounts otherwise due or to become due the Contractor, and if such expenditures, together with said costs, losses, damages and extra expenses, exceed the unpaid balance of the Work Order Maximum Payment Amount, Contractor and its surety agree to pay promptly to Owner, on demand, the full amount of such excess, including costs of collection, attorneys' fees and interest thereon at the maximum legal rate of interest until paid.

10.2 Owner's determination of Contractor's default or defaults and Owner's decision as to Contractor's failure to remedy and cure said default or defaults upon notification of their existence, made by Owner under the belief that a default or defaults existed under the terms hereof and that Contractor failed to remedy and cure said default or defaults, shall be conclusive (a) as to Owner's right to proceed as herein provided, and (b) as to Contractor's surety's obligation to perform the obligations assumed under Contractor's performance and/or payment bond. The liability of Contractor hereunder shall extend to and include the full amount of any and all sums paid, expenses and losses incurred, damages sustained and obligations assumed by Owner under the belief that such payments or assumptions were necessary or required (a) in completion of the Work and in providing labor, materials, equipment, supplies and other items therefor or re-letting the Agreement and (b) in settlement, discharge or compromise of any claims, demands, suits and judgments pertaining to or arising out of the Work hereunder. A sworn itemized statement thereof or the checks or other evidence of payment shall be *prima facie* evidence of the fact and extent of Contractor's liability.

10.3 In the event Contractor is in default, Owner shall have the right to supplement Contractor's forces without terminating this Agreement for default and deduct the cost of the same from any amounts otherwise due Contractor.

10.4 In the event any termination for default is found to be wrongful or improper, Contractor agrees that its sole and exclusive remedy is to have the termination treated as a termination for convenience in accordance with Article 11. Termination for Convenience.

10.5 In addition to the bases for termination of this Agreement under Articles 10.1 and 10.2, the City may, at its option, terminate this Agreement for cause immediately by providing written notice to Contractor if Contractor engages in behavior that is dishonest, fraudulent, or constitutes a conflict of interest with Contractor's obligations under this Agreement or is in violation of any of the City's Ethics Ordinances. Contractor shall immediately notify the City in writing, specifically disclosing any and all potential or actual conflicts of interest, which arise or may arise during the Term of this Agreement. City shall make a written determination as to whether a conflict of interest actually exists and the actions to be taken to resolve the conflict of interest.

## **11. Termination For Convenience; Termination For Lack Of Appropriations.**

11.1 Termination For Convenience. The City shall have the right to terminate this agreement or a Work Order without cause upon seven (7) calendar days' written notice to Contractor. In the event of such termination for

convenience, Contractor's recovery against Owner shall be limited to Services performed through the date of termination, calculated on a percent complete basis, together with any retainage withheld, if applicable, plus reasonable close-out and termination costs approved by the Owner, less the amount of prior payments to the Contractor, and Contractor shall not be entitled to any other and further recovery against Owner, including, but not limited to, anticipated profit on work not performed. In no event shall Contractor be entitled to a "cost-plus" recovery from Owner.

11.2 TERMINATION For Lack Of Appropriations. If, during any year of this Agreement, legislation establishing a Total Sum for the following year is not enacted, this Agreement will terminate in its entirety on the last day of the Agreement term for which a total sum has been legislatively authorized; provided, however, that Work Orders funded out of a previously legislatively authorized total sum amount may continue beyond such termination date. Furthermore, at any time during the term of this Agreement, City shall be entitled to terminate the Agreement for lack of appropriations or sufficient funding under the agreement upon providing thirty (30) days written notice to Contractor that the sufficient funding is not present to perform the Services under this Agreement. If the City terminates the Agreement pursuant to this provision, Contractor's recovery against Owner shall be in accordance with Section 11.1, above.

## 12. FORCE MAJEURE

Any delay in performance caused by terrorist attacks, insurrections, storms, fires, hurricanes, tornadoes, earth quakes, or other acts of God ("Force Majeure Event") shall excuse the performance of both parties for the duration the Force Majeure Event is in effect. If the Contractor is delayed at any time in the progress of the Work by a Force Majeure Event, then Contractor will be entitled to seek a Change Order in accordance with the requirements of Article 8. Any extension of Contract Time on account of a Force Majeure Event shall be net of any delays caused by or due to the fault or negligence of Contractor. The Contractor shall cooperate in good faith with the City to minimize the impact of any such occurrence. No extension of time shall be granted unless the Force Majeure Event causes a delay to a Substantial Completion Date, and such delay is proven by an independent critical path analysis of the effected work activities. Contractor shall not be entitled to any compensation for a Force Majeure Event delay. Contractor's sole remedy for Force Majeure Event delay shall be a time extension.

## 13. WARRANTY

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

13.2 If within one (1) year from the expiration of the Agreement Term or Final Completion of a Work Order (whichever timeframe is longer), or within such longer period of time as may be prescribed by law or by the term of any applicable special warranty required by the Agreement Documents ("Warranty Period"), any of the Work is found to be defective or not in accordance with the Agreement Documents, Contractor shall correct it promptly after receipt of a written notice from the City to do so. This obligation shall survive both Final Payment for the Work or designated portion thereof and termination of the Agreement. Contractor acknowledges that the Warranty Period provides a period during which Contractor has a duty to repair and does not in any way limit Contractor's liability for Work that is

not in accordance with the Agreement Documents, including any that may be discovered more than one (1) year after the date of Final Completion of a Work Order or expiration of the Agreement Term.

13.3 Without limiting the responsibility or liability of Contractor under the Agreement, all warranties given by manufacturers on materials or equipment incorporated in the Work are hereby assigned by Contractor to the City at no additional cost to the City. If requested, Contractor shall execute enforceable formal assignments of said manufacturer's warranties to the City at no additional cost to the City. Contractor shall not obtain any materials or equipment under warranties, which do not run directly to the benefit of the City, and all such warranties shall be directly enforceable by the City.

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

#### **14. CORRECTION OF THE WORK**

The Contractor shall promptly correct Work rejected by the City or Work failing to conform to the requirements of the Agreement Documents, whether discovered before or after Substantial Completion of a Work Order and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's, Owner's consultants, or a design professionals' services and expenses made necessary thereby, shall be at the Contractor's expense. If the Contractor fails to correct defective or non-conforming Work within seventy-two (72) hours from receipt of the City's written notice, then the City shall have the right to correct the defective or non-conforming work at Contractor's expense.

#### **15. INDEMNIFICATION**

15.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner and from and against any and all claims, damages, losses, demands, judgments and costs of suit or defense, including attorneys' fees, and reimburse Owner for any expense, damage or liability incurred by Owner whether for personal injury, property damage, direct or consequential damage, or economic loss arising or alleged to have arisen from the acts or omissions of 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 that would otherwise exist as to any party or person. This indemnity obligation shall include, but not be limited to, claims made or lawsuits filed by employees of Contractor or employees of anyone for whose acts Contractor may be liable, and claims made or lawsuits filed by employees of Owner. The foregoing indemnification does not apply to claims arising out of the sole negligence of Owner. Contractor further agrees to reimburse Owner for all costs and expenses, including attorneys' fees, expert witness fees, and/or consultant fees incurred to enforce these indemnity obligations.

15.2 Contractor will save and keep all Projects related to this Agreement free from all mechanics' liens and all other liens by reason of its Work or of any materials or other things used by it therein. If Contractor fails to remove any lien by bonding it, or otherwise, Owner, among other remedies, may retain sufficient funds out of any money due or thereafter to become due by Owner to Contractor to pay the same and all costs incurred by reason thereof, and may pay said lien or liens and Owner's costs associated with the lien or liens including reasonable attorneys' fees out of any funds at any time in the hands of Owner owing to Contractor. Contractor agrees that it shall be obliged to bond off any claim of lien of any of its subcontractors or suppliers notwithstanding any claim or argument as to non-

payment or an alleged prior breach by Owner as an alleged result of non-payment. Contractor's obligation to bond off all liens of its subcontractors and suppliers is absolute and unconditional, and Contractor's failure to bond off any lien shall be deemed a material breach and default of this Agreement. Contractor's performance and/or payment bond sureties shall be obliged to bond all liens filed by subcontractors and suppliers of Contractor in the event that Contractor fails for any reason whatsoever to bond any such lien filed after ten (10) days written notice from Owner to Contractor demanding the bonding of such lien(s). Contractor understands and agrees that it shall ensure that its own subcontractors and suppliers have the same obligations as Contractor under this Article.

15.3 Contractor shall indemnify and hold City, harmless from and against any losses, liabilities, damages, demands and claims, and all related costs (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgment, interest and penalties) arising from claims or actions based upon any of the Work, Services, materials or methodologies used by Contractor (or any Contractor agent, subcontractor, sub-tier contractor or representative), or the City's use thereof (or access or other rights thereto) in connection with the Work, infringes or misappropriates the intellectual property rights of a third party. If any Work, Services, materials, or methodologies provided by Contractor hereunder is held to constitute, or in the City's reasonable judgment is likely to constitute, an infringement or misappropriation, the City may direct that Contractor: (i) procure the right for the City to continue using such Work, Services, or methodologies; (ii) replace such Work, Services, materials or methodologies with a non-infringing equivalent, provided that such replacement does not result in a degradation of the functionality, performance or quality of the Work; (iii) modify such Work, Services, materials or methodologies, or have such Work, Services, materials or methodologies modified, to make them non-infringing, provided that such modification does not result in a degradation of the functionality, performance or quality of the Work, Services, materials or methodologies; or (iv) create a feasible workaround that would not have any adverse impact on City.

## 16. DISPUTE RESOLUTION

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

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

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

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

16.5 If the Owner does not elect arbitration, any Claims shall be resolved in Fulton County, Georgia Superior Court. Contractor hereby submits to jurisdiction and venue in Fulton County, Georgia, and waives all defenses based on a lack of jurisdiction and/or venue. Contractor acknowledges that this Agreement was negotiated, at least in part, in Fulton County, Georgia. In any arbitration or litigation, the arbitrators or the Court shall have the jurisdiction

to award the City costs, arbitrator fees, expert fees, and attorneys' fees, and the arbitrators or the Court shall award all such fees to the City if it is the prevailing party.

**17. EXTENSIONS OF TIME AND DELAY**

Contractor shall not be entitled to payment or compensation of any kind from the City for indirect, impact, or delay damages, including but not limited to costs of delay, disruption, interference, ripple effect, unforeseen site conditions, loss of anticipated profits, impact or hindrance from any cause whatsoever (collectively "Delay Damages"), whether such delay, disruption, interference, ripple effect, unforeseen site conditions, impact or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Contractor expressly waives and releases any Claim for Delay Damages and agrees that Contractor's sole and exclusive remedy for any delay shall be an extension of time to perform the Work and Services required the Agreement Documents, which shall be administered in accordance with the requirements of Article 8.

**18. MISCELLANEOUS**

18.1 The law of the state of Georgia will govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

18.2 If any of the provisions contained in the Agreement Documents are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision, and the Agreement Documents will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

18.3 Contractor shall not sell, transfer, or assign any or all of its respective rights and obligations under this Agreement to a third party without the City's written consent. Any attempted sale, transfer, or assignment of the rights or obligations of this Agreement shall be void and of no effect.

18.4 Articles 1, 4, 5, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, and 20 shall survive termination of this Agreement.

18.5 The Drawings or other Instruments of Service prepared by Contractor or its sub-tier contractors shall be owned by the City and may be used by the City on projects other than the Project(s) performed in connection with a Work Order issued per this Agreement.

18.6 Except as otherwise provided herein, all notices and other communications required or permitted to be given under this Agreement, including its Exhibits and Work Orders, shall be in writing, addressed to the parties at their respective addresses as provided below, and may be delivered in person, sent by overnight express mail or courier service, or by facsimile, or by certified mail postage prepaid, return receipt requested. The addresses of each party are as follows

_____	_____
_____	_____
_____	_____

Each party may from time to time change its address for receipt of notices by sending notice thereof in the manner provided herein to the other Party.

18.7 The failure of the City to insist upon or enforce strict performance of any provision of this Agreement or to exercise any right under the Agreement Documents shall not be construed as a waiver or relinquishment of the City's right to assert or rely upon any such provision or right and/or any other requirement of the Agreement Documents.

18.8 The Agreement Documents constitute the entire agreement and supersede all prior written or oral understandings, and may only be changed by a written amendment to the Agreement executed by both the City and the Contractor.

18.9 Contractor acknowledges and agrees that it may be adequately compensated in money damages for any Claims arising from performance of the Agreement Documents. Accordingly, Contractor waives and releases any right to assert a claim for *quantum meruit*, unjust enrichment, and any other equitable or quasi-contractual claim for relief that may be available under applicable law.

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

18.11 No presumption of any applicable law relating to the interpretation of contracts against the drafter shall apply to this Agreement.

18.12 Contractor is an independent contractor of the City and nothing in this Agreement shall be deemed to constitute Contractor and the City as partners, joint venturers, or be construed as requiring or permitting the sharing of profits or losses. Except as expressly provided in Article 6.10, nothing in this Agreement shall be deemed to constitute Contractor and the City as principal and agent and neither party has the authority to represent or bind or create any legal obligations for or on behalf of the other party.

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

## 19. CONFIDENTIAL INFORMATION

Contractor agrees to preserve as strictly confidential all Confidential Information for two (2) years following the expiration or termination of this Agreement; provided, however, that Contractor's obligation for Confidential Information that constitutes trade secrets pursuant to applicable law will continue for so long as such Confidential Information continues to constitute a trade secret under applicable law. Any Confidential Information that may be deemed Sensitive Security Information by the Department of Homeland Security or any other similar Confidential Information related to security will be considered trade secrets. Upon request by City, Contractor will return any trade

secrets to City. Contractor agrees to hold the Confidential Information of the City in trust and confidence and will not disclose it to any person, or use it (directly or indirectly) for its own benefit or the benefit of any other person other than in the performance of its obligations under this Agreement. Contractor will be entitled to disclose any Confidential Information if compelled to do so pursuant to: (i) a subpoena; (ii) judicial or administrative order; or (iii) any other requirement imposed upon it by applicable law. Prior to making such a disclosure, to the extent allowed pursuant to applicable law, the Contractor shall provide the City with thirty six (36) hours prior notice by facsimile of its intent to disclose, describing the content of the information to be disclosed and providing a copy of the pleading, instrument, document, communication or other written item compelling disclosure or, if not in writing, a detailed description of the nature of the communication compelling disclosure with the name, address, phone number and facsimile number of the person requesting disclosure.

## 20. ETHICS IN CONTRACTS

20.1 Gratuities and Kickbacks. In accordance with the City of Atlanta's Code of Ordinances, Section 2-1484, as may be amended, it shall be unethical for any person to offer, give or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor. Additionally, it shall be unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

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

*[Signatures on the following pages.]*

The parties hereto by authorized representatives have executed this Agreement as of the Effective Date.

The City of Atlanta

[Contractor]

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Municipal Clerk (Seal)

Recommended:

Chief Procurement Officer:

\_\_\_\_\_  
Commissioner:

\_\_\_\_\_  
Department of Watershed Management

Approved as to form:

\_\_\_\_\_  
City Attorney

DRAFT

Signature Block Options for Contractor:

**Corporate signature:**

[Insert Corporate Name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Corporate Secretary/Assistant

Secretary (Seal)

**Limited Liability Company:**

[Insert LLC Name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Notary Public (Seal)

My Commission Expires:

DRAFT

EXHIBIT A  
TO  
CONSTRUCTION SERVICES AGREEMENT

GENERAL SCOPE OF SERVICES

DRAFT

EXHIBIT A.1

COMPENSATION TERMS AND FEE SCHEDULE

DRAFT

EXHIBIT A.2

WORK ORDER FORM

WORK ORDER NO. \_\_\_\_ FOR PROJECT \_\_\_\_\_

Contractor will complete the Services described below in accordance with the terms and conditions in the Construction Services Agreement.

PROJECT: \_\_\_\_\_

SERVICES UNDER WORK ORDER NO. \_\_\_\_\_:

Contractor shall perform the Services for the purpose of [insert general description of Services to be performed], as more particularly described in the scope of work and accepted proposal from Contractor attached and incorporated herein as **Exhibit 1** to this Work Order No. \_\_\_\_, including the attached schedule of unit prices for performing the required Services.

**NOTICE TO PROCEED:**

[check one of the following provisions]

\_\_\_\_ Contractor shall commence Work within \_\_\_\_ days of the date of this Work Order

\_\_\_\_ Contractor shall commence Work within \_\_\_\_ days of receipt of a Notice To Proceed Work issued by the City.

**TIME FOR COMPLETION:** [identify with specificity all dates for Services from Contractor]

- a. Substantial Completion:
- b. Final Completion:
- c. Milestones:

**PAYMENT METHOD:**

\_\_\_\_ Option 1: (Section 4.1.1); or

\_\_\_\_ Option 2: (Section 4.1.2)

**WORK ORDER MAXIMUM PAYMENT AMOUNT:**

[insert total amount of payment for this Work Order based on unit prices in **Exhibit A.1**]

**REQUIRED SUBMITTALS AND DOCUMENTATION:**

[INSERT ANY AND ALL DOCUMENTATION REQUIRED FOR SERVICES, INCLUDING ALL SHOP DRAWINGS, AS-BUILTS REQUIRED FOR FINAL ACCEPTANCE]

**LIST OF APPROVED MATERIALS AND EQUIPMENT:** (IF REQUIRED FOR A WORK ORDER, LIST ALL APPROVED MANUFACTURERS AND EQUIPMENT PROVIDERS APPROVED IN CONTRACTOR'S PROPOSAL)

**FINAL ACCEPTANCE OF WORK REQUIREMENTS:**

[INSERT SPECIAL TERMS FOR FINAL ACCEPTANCE OF WORK, INCLUDING ANY SIGN OFFS, DELIVERABLES]

**CONFIRMATION THAT SERVICES AS LISTED ARE REQUESTED BY THE CITY**

By: \_\_\_\_\_

Name:

Title:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**CONFIRMATION OF SERVICE ASSIGNMENT ACCEPTED BY CONTRACTOR**

By: \_\_\_\_\_

Name:

Title:

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**DRAFT**

EXHIBIT 1 TO WORK ORDER FORM

SCOPE OF WORK/ACCEPTED CONTRACTOR PROPOSAL

DRAFT

**SCHEDULE OF UNIT PRICES FOR CONSTRUCTION SERVICES FOR EXHIBIT A TO WORK ORDER FORM**

**PERSONNEL:**

[LABOR CATEGORY] \$ \_\_\_\_\_ PER \_\_\_\_\_

[LABOR CATEGORY] \$ \_\_\_\_\_ PER \_\_\_\_\_

[list the labor categories and labor rates required to perform the Services per Exhibit A.1]

**MATERIALS:**

[list the unit prices for materials required to perform the Services per Exhibit A.1]

**OTHER REIMBURSABLE EXPENSES:**

[list the other reimbursable expenses required to perform the Services per Exhibit A.1]

**DRAFT**

EXHIBIT B

LEGISLATION

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EXHIBIT C

SUPPLEMENTAL CONDITIONS AND TECHNICAL SPECIFICATIONS

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EXHIBIT D

ADDITIONAL CONTRACT DOCUMENTS

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APPENDIX A

OFFICE OF CONTRACT COMPLIANCE REQUIREMENTS

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APPENDIX B

INSURANCE AND BONDING REQUIREMENTS

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