

Barrow County Board of Commissioners

30 North Broad Street Winder Georgia 30680 Phone: (770) 867-1977 Fax: (770) 307-3141

Cindy F. Clack
Purchasing Agent



MEMORANDUM

To: Parties Interested In RFP2015-13

From: Cindy Clack

Date: 5/6/2015

Re: RFP2015-13 Fire Training Facility

RFP2015-13 is attached for your consideration. Anyone accessing this Request for Proposal from the Barrow County website www.barrowga.org is responsible to insure the latest documents are in their possession including any addenda. All addenda, questions and answers will be posted on this site. ***This site should be visited frequently to insure an awareness of any updates.***

Please insure proposals are submitted exactly as specified in the RFP. If you have any questions, please submit them in writing to the Barrow County Purchasing Agent as called for in the RFP.

Thank you.



**Barrow County Board of Commissioners
30 North Broad Street
Winder, GA 30680**

**REQUEST FOR PROPOSALS
RFP2015-13**

FIRE TRAINING FACILITY

**BARROW COUNTY, GEORGIA
MAY 6, 2015**

REQUEST FOR PROPOSALS

RFP2015-13

**FIRE TRAINING FACILITY
BARROW COUNTY BOARD OF COMMISSIONERS**

Date: May 6, 2015

PURPOSE: The purpose of this request is to provide interested Contractors with sufficient information to enable them to submit a uniform proposal for the County's review of a Fire Training Facility (hereafter called "project") as required by the Barrow County Board of Commissioners, and to set forth a systematic method that will be fair and impartial to all parties concerned in order to generate responses that can be equally evaluated by the County.

GENERAL: Barrow County is interested in entering into an agreement with a Contractor to provide a Live-Fire & Confined Space Training Facility per the attached general requirements and specifications for the Barrow County Emergency Services at 222 Pleasant Hill Church Road NE Winder, Ga. 30680. You are invited to submit a response for this requirement.

OBJECTIVE: The "Project" shall be a four-story structure, constructed from ISO (International Organization for Structure) containers, and provide approximately 1600 square feet of training space in accordance with the general requirements and specifications included in this RFP.

COMPLIANCE WITH THE REQUEST FOR PROPOSAL (RFP): Each prospective Contractor must comply with all requirements of this RFP. Notice is hereby given to all Contractors that if their submittals are defective or irregular, the same may be rejected immediately. To facilitate comparative analysis and evaluation of submittals, it is desired that a uniform format be employed in structuring each. The required format will coincide with specifications given later in this notice. Each Contractor's degree of compliance with the requirements of this notice will be a factor in the subsequent evaluation and possible selection for providing designated services. All instructions are to be considered an integral part of this RFP.

FIRM PRICE: Prices quoted by Contractors shall be firm prices, not subject to increase and shall not include Federal or State Tax. All prices shall be for delivery, our destination, F.O.B. freight prepaid Winder, Georgia, unless otherwise shown. Firm prices shall include all associated costs as defined in the Specifications. Invoices covering required services payable by the County will be paid Net 30 days from date of invoice. Reference the enclosed Agreement for Barrow County's payment process.

LIQUIDATED DAMAGES: *PROJECT COMPLETION WILL BE 120 DAYS FROM DATE OF THE NOTICE TO PROCEED.* Liquidated damages of One Hundred Fifty Dollars (\$150.00) per day will be assessed for each day after completion date until project is completed.

SECURITY: Accompany proposal with a bid security in the amount of five percent (5%) of the proposal. The successful contractor will be required to submit to Barrow County a performance bond and payment bond in the amount equal to one hundred percent (100%) of the total contract amount. Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in Georgia. **Only Barrow County bond forms will be accepted.**

RIGHT TO SUBMITTED MATERIALS: All responses, inquires, or correspondence relating or in reference to this schedule, exhibit, and other documentation by the Contractor shall be properly identified as to Contractor and will become the property of Barrow County when received. Barrow County will not be responsible for any expenses incurred by any Contractor in the development of a response to this Request for Proposal including any onsite (or otherwise) interviews and/or presentations, and/or supplemental information provided, submitted, or given to the County or its representatives. Further, the County shall reserve the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement/purchase order by the recommended Contractor even if the Board of Commissioners has formally accepted a recommendation.

CLARITY AND THOROUGHNESS: Barrow County must determine which Contractor best meets its immediate and long-term objectives. It is each proposing Contractor's responsibility to ensure that all information in the proposal is thorough and easily readable by County. County, at its sole discretion, may reject any submittal that is unclear in any way. It is requested that Contractors keep their responses concise, to the point and use as little technical jargon as possible.

INQUIRIES: Proposing Contractors, or their representatives or agents, **shall not** contact any members, or employees, of the Barrow County Board of Commissioners or any Barrow County Elected Official or employee of any Barrow County Elected Official regarding this RFP, proposal evaluation, or selection process from the time the RFP is issued until the time a notification of intent to award is announced. **Questions relating to this RFP must be submitted in writing to: Cindy Clack, Purchasing Agent (email: cclack@barrowga.org).** *Deadline for questions is May 26, 2015 at 5:00pm.* All questions submitted by this date will be answered and posted as an addendum on the website www.barrowga.org.

PRE-PROPOSAL SITE VISIT: A Non Mandatory Pre-Proposal Site Visit will be conducted **May 22, 2015 at 10:00 am** at the Barrow County Fire Headquarters Station at 222 Pleasant Hill Church Road NE Winder, Ga. 30680. **This site visit is not mandatory but allows interested Contractors the opportunity to view the site.**

EVENTS: The following dates and times apply to this RFP:

1. Issue Request for Proposal -----May 6, 2015
2. Non-Mandatory Pre-Proposal Site Visit-----May 22, 2015 (10:00 AM)
3. Deadline for Questions -----May 26, 2015 (5:00 PM)
4. Proposal Due Date -----June 4, 2015 (12:00 Noon)
6. Proposal Opening -----June 4, 2015 (2:00 PM)
7. Selection Recommendation to BOC -----June 23, 2015
8. Award of Agreement if Approved-----June 24, 2015
9. Work to begin-----July 2015

SEALED PROPOSALS: Each proposal must be submitted in a sealed envelope, addressed to the County. Each sealed envelope containing a proposal must be plainly marked on the outside with “**RFP2015-13 Fire Training Facility**”. If a proposal is forwarded by mail, the sealed envelope containing the proposal must be enclosed in another envelope to the attention of the County at the address shown below and also plainly marked with “RFP2015-13 Fire Training Facility”. The County will not be responsible for late mail deliveries and **no proposal will be accepted if received after the time stipulated by this RFP.** No proposal may be withdrawn or modified in any way after the deadline for RFP opening. **FAILURE TO COMPLY WITH THE ABOVE INSTRUCTIONS WILL DISQUALIFY THE PROPOSAL.**

PROPOSALS SHALL BE SUBMITTED TO:

Barrow County Board of Commissioners
Clerk’s Office
30 North Broad Street
Winder, GA 30680
770.307.3005

Sealed proposals will be accepted in the Clerk’s Office, no later than **12:00 pm (Noon) Thursday, June 4, 2015.** Proposals will be opened in the Second Floor Commission Meeting Room at the above address at 2:00 p.m. on June 4, 2015. All proposals will be evaluated and the project will be awarded, if it is awarded, within 120 days of the proposal opening.

LIABILITY AND RISK MANAGEMENT: See attached Agreement for requirements.

INSURANCE REQUIREMENTS:

- All Contractors and subcontractors shall provide certificates of insurance to the County for the minimum amounts of insurance prescribed by the County’s

Standard Construction Services Agreement and shall comply with all other insurance requirements contained therein.

- No contract will be awarded until the appropriate certificates of insurance are in the possession of the Purchasing Office.
- Indemnification. See Standard Construction Services Agreement.

PROPOSAL FORMAT: Contractors should submit an original (un-bound) and five (5) copies of the requested proposal. **Please do not bind the original copy.** The proposal shall consist of the following in the order shown:

- **Letter of Introduction** -- Provide a letter of introduction.
- **Company Profile** – Describe your business including, but not limited to, its years in business, number of clients using your services, and any distinctiveness of your business. Provide legal status and Federal Tax ID number.
- **References** – Include references of clients; please provide name, address, telephone number, contact name and contact title. ***PHOTOS OF PREVIOUSLY CONSTRUCTED STRUCTURES LISTED AS REFERENCES MUST BE INCLUDED WITH THE REFERENCE DOCUMENT.*** Use the attached Reference Document (2 pages).
- **Proposal** – Submit proposal with A PICTORIAL REPRESENTATION OF THE STRUCTURE YOU ARE PROPOSING per specifications. (Also include your AWS certification, engineer certificate and your method of compliance with Title 43, Chapter 41 Official Code of Georgia regarding general contractors).
- **Pricing** – Use the attached “Fire Training Facility Proposal Form” in submitting pricing.
- **Bid Bond** – Use the attached Bid Bond document.
- **Optional Information** -- If any not covered above that the Contractor deems relevant.
- **Agreement** – CONSTRUCTION SERVICES AGREEMENT: **All submitting proposals are required to execute the Construction Services Agreement** (the “Agreement”) included in this package to indicate the willingness to comply with all terms of the Agreement and to submit the executed Agreement with the proposal. Upon award of the Project to the winning Contractor, the County will execute the Agreement. Please be advised that the proposing Contractor’s execution of the Agreement prior to the award of the Project does not constitute the acceptance of an offer by the County or otherwise bind the County in any way until such time as the County executes the Agreement.

Proposals are to be limited to thirty (30) pages single-sided (this does not include Non-Collusion, References, Bid Bond or the Executed Agreement).

PROPOSAL EVALUATIONS AND SELECTION PROCESS AND TIMELINE:

Proposals will be reviewed and one proposal will be selected that, in the opinion of the County, is most advantageous to meeting its needs. Evaluation will include pricing. Barrow County reserves the right to reject any and all proposals submitted, or where it may serve the best interest of the County, to request additional information or clarification from those submitting proposals. The County, in its sole discretion, also reserves the right to waive any formalities or technicalities relative to any or all proposals. Where two or more companies are deemed equal, the County reserves the right to make the award to one of the companies. At the County's discretion, presentations may be requested as part of the evaluation process.

ASSIGNMENT OF CONTRACTUAL RIGHTS: It is agreed that the CONTRACTOR selected will not assign, transfer, convey, or otherwise dispose of a contract that results from this invitation or his right, title, or interest in or to the same, any part thereof, without written consent by Barrow County.

DOCUMENTS: The following are included in this "Request for Proposal":

- Memo (1 Page)
- Request For Proposal (7 Pages)
- General Requirements / Specifications (5 Pages)
- Proposal Form (1 Page)
- References Form (2 Pages)
- Bid Bond (2 Pages)
- Payment Bond (3 Pages)
- Performance Bond (3 Pages)
- Notice of Award (1 Page)
- Notice to Proceed (1 Page)
- Agreement (33 Pages)
- Barrow County Code of Ethics Ordinance (30 Pages)

CONTRACTOR REQUIREMENTS:

All successful bidders must comply with Title 43, Chapter 41 of the Official Code of Georgia regarding general contractors. Please document your method of compliance with your proposal.

LOCAL VENDOR'S PREFERENCE:

Because bids awarded to Local Vendors contribute to the County's tax base and promote the local economy, the County has determined that, under certain circumstances described in this Section, Local Vendors shall be provided an additional privilege, whenever not otherwise prohibited by State law (including, but not limited to, public

works and road construction projects as contemplated by Section 1-7(6) of the County's Purchasing Policy), when bidding against non-Local Vendors.

For bids in the amount of \$25,000.00 or more, if a Local Vendor's bid shall meet all specifications and does not exceed four percent (4%) more than the lowest responsive and responsible bidder, the lowest bidding Local Vendor shall be offered three (3) business days from the opening of such bids in which to notify the Purchasing Office in writing that it agrees to match the low bid submitted by any non-Local Vendor. If such Local Vendor shall not agree to match the low bid, then the next lowest Local Vendor, if any, shall be offered within three (3) business days thereafter to notify the Purchasing Office in writing that it agrees to match the low bid submitted by any non-Local Vendor, and so on until all applicable Local Vendors are offered the opportunity to match the low bid.



Barrow County Emergency Services

Barrow Co. Winder GA

Live-Fire & Confined Space Training Facility

Fire Training Facility General Requirements:

1. The training facility shall be a four-story structure, be constructed from one-trip International Organization for Standardization (ISO) containers, and provide approximately 1,600 square feet of training space.
2. The training facility shall be constructed from (3) New 8' x 8.5' x 40' and (1) New 8' x 8.5' x 20' ISO Containers.
3. The training structure shall be in compliance with NFPA 1402 "Guide to Building Fire Service Training Centers 2012 Edition".
4. The Live-Fire Component of the training structure shall be a fully insulated secondary structure within the container unit and designed specifically for repeated Class "A" fueled training.
5. Vendor shall deliver, assemble and install the training structure on Barrow County's prepared site. Proposals shall include all costs associated with delivery and onsite install including but not limited to rental of crane, generator, etc.
6. The training structure shall be delivered and installed within 120 days upon project award and layout drawing approval.
7. The training facility exterior shall be painted by vendor at Barrow staff choice of color. MSDS sheets must be provided to Barrow staff.
8. The training facility shall contain a warranty for a period of (1) one year for workmanship & materials starting from the date of acceptance.
9. Vendor shall obtain all necessary permits required for the project.
10. Vendor shall remove all construction debris from site on daily basis.
11. Vendor shall provide Barrow County with photographs of structures previously constructed by their company.



Fire Training Facility General Requirements (Continued):

12. Vendor shall assist Barrow staff by providing the necessary information for foundation design purposes and therefore should have a registered professional engineer on staff (certification must be provided with proposal).
13. Vendor shall employ fabricators who have been American Welding Society (AWS) certified to perform the necessary welding procedures (certifications must be provided with proposal).
14. Vendor shall include a (2) two day “Train the Trainer Course” for up to 12 students within two weeks of training facility delivery. Course shall be conducted on-site by a certified fire Instructor (CFI).
15. Vendor shall provide a pictorial representation of their training structure solution with their proposal that substantially satisfies the below noted specification requirements.
16. Vendor shall coordinate with County and Fire Service representative regarding aspects of construction.
17. Vendor shall present County with as-built drawings upon completion of project.
18. Vendor shall include an electronic version of the Training Facility Operations and Maintenance Manual upon delivery.
19. The selected vendor shall prepare layout drawings and coordinate a Pre-Construction design review meeting to finalize the facility configuration/layout upon project award. This Pre-Construction meeting shall take place at the Barrow County Fire Headquarters building located at 222 Pleasant Hill Church Road NE, Winder, Ga. 30680 prior to final order being released.



Fire Training Facility Specifications:

Container Unit #1 (Live-Fire Training) – (Container 8' x 8.5' x 40')

1. Original wood flooring shall be removed within the container and replaced with non-slip diamond plate steel welded continuously to the perimeter of the container and stitch welded to the floor joists. Brick pavers shall be installed over the diamond plate steel within the Burn Room.
2. Include a fully insulated 8ft x 8ft x 20ft Modular, Enclosed, Structure Fire Burn Room utilizing Class 'A' fuel. The walls and ceiling of the Modular Burn Room shall be constructed from heavy gauge corrugated steel and high performance insulation built to withstand repeated evolutions up to 1100 degrees F.
3. Include a Ventilation Hatch operated by an exterior mounted winch system.
4. The Modular Burn Room shall include heavy gauge steel material suspension chains on the ceiling and walls.
5. Include a multi-functional pallet sized Burn Crib.
6. Include a (4) zone Temperature Monitoring System which will read the ambient air temperature and relay the information to an exterior mounted data logger.
7. Include (1) steel tube framed Fire Window with a locking hatch cover and steel wheel closure system.
8. Include (2) steel reinforced, non-latching Fire Doors.
9. Include a 4' x 8' Wall Breach Simulator that is designed to hold 2" x 4" studs spaced at 16" on center.
10. Include an OSHA compliant Guardrail System made of galvanized steel tubing and galvanized bar grating creating an active rooftop.
11. Include a Vertical Pitched Roof Cutting Prop with a 4' x 8' cutting area for vertical ventilation training.
12. Include a Behind the Wall Fire Training Prop.
13. Include an exterior stair and guardrail system.



Container Unit #2 (SCBA Confined Space Maze Training) – (Container 8’ x 8.5’ x 40’)

1. Include (2) steel tube framed Windows with a latching closure system. (1) One of the Windows shall be configured to “Denver Drill” dimensions.
2. Include OSHA compliant interior steel stairs with handrails.
3. Include a Dry Standpipe System with hose connections and sprinkler system.
4. Include a (4) Door Forcible Entry and Cutting Door System.
5. Include a Steel Panel Cutting Prop.
6. Include a Variable Angle Rebar Cutting Simulator.
7. Include a Reconfigurable SCBA Confined Maze System allowing the entire interior floor space to be reconfigured for various layouts.

Container Unit #3 (Live-Fire Training) – (Container 8’ x 8.5’ x 40’)

1. Original wood flooring shall be removed within the container and replaced with non-slip diamond plate steel welded continuously to the perimeter of the container and stitch welded to the floor joists. Brick pavers shall be installed over the diamond plate steel within the Burn Room.
2. Include a fully insulated 8ft x 8ft x 20ft Modular, Enclosed, Structure Fire Burn Room utilizing Class ‘A’ fuel. The walls and ceiling of the Modular Burn Room shall be constructed from heavy gauge corrugated steel and high performance insulation built to withstand repeated evolutions up to 1100 degrees F.
3. Include a Ventilation Hatch operated by an exterior mounted winch system.
4. The Modular Burn Room shall include heavy gauge steel material suspension chains on the ceiling and walls.
5. Include a multi-functional pallet sized Burn Crib shall be included.
6. Include a (4) zone Temperature Monitoring System which will read the ambient air temperature and relay the information to an exterior mounted data logger.
7. Include OSHA compliant interior steel stairs with handrails



8. Include (1) steel tube framed Fire Window with a locking hatch cover and steel wheel closure system.
9. Include (1) steel reinforced, non-latching Fire Door.
10. Include an OSHA compliant Guardrail System made of galvanized steel tubing and galvanized bar grating creating an active rooftop.

Container Unit #4 (Live-Fire Training) – (Container 8' x 8.5' x 20')

1. Include OSHA compliant interior steel stairs with handrails.
2. Include (1) steel reinforced, non-latching Door.
3. Include an OSHA compliant Guardrail System made of galvanized steel tubing and galvanized bar grating creating an active rooftop.
4. 8' x 10' x 10' high Rappelling Platform with (4) four 5000lb. OSHA rated anchor rings for high-angle rope rappelling training.

PROPOSAL FORM

FOR THE

RFP2015-13 FIRE TRAINING FACILITY

PROPOSALS ARE DUE BY 12:00 P.M., JUNE 4, 2015 at Barrow County Board of Commissioners
30 North Broad Street, Clerk's Office,
Winder, Georgia 30680

Having thoroughly reviewed the proposal documents and verifying existing conditions at the project site, I/we propose to deliver, assemble and install per the general requirements and specifications of this RFP2015-13 a Fire Training Facility in a lump sum amount listed below:

_____ Dollars (\$ _____)

(Company Name)

(Address)

(City, State, Zip)

(Print or Type Name)

(Signature-When signed, this proposal is legal and binding to the Barrow County Board of Commissioners and acknowledges that ALL Specifications, Terms and Conditions and/or instructions to Bidders have been read and understood).

(Date)

(Phone Number)

Included and attached is a Bid Bond in the amount of not less than 5% of the base bid.

Included in the amount above is the sum of \$_____ for providing a Performance and Payment Bond for 100% of the total base bid. Same shall be provided by a surety corporation licensed in the State of Georgia and a certified Power of attorney shall be attached.

ADDENDUM ACKNOWLEDGMENT

Addendum # 1 _____

Addendum # 2 _____

Addendum #3 _____

Addendum #4 _____

Addendum #5 _____

Addendum #6 _____

**REQUEST FOR PROPOSALS
RFP2015-13**

FIRE TRAINING FACILITY

(PHOTOS OF PREVIOUSLY CONSTRUCTED STRUCTURES LISTED AS REFERENCES
MUST BE INCLUDED WITH THIS REFERENCE DOCUMENT)

**BARROW COUNTY, GEORGIA
REFERENCES**

Project: _____ **Value:** _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Project: _____ **Value:** _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Project: _____ **Value:** _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

REFERENCES – PAGE 2
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COURTHOUSE AND JAIL CCTV SYSTEM ENHANCEMENTS

Project: _____ **Value:** _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Project: _____ **Value:** _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

Project: _____ **Value:** _____

Owner: _____

Address: _____

Contact Person: _____

Contact Title, Phone No., & Email Address: _____

BID BOND

BARROW COUNTY, GEORGIA

BIDDER (Name and Address):

SURETY (Name and Address of Principal Place of Business):

OWNER (hereinafter referred to as the "County" (Name and Address):

Barrow County, Georgia
30 North Broad Street
Winder, Georgia 30680

BID

BID DUE DATE:

PROJECT (Brief Description Including Location):

BOND

BOND NUMBER:

DATE (Not later than Bid due date):

PENAL SUM: _____

(Words)

(Figures)

IN WITNESS WHEREOF, Surety and Bidder, intending to be legally bound hereby to the County, subject to the terms printed below or on the reverse side hereof, do each cause this Bid Bond to be duly executed on its behalf by its authorized officer, agent or representative.

BIDDER

SURETY

_____(Seal)

_____(Seal)

Bidder's Name and Corporate Seal

Surety's Name and Corporate Seal

By: _____

By: _____

Signature and Title:

Signature and Title:
(Attach Power of Attorney)

Attest: _____

Attest: _____

Signature and Title:

Signature and Title:

- Note:
- (1) Above addresses are to be used for giving any notice required by the terms of this Bid Bond.
 - (2) Any singular reference to Bidder, Surety, the County or any other party shall be considered plural where applicable.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay to the County upon Default of Bidder the penal sum set forth on the face of this Bond.

2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension of that time agreed to in writing by the County) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents.

3. This obligation shall be null and void if:

3.1 The County accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension of that time agreed to in writing by the County) the executed Agreement required by the Bidding Documents and any performance and payment Bonds required by the Bidding Documents; or

3.2 All Bids are rejected by the County; or

3.3 The County fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension of that time agreed to in writing by Bidder and, if applicable, consented to by Surety when required by paragraph 5 hereof).

4. Payment under this Bond will be due and payable upon Default by Bidder within 30 calendar days after receipt by Bidder and Surety of a written Notice of Default from the County, which Notice will be given with reasonable promptness and will identify this Bond and the Project and include a statement of the amount due.

5. Surety waives notice of, as well as any and all defenses based on or arising out of, any time extension to issue a Notice of Award agreed to in writing by the County and Bidder, provided that the total time, including extensions, for issuing a Notice of Award shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.

6. No suit or action shall be commenced under this Bond either prior to 30 calendar days after the Notice of Default required in paragraph 4 above is received by Bidder and Surety or later than one year after Bid due date.

7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the State of Georgia.

8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.

9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent or representative who executed this Bond on behalf of Surety to execute, seal and deliver such Bond and bind the Surety thereby.

10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.

11. The term "Bid" as used herein includes a Bid, offer or proposal, as applicable under the particular circumstances.

12. The terms of this Bid Bond shall be governed by the laws of the State of Georgia.

PAYMENT BOND

BARROW COUNTY, GEORGIA

KNOW ALL MEN BY THESE PRESENTS THAT _____ (as CONTRACTOR, hereinafter referred to as the “Principal”), and _____ (as SURETY COMPANY, hereinafter referred to as the “CONTRACTOR’S SURETY”), are held and firmly bound unto Barrow County, Georgia (as OWNER, hereinafter referred to as the “County”), for the use and benefit of any “Claimant,” as hereinafter defined, in the sum of Dollars (\$_____), lawful money of the United States of America, for the payment of which the Principal and the Contractor’s Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the County, dated _____, which is incorporated herein by reference in its entirety (hereinafter referred to as the “CONTRACT”), for the construction of a project known as RFP2015-13 FIRE TRAINING FACILITY, (hereinafter referred to as “the PROJECT”).

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor, services and materials used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

A "Claimant" shall be defined herein as any Subcontractor, person, Party, partnership, corporation or other entity furnishing labor, services or materials used or reasonably required for use in the performance of the Contract, without regard to whether such labor, services or materials were sold, leased or rented, and without regard to whether such Claimant is or is not in privity of the Contract with the Principal or any Subcontractor performing Work on the Project.

In the event of any claim made by the Claimant against the County, or the filing of a Lien against the property of the County affected by the Contract, the Contractor's Surety shall either settle or resolve the Claim and shall remove any such Lien by bond or otherwise as provided in the Contract.

The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

IN WITNESS WHEREOF, the Principal and Contractor's Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers on this ____ day of _____, 20____.

(Name of Principal)

By: _____ (Print/Type)

_____ (Signature)

Title: _____ (SEAL)

(Signatures Continued on Next Page)

Attest:

_____ (Print/Type)

_____ (Signature)

Title: _____

Date: _____

(Name of Contractor's Surety)

By: _____ (Print/Type)

_____ (Signature)

Title: _____ (SEAL)

Attest:

_____ (Print/Type)

_____ (Signature)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)

PERFORMANCE BOND

BARROW COUNTY, GEORGIA

KNOW ALL MEN BY THESE PRESENTS THAT _____ (as CONTRACTOR, hereinafter referred to as the “Principal”), and _____ (as SURETY COMPANY, hereinafter referred to as the “CONTRACTOR’S SURETY”), are held and firmly bound unto Barrow County, Georgia (as OWNER, hereinafter referred to as the “County”), for the use and benefit of any “Claimant,” as hereinafter defined, in the sum of Dollars (\$_____), lawful money of the United States of America, for the payment of which the Principal and the Contractor’s Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the County, dated the ____ of _____, 20__ which is incorporated herein by reference in its entirety (hereinafter referred to as the “CONTRACT”), for the construction of a project known as RFP2015-13 FIRE TRAINING FACILITY, (hereinafter referred to as “the PROJECT”).

NOW THEREFORE, the conditions of this obligation are as follows:

1. That if the Principal shall fully and completely perform each and all of the terms, provisions and requirements of the Contract, including and during the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and if the Principal and the Contractor’s Surety shall indemnify and hold harmless the County from any and all losses, liability and

damages, claims, judgments, liens, costs and fees of every description, including but not limited to, any damages for delay, which the County may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any and all of the terms, provisions and requirements of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise to remain in full force and effect;

2. In the event of a failure of performance of the Contract by the Principal, which shall include, but not be limited to, any breach of default of the Contract:
 - a. The Contractor's Surety shall commence performance of its obligations and undertakings under this Bond no later than thirty (30) days after written notice from the County to the Contractor's Surety; and
 - b. The means, method or procedure by which the Contractor's Surety undertakes to perform its obligations under this Bond shall be subject to the advance written approval of the County.

The Contractor's Surety hereby waives notice of any and all modifications, omissions, additions, changes and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.

IN WITNESS WHEREOF, the principal and Contractor's Surety have hereunto affixed

their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys-in-fact, this _____ day of _____, 20____.

(Name of Principal)

By: _____ (Print/Type)

_____ (Signature)

Title: _____ (SEAL)

Attest:

_____ (Print/Type)

_____ (Signature)

Title: _____

Date: _____

(Name of Contractor's Surety)

By: _____ (Print/Type)

_____ (Signature)

Title: _____ (SEAL)

Attest:

_____ (Print/Type)

_____ (Signature)

Title: _____

Date: _____

(ATTACH SURETY'S POWER OF ATTORNEY)

NOTICE OF AWARD

TO: _____

PROJECT TITLE: RFP2015-13 FIRE TRAINING FACILITY

Barrow County Board of Commissioners (Owner) has considered the Bid submitted by you for the above described Project which was opened and read on _____, 2015. You are hereby notified that your Bid has been accepted for the Project in the amount of \$ _____ dollars.

You are required in the bid documents to furnish the required Payment Bond and Performance Bond each in the amount of one hundred percent (100%) of the Contract amount. Also, a Certificate(s) of Insurance is to be submitted as called for in the bid documents. Attached please find the fully executed Construction Agreement for your use. Upon Barrow County's receipt of the other stated documents, a NOTICE TO PROCEED will be generated.

If you fail to furnish the other stated documents within ten (10) days from the date of receipt of this document, Owner will be entitled to such rights as may be granted by law to insure Project is completed on schedule.

Please acknowledge a copy of this Notice of Award and return it to: Cindy Clack, Purchasing Agent, Barrow County Board of Commissioners, 30 North Broad Street, Winder, GA 30680.

Dated this _____ day of _____, 2015.

BARROW COUNTY BOARD OF COMMISSIONERS (OWNER)

By: _____

Randall Dowling, County Manager

ACCEPTANCE OF NOTICE OF AWARD:

RECEIPT OF THIS NOTICE OF AWARD IS HEREBY ACKNOWLEDGED:

BY: _____ TITLE: _____

DATED THIS THE _____ DAY OF _____, 2015.

NOTICE TO PROCEED

TO: _____

PROJECT DESCRIPTION: RFP2015-13 FIRE TRAINING FACILITY

You are hereby notified to commence Work in accordance with the Agreement dated _____ on or before _____ and you are to complete the Work in accordance with Agreement.

Date this ___ day of _____, 2015.

BY: _____, Randall Dowling, County Manager
BARROW COUNTY BOARD OF COMMISSIONERS (OWNER)

Receipt of the above "Notice to Proceed" is hereby acknowledged by _____
_____ this the _____ day of
_____, 2015.

BY: _____ (CONTRACTOR)
TITLE: _____

This is the Standard Construction Services Agreement of Barrow County. Any Contractor doing business with the County must enter into this Agreement.

CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement (the "Agreement") is made and entered into this ____ day of _____, 2015, by and between BARROW COUNTY, a political subdivision of the State of Georgia, acting by and through its governing authority, the Barrow County Board of Commissioners ("County"), and _____, a _____, ("Contractor"), collectively referred to as the "Parties".

W I T N E S S E T H:

WHEREAS, the County desires to employ a contractor to perform services for the construction of a Project, as defined below; and

WHEREAS, the County solicited proposals for construction of the Project pursuant to Barrow County Request for Proposal RFP2015-13, dated _____, 2015; and

WHEREAS, the Contractor submitted a complete and timely proposal and met all proposal requirements such that the County awarded RFP2015-13 to the Contractor; and

WHEREAS, the County finds that specialized knowledge, skills, and training are necessary to perform the Work contemplated under this Agreement; and

WHEREAS, the Contractor has represented that it is qualified by training and experience to perform the Work; and

WHEREAS, based upon Contractor's proposal to perform the construction services described herein, the County has selected Contractor as the successful proposer, and

WHEREAS, Contractor desires to perform the Work as set forth in this Agreement under the terms and conditions provided in this Agreement; and

WHEREAS, the public interest will be served by this Agreement; and

WHEREAS, Contractor has familiarized itself with the nature and extent of the Contract Documents, the Project, and the Work, with all local conditions and federal, state and local laws, ordinances, rules and regulations in any manner that may affect cost, progress or performance of Work, and Contractor is aware that he must be licensed to do business in the State of Georgia.

NOW THEREFORE, for and in consideration of the mutual promises contained herein and other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

Section 1. Contract Documents

The following documents, attached hereto (except as expressly noted otherwise below) and incorporated herein by reference, constitute the Contract Documents:

- A. This Agreement;
- B. Request for Proposal RFP2015-13 (maintained on file with the Purchasing Department) ;
- C. Proposal Documents from Contractor, dated _____, _____, _____, attached hereto as Exhibit “A”;
- D. Performance Bond and Payment Bond (maintained on file with the Purchasing Department);
- E. Noncollusion Affidavit of Prime Proposer, attached hereto as Exhibit “B”;
- F. Final Affidavit, attached hereto as Exhibit “C”;
- G. Alien Employment affidavits attached hereto as Exhibits “D” and “E”;
- H. Plans and specifications (included in RFP maintained on file with the Purchasing Department), with any modifications (if issued) attached as Exhibit “F” ;
- I. Key Personnel, attached hereto as Exhibit “G”;
- J. Contract Administration provisions (if issued), attached hereto as Exhibit “H”;
- K. Notice of Award, attached hereto as Exhibit “I”;
- L. Barrow County Code of Ethics;
- M. The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents if properly adopted in writing and executed by the Parties.

Section 2. Project Description; Consultant

The Project is defined generally as follows: RFP2015-13 Fire Training Facility (the “Project”).

Section 3. The Work

The Project consists of: 1) the customization of four (4) ISO containers as provided for in the Contract documents; 2) shipping of said containers, upon completion of customization, to the County; and 3) installation of said containers as provided for in the Contract Documents.

The Work includes all material, labor, insurance, tools, equipment, and any other miscellaneous items and work reasonably inferable from the Contract Documents. The term “reasonably inferable” takes into consideration the understanding of the Parties that some details necessary for completion of the Work may not be shown on the drawings or included in the specifications, but they are a requirement of the Work if they are a usual and customary component of the Work or are otherwise necessary for complete installation and operation of the Work. Contractor shall complete the Work in strict accordance with the Contract Documents. In the event of any discrepancy among the terms of the various Contract Documents, the provision most beneficial to the County, as determined by the County in its sole discretion, shall govern.

The County will issue a Notice to Proceed, which Notice to Proceed shall state the dates for beginning Work and for achieving Final Completion of Work. Work shall commence within five (5) days of County’s issuance of the Notice to Proceed.

Unless otherwise approved, the Contractor shall perform its obligations under this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

Section 4. Contract Periods; Liquidated Damages

- A. Contract Periods/Contract Term. Contractor warrants and represents that it will perform its Work in a prompt and timely manner, which shall not impose delays on the progress of the Work. The Contractor shall commence Work pursuant to this Agreement on or before a date to be specified on a written “Notice to Proceed” provided by the County (the “Commencement Date”), and the Parties intend that all Work shall be completed on or before 120 days following the commencement specified in the Notice to Proceed. Every effort will be made by Contractor to shorten this period. If the Term of this Agreement is longer than one year, the Parties agree that this Agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of the County on December 31 each calendar year of the Term, and further, that this Agreement shall automatically renew on January 1 of each subsequent calendar year absent the County’s provision of written notice of non-renewal to Contractor at least five (5) days prior to the end of the then current calendar or fiscal year, as applicable. Title to any supplies, materials, equipment, or other personal property shall remain in Contractor until fully paid for by the County.

- B. Liquidated Damages. The County and Contractor recognize that time is of the essence of this Agreement and that County will suffer financial loss if the Work is not completed in accordance with the deadlines specified in Section 4(A) above

and within the Contract Documents. The County and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the County if the Work is not completed within the specified times. Accordingly, instead of requiring any such proof, the County and Contractor agree that, as liquidated damages for delay (but not as a penalty), the Contractor shall pay to the County **One Hundred Fifty and 00/100 Dollars (\$150.00)** for each and every day that expires after the deadlines provided herein, or agreed to in writing by both Parties in a change order.

C. **Expediting Completion.** The Contractor is accountable for completing the Work within the time period provided in the Contract Documents, or as otherwise amended by a change order. If, in the judgment of the County, the Work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to insure timely completion of the entire Work or a separable portion thereof, the Contractor, when so informed by the County, shall immediately take action to increase the rate of work placement by:

- (1) An increase in working forces;
- (2) An increase in equipment or tools;
- (3) An increase in hours of work or number of shifts;
- (4) Expediting delivery of materials; and/or
- (5) Other action proposed if acceptable to County.

Within five (5) calendar days after such notice from County that the Work is behind schedule, the Contractor shall notify the County in writing of the specific measures taken and/or planned to increase the rate of progress. The Contractor shall include an estimate as to the date of scheduled progress recovery. Should the County deem the plan of action inadequate, the Contractor shall take additional steps to make adjustments as necessary to its plan of action until it meets with the County's approval.

Section 5. Contractor's Compensation; Time and Method of Payment

- A. The total amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed \$_____.__, except as outlined in Section 6 below (the "Contract Price"). The compensation for Work performed shall be based upon the Contractor's proposal attached herein as Exhibit "A".
- B. County agrees to pay the Contractor for the Work performed and costs incurred by Contractor upon certification by the County that the Work was actually performed and costs actually incurred in accordance with this Agreement. Compensation for Work performed and reimbursement for costs incurred shall be paid to the Contractor upon receipt and approval by the County of invoices setting forth in

detail the Work performed and costs incurred. Invoices shall be submitted on a monthly basis, and such invoices shall reflect charges incurred versus charges budgeted. Each invoice shall be accompanied by an Interim Waiver and Release upon Payment (or a Waiver and Release upon Final Payment in the case of the invoice for final payment) procured by the Contractor from all subcontractors in accordance with O.C.G.A. § 44-14-366.

- C. County and Contractor shall comply with the provisions of O.C.G.A. § 13-10-80. The Contractor through each invoice may request payment of no more than ninety percent (90%) of that portion of the Work completed during the term covered by such invoice until fifty percent (50%) of the Contract Price, as may be adjusted, is due and the manner of completion of the Work and its progress are reasonably satisfactory to the County. Payment for the remaining ten percent (10%) of Work completed and covered by such invoices shall be retained by the County until Final Completion. Once fifty percent (50%) of the Contract Price, as may be adjusted, is due and the manner of completion of the Work and its progress are reasonably satisfactory to the County, no additional retainage shall be withheld, except as provided below. At the discretion of the County and with the written approval of the Contractor, the retainage of each subcontractor may be released separately as the subcontractor completes his or her work.

If, after discontinuing the retention, the County 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 County, the Contractor and subcontractors shall be entitled to resume withholding retainage accordingly. At Final Completion of the Work and as the County determines the Work to be reasonably satisfactory, the County shall, within 30 days after the invoice and other appropriate documentation as may be required by the Contract Documents are provided to the County, pay the retainage to the Contractor. If at that time there are any remaining incomplete minor items, an amount equal to 200 percent of the value of each item as determined by the County shall be withheld until such item or items are completed. The reduced retainage shall be shared by the Contractor and subcontractors as their interests may appear.

The Contractor shall, within ten (10) days from its receipt of retainage from the County, pass through payments to subcontractors and shall reduce each subcontractor's retainage in the same manner as the Contractor's retainage is reduced by the County; provided, however, that the value of each subcontractor's work complete and in place equals fifty percent (50%) of his or her subcontract value, including approved change orders and other additions to the subcontract value, provided, further, that the work of the subcontractor is proceeding satisfactorily and the subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his or her work including any warranty work as the Contractor in his or

her reasonable discretion may require, including, but not limited to, a payment and performance bond. The subcontractor shall, within ten (10) days from the subcontractor's receipt of retainage from the Contractor, pass through payments to lower tier subcontractors and shall reduce each lower tier subcontractor's retainage in the same manner as the subcontractor's retainage is reduced by the Contractor; provided, however, that the value of each lower tier subcontractor's work complete and in place equals fifty percent (50%) of his or her subcontract value, including approved change orders and other additions to the subcontract value; provided, further, that the work of the lower tier subcontractor is proceeding satisfactorily and the lower tier subcontractor has provided or provides such satisfactory reasonable assurances of continued performance and financial responsibility to complete his or her work including any warranty work as the subcontractor in his or her reasonable discretion may require, including, but not limited to, a payment and performance bond.

Neither final payment nor any retained percentage shall become due until the Contractor submits to the County: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the County or County property might be responsible or encumbered (less amounts withheld by County) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance, required by the Contract Documents to remain in force after final payment, is currently in effect and will not be canceled or allowed to expire until at least 30 calendar days prior written notice has been given to the County; (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) a release or waiver of liens, claims, security interests, and encumbrances by all subcontractors and material suppliers; and (6), if required by the County, other data establishing payment or satisfaction of obligations, such as receipts, to the extent and in such form as may be designated by the County. If a subcontractor or material supplier refuses to furnish a release or waiver as required by the County, the Contractor may furnish a bond satisfactory to the County to indemnify the County against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the County all money that the County may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee, except those claims previously made in writing and identified by that payee as unsettled at the time of final application for payment.

- D. Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and like deviations from the Work described in this Agreement shall be clearly communicated to the County *before*

charges are incurred and shall be handled through change orders, as described in Section 6 below. The County shall pay the Contractor within thirty (30) days after approval of the invoice by County staff, less any retainage as described in this Section. No payments will be made for unauthorized work. Payment will be sent to the designated address by U. S. Mail only; payment will not be hand-delivered, though the Contractor may arrange to pick up payments directly from the County or may make written requests for the County to deliver payments to the Contractor by Federal Express delivery at the Contractor's expense.

Section 6. Change Orders

- A. "Change order" means a written modification of the Contract Documents, signed by the County and the Contractor.
- B. The County reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written change orders and executed by the Contractor and the County. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by the County in its sole discretion, the County shall have the right to determine reasonable terms, and the Contractor shall proceed with the changed work.
- C. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written change order duly executed on behalf of the County and the Contractor.
- D. The County Manager has authority to execute without further action of the Barrow County Board of Commissioners, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or materially increase the total amount to be paid under this Agreement, as set forth in Section 5 above. Any such change orders materially altering the terms of this Agreement, or increasing the total amount to be paid under this Agreement in excess of \$25,000.00, must be approved by the resolution of the Barrow County Board of Commissioners.

Section 7. Covenants of Contractor.

- A. Ethics Code

Contractor agrees that it shall not engage in any activity or conduct that would result in a violation of the Barrow County Code of Ethics or any other similar law or

regulation.

B. Time is of the Essence

Contractor specifically acknowledges that TIME IS OF THE ESSENCE for completion of the Project.

C. Expertise of Contractor

Contractor accepts the relationship of trust and confidence established between it and the County, recognizing that the County's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Contractor under this Agreement. The Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of County and the Project in accordance with County's requirements and procedures.

Contractor represents that it has familiarized itself with the nature and extent of the Contract Documents, the Work, work site(s), locality, and all local conditions, laws and regulations that in any manner may affect cost, progress, performance, or furnishing of the Work. Contractor further represents and agrees that it has correlated the results of all such observations, examinations, investigations, explorations, tests, reports, and studies with the terms and conditions of the Contract Documents. Contractor represents that it has given the County written notice of all conflicts, errors, or discrepancies that the Contractor has discovered in the Contract Documents, and the written resolution thereof by the County is acceptable to the Contractor.

Contractor agrees that it will perform its services in accordance with the usual and customary standards of the Contractor's profession or business and in compliance with all applicable federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project. Further, the Contractor agrees to bear the full cost of correcting the Contractor's negligent or improper Work, the negligent or improper work of its contractors and subcontractors, and any harm caused by such negligent Work.

The Contractor's duties shall not be diminished by any approval by the County of Work completed or produced; nor shall the Contractor be released from any liability by any approval by the County of Work completed or produced, it being understood that the County is ultimately relying upon the Contractor's skill and knowledge in performing the Work required under the Contract Documents.

In the event that during the course of performing the Work, the Contractor discovers or reasonably should discover that there exists in any drawings, specifications, plans, sketches, instructions, information, requirements, procedures, and other data supplied to the Contractor (by the County or any other party) that is, in the Contractor's opinion, unsuitable, improper, or inaccurate for the purposes for which the document or data is furnished, Contractor shall promptly inform the County of such inaccuracies, impropriety, issues or concerns.

D. Budgetary Limitations

Contractor agrees and acknowledges that budgetary limitations are not a justification for breach of sound principals of Contractor's profession and industry. Contractor shall take no calculated risk in the performance of the Work. Specifically, Contractor agrees that, in the event it cannot perform the Work within the budgetary limitations established without disregarding sound principals of Contractor's profession and industry, Contractor will give written notice immediately to the County.

E. County's Reliance on the Work

The Contractor acknowledges and agrees that the County does not undertake to approve or pass upon matters of expertise of the Contractor and that therefore, the County bears no responsibility for Contractor's Work performed under this Agreement. The Contractor acknowledges and agrees that the acceptance of Work by the County is limited to the function of determining whether there has been compliance with what is required to be produced under this Agreement. The County will not, and need not, inquire into adequacy, fitness, suitability or correctness of Contractor's performance. Contractor further agrees that no approval of designs, plans, or specifications by any person, body, or agency shall relieve Contractor of the responsibility for adequacy, fitness, suitability, and correctness of Contractor's Work under professional and industry standards, or for performing services under this Agreement in accordance with sound and accepted professional and industry principals.

F. Contractor's Reliance on Submissions by the County

Contractor must have timely information and input from the County in order to perform the Work required under this Agreement. Contractor is entitled to rely upon information provided by the County, but Contractor shall be required to provide immediate written notice to the County if Contractor knows or reasonably should know that any information provided by the County is erroneous, inconsistent, or otherwise problematic.

G. Contractor's Representative

_____ shall be authorized to act on Contractor's behalf with respect to the Work as Contractor's designated representative.

H. Assignment of Agreement

The Contractor covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of the County. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them, and the County shall have no obligation to them.

I. Responsibility of Contractor and Indemnification of County

The Contractor covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. The Contractor shall bear all losses and damages directly or indirectly resulting to it and/or the County on account of the performance or character of the Work rendered pursuant to this Agreement. Contractor shall defend, indemnify, and hold harmless the County, its officers, boards, commissions, elected and appointed officials, employees, servants, volunteers and agents (hereinafter referred to as "County Parties") from and against any and all claims, injuries, suits, actions, judgments, damages, losses, costs, expenses, and liability of any kind whatsoever, including but not limited to, attorney's fees and costs of defense (hereinafter "Liabilities"), which may be the result of willful, negligent, or tortious conduct arising out of the Work, performance of contracted services, or operations by the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable, regardless of whether or not the negligent act is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of the County or County Parties. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision.

In any and all claims against the County or County Parties, by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the County and County Parties shall survive expiration or termination of

this Agreement, provided that the claims are based upon or arise out of actions that occurred during the performance of this Agreement.

J. Independent Contractor

Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of the County. The Contractor agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies, and/or materials necessary to complete the Work; hiring of subcontractors, agents, or employees to complete the Work; and the payment of employees, including compliance with Social Security, withholding, and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. Any provisions of this Agreement that may appear to give the County the right to direct Contractor as to the details of the services to be performed by Contractor or to exercise a measure of control over such services will be deemed to mean that Contractor shall follow the directions of the County with regard to the results of such services only.

Inasmuch as the County and the Contractor are independent of each other, neither has the authority to bind the other to any third person or otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing signed by both parties hereto. The Contractor agrees not to represent itself as the County's agent for any purpose to any party or to allow any employee of the Contractor to do so, unless specifically authorized, in advance and in writing, to do so, and then only for the limited purpose stated in such authorization. The Contractor shall assume full liability for any contracts or agreements the Contractor enters into on behalf of the County without the express knowledge and prior written consent of the County.

K. Insurance

- (1) Requirements: The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the County Attorney to form and content. These requirements are subject to amendment or waiver if so approved in writing by the County Manager.
- (2) Minimum Limits of Insurance: Contractor shall maintain the following insurance policies with limits no less than:

- (a) Comprehensive General Liability policy of \$1,000,000 (one million dollars) combined single limit per occurrence \$2,000,000 (two million dollars) aggregate for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
 - (b) Comprehensive Automobile Liability policy (covering owned, non-owned, and hired automobiles) of \$1,000,000 (one million dollars) combined single limit per occurrence \$2,000,000 (two million dollars) aggregate for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
 - (c) Professional Liability policy of \$1,000,000 (one million dollars) for claims arising out of professional services and caused by the Contractor's errors, omissions, or negligent acts.
 - (d) Workers' Compensation policy with limits as required by the State of Georgia and Employers Liability limits of \$1,000,000 (one million dollars) per accident.
- (3) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County in writing.
- (4) Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:
- (a) General Liability and Automobile Liability Coverage.
 - (i) The County and County Parties are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the County or County Parties.
 - (ii) The Contractor's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the County or County Parties. Any insurance or self-insurance maintained by the County

or County Parties shall be in excess of the Contractor's insurance and shall not contribute with it.

- (iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the County and County Parties.
 - (iv) Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought.
 - (v) Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.
 - (vi) The insurer shall agree to waive all rights of subrogation against the County and County Parties for losses arising from work performed by the Contractor for the County.
- (b) Workers' Compensation Coverage: The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the County and County Parties for losses arising from work performed by the Contractor for the County.
- (c) Builder's Risk Insurance. Contractor shall provide a Builder's Risk Insurance Policy to be made payable to the County and Contractor, as their interests may appear. The policy amount shall be equal to 100% of the Contract price, written on a Builder's Risk "All Risk," or its equivalent. The policy shall provide, or be endorsed to provide, as follows: "The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy: i) Equipment may be delivered to the insured premises and installed in place ready for use; and ii) Partial or complete occupancy by Owner; and iii) Performance of Work in connection with construction operations insured by the Owner, by agents or lessees, or other Contractors of the Owner or Using Agency."
- (d) All Coverages:
- (i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except

after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

(ii) Policies shall have concurrent starting and ending dates.

- (5) Acceptability of Insurers: Insurance is to be placed with insurers licensed to do business in Georgia and with an A.M. Bests' rating of no less than A:VII.
- (6) Verification of Coverage: Contractor shall furnish the County with certificates of insurance and endorsements to the policies evidencing coverage required by this Section prior to the start of work. The certificate of insurance and endorsements shall be on a form utilized by Contractor's insurer in its normal course of business and shall be received and approved by the County prior to execution of this Agreement by the County. The County reserves the right to require complete, certified copies of all required insurance policies, at any time. The Contractor shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.
- (7) Subcontractors: Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming the County and County Parties as additional insureds.
- (8) Claims-Made Policies: Contractor shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Agreement, whichever is later.
- (9) County as Additional Insured and Loss Payee: The County and County Parties shall be named as additional insureds and loss payees on all policies required by this Agreement, except the County need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy.

L. Bonds

The Contractor shall provide Performance and Payment bonds with a surety licensed to do business in Georgia and listed on the Treasury Department's most current list (Circular 570 as amended). Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

M. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit

It is the policy of County that unauthorized aliens shall not be employed to perform work on County contracts involving the physical performance of services. Therefore, the County shall not enter into a contract for the physical performance of services within the State of Georgia unless:

- (1) the CONTRACTOR shall provide evidence on County-provided forms, attached hereto as Exhibits “D” and “E” (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and CONTRACTOR’s subcontractors have conducted a verification, under the federal Employment Eligibility Verification (“EEV” or “E-Verify”) program, of the social security numbers, or other identifying information now or hereafter accepted by the E-Verify program, of all employees who will perform work on the County contract to ensure that no unauthorized aliens will be employed, **or**
- (2) the CONTRACTOR provides evidence that it is not required to provide an affidavit because it is licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing as of the date when the contract for services is to be rendered.

The CONTRACTOR hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in Exhibit “D”, and submitted such affidavit to County or provided the County with evidence that it is not required to provide such an affidavit because it is licensed and in good standing as noted in subsection (2) above. Further, CONTRACTOR hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Rule 300-10-1-.02.

In the event the CONTRACTOR employs or contracts with any subcontractor(s) in connection with the covered contract, the CONTRACTOR agrees to secure from such subcontractor(s) attestation of the subcontractor’s compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor’s execution of the subcontractor affidavit, the form of which is attached hereto as Exhibit “E”, which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is licensed and in good standing as noted in subsection (2) above. If a subcontractor affidavit is obtained, CONTRACTOR agrees to provide a completed copy to the County within five (5) business days of receipt from any subcontractor.

Where CONTRACTOR is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall be authorized to conduct an inspection of the CONTRACTOR's and CONTRACTOR's subcontractors' verification process at any time to determine that the verification was correct and complete. The CONTRACTOR and CONTRACTOR's subcontractors shall retain all documents and records of their respective verification process for a period of three (3) years following completion of the contract. Further, where CONTRACTOR is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall further be authorized to conduct periodic inspections to ensure that no County CONTRACTOR or CONTRACTOR's subcontractors employ unauthorized aliens on County contracts. By entering into a contract with the County, the CONTRACTOR and CONTRACTOR's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where a CONTRACTOR or CONTRACTOR's subcontractors are found to have employed an unauthorized alien, the County Manager or his/her designee may report same to the Department of Homeland Security. The CONTRACTOR's failure to cooperate with the investigation may be sanctioned by termination of the contract, and the CONTRACTOR shall be liable for all damages and delays occasioned by the County thereby.

CONTRACTOR agrees that the employee-number category designated below is applicable to the CONTRACTOR. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.]

- _____ 500 or more employees.
- _____ 100 or more employees.
- _____ Fewer than 100 employees.

CONTRACTOR hereby agrees that, in the event CONTRACTOR employs or contracts with any subcontractor(s) in connection with this Agreement and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the CONTRACTOR will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

The above requirements shall be in addition to the requirements of State and federal law, and shall be construed to be in conformity with those laws.

N. Records, Reports and Audits

- (1) Records:

- (a) Records shall be established and maintained by the Contractor in accordance with requirements prescribed by the County with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.
 - (b) All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.
- (2) Reports and Information: Upon request, the Contractor shall furnish to the County any and all statements, records, reports, data, and information related to matters covered by this Agreement in the form requested by the County.
 - (3) Audits and Inspections: At any time during normal business hours and as often as the County may deem necessary, there shall be made available to the County for examination all records with respect to all matters covered by this Agreement. The Contractor will permit the County to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and/or data relating to all matters covered by this Agreement.

O. Confidentiality

Contractor acknowledges that it may receive confidential information of the County and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, contractors, and/or staff to likewise protect such confidential information. The Contractor agrees that confidential information it receives or such reports, information, opinions, or conclusions that Contractor creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the County. Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

Contractor acknowledges that the County's disclosure of documentation is governed by Georgia's Open Record's Act, and Contractor further acknowledges that, if Contractor submits records containing trade secret information and if Contractor wishes to keep such records confidential, Contractor must submit and attach to such records an affidavit affirmatively declaring that specific information in the records constitutes trade secrets pursuant to Article 27 of Chapter 1 of Title 10, and the Parties shall follow the requirements of O.C.G.A. § 50-18-72(a)(34) related thereto.

P. Licenses, Certifications and Permits

The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits, or the like required by any and all national, state, regional, county, local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement; provided that some permits or licenses related to the Project may be obtained as part of the Work and shall be obtained as required. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals. The Contractor shall furnish copies of all such permits, licenses, or approvals to the County within ten (10) days after issuance.

Q. Key Personnel

All of the individuals identified in Exhibit "G" are necessary for the successful completion of the Work due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team, as listed in Exhibit "G", without written approval of the County. Contractor recognizes that the composition of this team was instrumental in the County's decision to award the work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the County's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this Section shall constitute a material breach of Contractor's obligations under this Agreement and shall be grounds for termination. Contractor shall not subcontract with any third party for the performance of any portion of the Work without the prior written consent of the County. Contractor shall be solely responsible for any such subcontractors in terms of performance and compensation.

R. Authority to Contract

The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners, or similar

authorities to simultaneously execute and bind Contractor to the terms of this Agreement, if applicable.

S. Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product, and other materials prepared or in the process of being prepared for the Work to be performed by the Contractor (“Materials”) shall be the property of the County, and the County shall be entitled to full access and copies of all such Materials. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the Work shall be delivered immediately to the County. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged, or destroyed before final delivery to the County, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to the County, and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

T. Meetings

The Contractor is required to meet with the County’s personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract at no additional cost to the County. Meetings will occur as problems arise and will be coordinated by the County. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor’s option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

U. Nondiscrimination

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Contractor agrees that, during performance of this Agreement, Contractor, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Contractor agrees to comply with all applicable implementing regulations and shall include the provisions of this Section 7(U) in every subcontract for services contemplated under this Agreement.

Section 8. Covenants of the County

A. Right of Entry

The County shall provide for right of entry for Contractor to enter the respective property in order for Contractor to complete the Work.

Section 9. Warranty

A. Warranty

Except as may be otherwise specified or agreed, the Contractor shall repair or replace all defects in materials, equipment, or workmanship appearing within 1 (ONE) year from the date of Final Completion at no additional cost to the County. Further, Contractor shall provide all maintenance services, including parts and labor, for 1 (ONE) year from the date of Final Completion at no additional cost to the County. An inspection shall be conducted by the County or its representative(s) near the completion of the 1 (ONE)-year general warranty period to identify any issues that must be resolved by the Contractor. After the expiration of such warranty period, County shall be responsible for repairing issues resulting from normal wear and tear and shall be responsible for general maintenance of the equipment; however, expiration of such warranty period shall not affect the Contractor's continued liability under an implied warranty of merchantability and fitness. All other warranties implied by law, including fitness for a particular purpose and suitability, are hereby preserved and shall apply in full force and effect beyond the 1 (ONE)-year warrant period. County may purchase additional maintenance services from the Contractor upon a written proposal for such services being executed by authorized representatives of both Parties, and upon execution, such proposal for additional services shall be incorporated herein by this reference.

Section 10. Termination

A. The County may terminate this Agreement for convenience at any time upon providing written notice thereof to Contractor at least seven (7) calendar days in advance of the termination date. In the event of a termination for convenience, Contractor shall take immediate steps to terminate work as quickly and effectively as possible and shall terminate all commitments to third-parties, unless otherwise instructed by the County. Provided that no damages are due to the County for Contractor's failure to perform in accordance with this Agreement, the County shall pay Contractor for work performed to date in accordance with Section 5 herein. The County shall have no further liability to Contractor for such termination. Further, at its sole discretion, the County may pay Contractor for additional value received as a result of Contractor's efforts, but in no case shall said payment exceed any remaining unpaid portion of the Contract Price.

- B. The County may terminate this Agreement for cause if Contractor breaches any material provision of this Agreement. The County shall give Contractor seven (7) days written notice of its intent to terminate the Agreement and the reasons therefore, and if Contractor, or its Surety, fails to cure the default within that period, the termination shall take place without further notice. The County shall then make alternative arrangements for completion of the Project. The County will make no payment to the Contractor or its Surety until all costs of completing the Project are paid. If the unpaid balance of the amount due the Contractor, according to this Agreement, exceeds the cost of finishing the Project, County shall provide payment to the Contractor (or its Surety) for services rendered and expenses incurred prior to the termination date, provided that such payment shall not exceed the unpaid balance of the amount otherwise payable under this Agreement minus the cost of completing the Project. If the costs of completing the Project exceed the unpaid balance, the Contractor or its Surety will pay the difference to the County.

The County reserves the right in termination for cause to take assignment of all contracts between the Contractor and its subcontractors, vendors, and suppliers. The County will promptly notify the Contractor of the contracts the County elects to assume. Upon receipt of such notice, the Contractor shall promptly take all steps necessary to effect such assignment.

- C. If the County terminates this Agreement for cause, and it is later determined that the County did not have grounds to do so, the termination will be treated as a termination for convenience under the terms of Section 10(A) above.
- D. Upon termination, the Contractor shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to the County all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the County.
- E. The Contractor shall have no right to terminate this agreement prior to completion of the Work, except in the event of the County's failure to pay the Contractor within thirty (30) days of Contractor providing the County with notice of a delinquent payment and an opportunity to cure.
- F. The rights and remedies of the County and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

Section 11. Miscellaneous

- A. Defined Terms. Terms used in this Agreement shall have their ordinary meaning,

unless otherwise defined below or elsewhere in the Contract Documents.

(i) “Final Completion” means when the Work has been completed in accordance with terms and conditions of the Contract Documents.

- B. Complete Agreement. This Agreement, including the Contract Documents, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement, or promise relating to the subject matter of this Agreement not contained in this Agreement or the Contract Documents shall be valid and binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.
- C. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Georgia. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Barrow County, Georgia.
- D. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- E. Invalidity of Provisions; Severability. Should any article(s) or section(s) of this Agreement, or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may for any reason be hereafter declared invalid.
- F. Business License. Prior to commencement of the Work to be provided hereunder, Contractor shall apply to the County for a business license, pay the applicable business license fee, and maintain said business license during the term of this Agreement.
- G. Notices.

(1) Communications Relating to Day-to-Day Activities.

All communications relating to the day-to-day activities of the Work shall be exchanged between _____ for the County and

_____ for the Contractor.

(2) Official Notices.

All other notices, requests, demands, writings, or correspondence, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when (1) personally delivered, or (2) on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent *via* national overnight commercial carrier to the Parties at the addresses given below, or at a substitute address previously furnished to the other Parties by written notice in accordance herewith:

NOTICE TO THE COUNTY shall be sent to:

County Manager
c/o Barrow County Board of Commissioners
30 North Broad Street
Winder, Ga. 30680

NOTICE TO CONTRACTOR shall be sent to:

Future changes in address shall be effective only upon written notice being given by the County to the Contractor or by the Contractor to the County Manager via one of the delivery methods described in this Section.

- H. Waiver of Agreement. No failure by the County to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Contractor with this Agreement, and no custom or practice of the County at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect the County's right to demand exact and strict compliance by Contractor with the terms and conditions of this Agreement.
- I. Sovereign Immunity. Nothing contained in this Agreement shall be construed to be a waiver of the County's sovereign immunity or any individual's qualified good faith or official immunities.
- J. No Personal Liability. Nothing herein shall be construed as creating any individual or personal liability on the part of any County Party. No County Party shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the County or for any amount which may become due to the

Contractor or successor or on any obligation under the terms of this Agreement. Likewise, Contractor's performance of services under this Agreement shall not subject Contractor's individual employees, officers, or directors to any personal liability. The Parties agree that their sole and exclusive remedy, claim, demand, or suit shall be directed and/or asserted only against Contractor or the County, respectively, and not against any employee, officer, director, or elected or appointed official.

- K. Force Majeure. Neither the County nor Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond their respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion, or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of CONTRACTOR; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection, or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.
- L. Headings. All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Agreement, nor in any way affect this Agreement.
- M. No Third Party Rights. This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other right.
- N. Successors and Assigns. Each Party binds itself, its partners, successors, assigns, and legal representatives to the other Party hereto, its partners, successors, assigns, and legal representatives with respect to all covenants, agreements, and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, the County and the Contractor have executed this Agreement effective as of the date first above written.

[SIGNATURES ON FOLLOWING PAGE]

CONTRACTOR: _____

BARROW COUNTY, GEORGIA

By: _____

_____, _____
[NAME AND TITLE]

_____, _____
[NAME AND TITLE]

[CORPORATE SEAL]

[COUNTY SEAL]

SIGNED, SEALED, AND DELIVERED
in the presence of:

SIGNED, SEALED, AND DELIVERED
in the presence of:

Witness

Witness

Notary Public

Notary Public

[NOTARY SEAL]

[NOTARY SEAL]

My Commission Expires:

My Commission Expires:

EXHIBIT “A”

[PROPOSAL DOCUMENTS]

EXHIBIT "B"

NONCOLLUSION AFFIDAVIT OF PRIME (PROPOSER/BIDDER)

**STATE OF GEORGIA
COUNTY OF BARROW**

_____, being first duly sworn, deposes and says that:

(1) He is _____ (Owner, Partner, Officer, Representative, or Agent) of _____ (the "_____" (Proposer/Bidder)) that has submitted the attached _____ (Proposal/Bid);

(2) He is fully informed respecting the preparation and contents of the attached _____ (Proposal/Bid) and of all pertinent circumstances respecting such _____ (Proposal/Bid);

(3) Such _____ (Proposal/Bid) is genuine and is not a collusive or sham _____ (Proposal/Bid);

(4) Neither the said _____ (Proposer/Bidder) nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, included in this affidavit, has in any way colluded, conspired, connived, or agreed, directly or indirectly, with any other _____ (Proposer/Bidder), firm or person to submit a collusive or sham _____ (Proposal/Bid) in connection with the Contract for which the attached _____ (Proposal/Bid) has been submitted to or refrain from proposing in connection with such Contract, or has in any collusion or communication or conference with any other _____ (Proposer/Bidder), firm or person to fix the price or prices in the attached _____ (Proposal/Bid) or of any other _____ (Proposer/Bidder), or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against Barrow County or any person interested in the proposed Contract; and,

(5) The price or prices quoted in the attached _____ (Proposal/Bid) are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the _____ (Proposer/Bidder) or any of its agents, representatives, owners, employees, or parties in interest, included in this affidavit.

(6) _____ (Proposer/Bidder) has not directly or indirectly violated any law, ordinance or regulation related to the _____ (Proposal/Bid).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____,
20____.

Notary Public

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "C"

FINAL AFFIDAVIT

TO BARROW COUNTY, GEORGIA

I, _____, hereby certify that all suppliers of materials, equipment and service, subcontractors, mechanics, and laborers employed by _____ or any of its subcontractors in connection with the construction of _____ for Barrow County have been paid and satisfied in full as of _____, 20____, and that there are no outstanding obligations or claims of any kind for the payment of which Barrow County on the above named project might be liable, or subject to, in any lawful proceeding at law or in equity.

Signature

Title

Personally appeared before me this ____ day of _____, 20____. _____, who under oath deposes and says that he is _____ of the firm of _____, that he has read the above statement, and that to the best of his knowledge and belief same is an exact true statement.

Notary Public

[NOTARY SEAL]

My Commission Expires

EXHIBIT "D"

STATE OF GEORGIA

COUNTY OF BARROW

CONTRACTOR AFFIDAVIT AND AGREEMENT

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of Barrow County has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91.

Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period, and the undersigned contractor will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b).

Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Contractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.
Executed on _____, ____, 20__ in _____
(city), _____ (state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or
Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF _____,
20__.

Notary Public

[NOTARY SEAL]

My Commission Expires:

EXHIBIT "E"

STATE OF GEORGIA

COUNTY OF BARROW

SUBCONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with _____ (name of contractor) on behalf of Barrow County has registered with, is authorized to use, and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period, and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five (5) business days of receipt. If the undersigned subcontractor receives notice that a sub-subcontractor has received an affidavit from any other contracted sub-subcontractor, the undersigned subcontractor must forward, within five (5) business days of receipt, a copy of the notice to the contractor.

Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification
Number

Date of Authorization

Name of Subcontractor

Name of Project

Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, ____, 201__ in _____(city),
_____(state).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or
Agent

SUBSCRIBED AND SWORN BEFORE ME
ON THIS THE _____ DAY OF
_____,201__.

NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:

EXHIBIT “F”

[MODIFICATIONS TO PLANS AND SPECIFICATIONS TO BE INSERTED(IF ISSUED)]

EXHIBIT “H”

[INSERT NOTICE OF AWARD]

COUNTY OF BARROW

STATE OF GEORGIA

BARROW COUNTY ETHICS ORDINANCE

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF BARROW COUNTY, TO ESTABLISH THE CODE OF ETHICS FOR BARROW COUNTY; TO FURTHER AND INCORPORATE THE POLICIES AND LAWS OF THE STATE OF GEORGIA RELATING TO ETHICAL STANDARDS; TO CREATE THE BOARD OF ETHICS AND PROVIDE FOR ITS CONSTITUENT MEMBERSHIP, DUTIES, AND RESPONSIBILITIES; TO PROVIDE FOR THE INVESTIGATION OF ETHICS COMPLAINTS; TO PROVIDE FOR THE ENFORCEMENT OF ETHICAL STANDARDS; TO PROVIDE FOR SEVERABILITY; TO PROVIDE FOR AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Constitution of the State of Georgia, approved by the voters of the State in November of 1982, and effective July 1, 1983, provides in Article IX, Section II, Paragraph I Thereof, that the governing authority of the county may adopt clearly reasonable ordinances, resolutions and regulations;

WHEREAS, O.C.G.A. § 36-1-20 authorizes counties to enact ordinances for protection and preserving the public health, safety and welfare of the population of the unincorporated areas of the County;

WHEREAS, the governing authority of Barrow County, to wit, the Board of Commissioners, desires to exercise its authority in adopting this Ordinance;

WHEREAS, it is essential to the proper operation of democratic government that public officials of independent and impartial, that governmental decisions and policy be made in the proper channels of the governmental structure, that public office not be used for private gain other than the remuneration provided by law, and that there be public confidence in the integrity of government;

WHEREAS, the attainment of one or more of these ends is impaired whenever there exists a conflict between the private interests of an elected official or a governmental employee and his duties as such;

WHEREAS, the public interest, therefore, requires that the law protect against such conflicts of interest and establish appropriate ethical standards with respect to the conduct of elected officials and government employees in situations where conflicts exist;

WHEREAS, it is also essential to the proper operation of government that those best qualified be encouraged to serve the government. Accordingly, legal safeguards against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the government of those men and women who are best qualified to serve it;

WHEREAS, an essential principle underlying the staffing of our government structure is that its elected officials and employees should not be denied the opportunity, available to all other citizens, to acquire and retain private economic and other interests, except where conflicts with the responsibility of such elected officials and employees to the public cannot be avoided;

WHEREAS, in recognition of these goals and principles, it is the policy of the Board of Commissioners to institute, establish, promote and enforce standards of ethical conduct for all of Barrow County's officers and employees; and

WHEREAS, it is a further policy of the Board of Commissioners that the proper administration of Barrow County's government and the promotion and enforcement of standards of ethical conduct for Barrow County's officers and employees would be best served by the creation of a Barrow County Board of Ethics for the investigation of complaints related to ethical standards;

NOW, THEREFORE, BE IT ORDAINED AND RESOLVED BY THE BOARD OF COMMISSIONERS OF BARROW COUNTY, GEORGIA AS FOLLOWS:

ARTICLE ONE: GENERAL PROVISIONS

Section One. Short Title.

This Ordinance shall be known as "The Barrow County Ethics Ordinance," and may be Cited and referred to as such.

Section Two. Definitions.

For the purposes of this Ordinance, the following terms, phrases, words and their derivations shall have the meaning provided herein. When no inconsistent with the context, words used in the present tense include the future, words in the plural number included the singular number and words in the singular number include the plural number.

- (A) **"Board"** means the Barrow County Board of Commissioners.
- (B) **"Board of Ethics"** means the Barrow County Board of Ethics as formed and described herein.
- (C) **"Business Entity"** means any business of whatever nature regardless of how designated or formed, whether a sole proprietorship, partnership, joint venture, association, trust, corporation, limited liability company, or any other type of business enterprise and whether a person acting on behalf of, or as a representative or agent of, the business entity.
- (D) **"Confidential Information"** means any information that, by law or practice, is not reasonably available to the public.
- (E) **"County Official"** means the Barrow County Board of Commissioners, any member of a board, commission or authority appointed by the Board, the Chief of

Operations or his/her equivalent and any other elected or appointed officer or employee of Barrow County, including those employees who are exempt from the Barrow County Civil Service System, except to the extent prohibited by law.

- (F) **“Employee”** means all those persons employed on a regular or part-time basis by The County, as well as those persons whose services are retained under the terms of a contract with the County, including those employees who are exempt from the Barrow County Civil Service System, except to the extent prohibited by law.
- (G) **“Family”** means the spouse, parents, children, brothers and sisters, related by blood or marriage of a county official or employee.
- (H) **“Interest”** means direct or indirect pecuniary or material benefit accruing to a County Official or Employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with the County, except for such contracts or transactions which, by their terms and by the substance of their provisions, confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated. The term “interest” shall not include any remote interest. For purposes of this Ordinance, a County Official or Employee shall be deemed to have an interest in the affairs of:
- (1) His or her family;
 - (2) Any business entity in which the county official or employee is a member, officer, director, employee or prospective employee;
 - (3) Any business entity as to which the stock, legal ownership, or beneficial ownership of a county official or employee is in excess of five percent (5%) of the total stock or total legal and beneficial ownership, or which is

controlled or owned directly or indirectly by the county official or employee.

- (l) **“Official Act” or “Official Duties”** means any legislative, administrative, appointive or discretionary act of any County Official or Employee of the County or any agency, board, authority or commission thereof.

ARTICLE TWO: CODE OF ETHICS FOR COUNTY SERVICE GENERALLY AND FOR EMPLOYEES

This Article Two is intended to adopt and incorporate herein for local enforcement the ethical standards of O.C.G.A. § 45-10-1, as it may be amended from time to time.

Any person in County service shall;

Section One.

Put loyalty to the highest moral principles and to country above loyalty to person, party, or government department.

Section Two.

Uphold the Constitution, laws and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.

Section Three.

Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.

Section Four.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Section Five

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

Section Six

Make no private promises of any kind binding upon the duties of office, since a government employee has no private word that can be binding on public duty.

Section Seven.

Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Section Eight.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Section Nine.

Expose corruption wherever discovered.

Section Ten.

Uphold these principles, ever conscious that public office is a public trust.

ARTICLE THREE: CODE OF ETHICS FOR COUNTY OFFICIALS AND DEPARTMENT DIRECTORS

This Article Three is intended to adopt and incorporate herein for local enforcement the ethical standards of O.C.G.A. § 45-10-3, as it may be amended from time to time.

All County Officials and Department Directors shall:

Section One.

Uphold the Constitution, laws and regulations of the United States, the State of Georgia, the County of Barrow and all governments therein and never be a party to their evasion.

Section Two.

Never discriminate by the dispensing of special favors or privileges to anyone, whether or not for remuneration.

Section Three.

Not engage in any business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

Section Four.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Section Five.

Expose corruption wherever discovered.

Section Six.

Never solicit, accept, or agree to accept gifts, loans, gratuities, discounts, favors, hospitality or services from any person, association or corporation under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the performance of the member's official duties.

Section Seven.

Never accept any economic opportunity under circumstances where he knows or should know that there is a substantial possibility that the opportunity is being afforded him with intent to influence his conduct in the performance of his official duties.

Section Eight.

Never engage in other conduct which is unbecoming to a member or which constitutes a breach of public trust.

Section Nine.

Never take any official action with regard to any matter under circumstances in which he knows or should know that he has a direct or indirect monetary interest in the subject matter of such matter or in the outcome of such official action.

ARTICLE FOUR: SPECIFIC PROVISIONS RELATED TO CONFLICT OF INTEREST TRANSACTIONS AND DISCLOSURES

The following provisions related to conflict of interest transactions and disclosures are intended to supplement and elaborate upon the Code of Ethics set forth in Articles Two and Three above and all such provisions shall be read and interpreted in accordance therewith.

Section One. Compliance with Applicable Law.

No County Official or Employee shall engage in any activity or transaction that is prohibited by law, now existing or hereafter enacted, which is applicable to him or her by virtue of his or her office or employment. Other provisions of law or regulations shall apply when any provisions of this Ordinance shall conflict with the laws of the State of Georgia or the United States, except to the extent that this Ordinance permissibly sets forth a more stringent standard of conduct. The laws of the State of Georgia or the United States shall apply when this Ordinance is silent.

Section Two. Conflict of Interest Transactions.

- (A) No County Official or Employee shall acquire or maintain an interest in any contract or transaction if a reasonable basis exists that such an interest will be affected directly by his or her official act or action or by official acts or actions of

the County, which the County Official or Employee has a reasonable opportunity to influence, except consistent with the disclosure and abstention provisions set forth herein.

(B) Barrow County shall not enter into any contract involving services or property with a County Official or Employee or with a business entity in which the County Official or an Employee has an interest. Provided that the disclosure and abstention provisions set forth herein are followed, this paragraph shall not apply to the following:

- (1) The designation of a bank or trust company as a depository for county funds;
- (2) The borrowing of funds from any bank or lending institution which offers competitive rates for such loans;
- (3) Contracts entered into with a business which employs a consultant, provided that the consultant's employment with the business is not incompatible with this Ordinance;
- (4) Contracts for services entered into with a business which is the only available source for such goods or services; and
- (5) Contracts entered into under circumstances that constitute an emergency situation, provided that a record explaining the emergency is prepared by the Board and submitted to the Chief of Operations (or his/her equivalent) to be kept on file.

Section Three. **Financial Disclosures.**

Financial disclosures shall be governed by federal and state law as it may be amended from time to time and this Ordinance shall not require any additional financial disclosure reports to be filed other than those required by federal and state law.

Section Four. **Zoning Application Disclosures.**

All disclosures with regard to zoning applications shall be governed in their entirety by the Conflict of Interest in Zoning Actions provisions contained in O.C.G.A. § 36-67A-1, et seq., as it may be amended from time to time.

Section Five. **Disclosures Related to Submission of Bids or Proposals for County Work or Contract.**

Persons submitting bids or proposals for county work who have contributed \$250.00 or more to a County Official must disclose on their bid or proposal the name of the County Official(s) to whom the contribution was made and the amount contributed. Such a disclosure must also be made prior to a request for any change order or extension of any contract awarded to the person who submitted the successful bid or proposal.

Section Six. **Withholding of Information.**

No County Official or Employee shall knowingly withhold any information that would impair the proper decision making of the Board or any of the County's boards, agencies, authorities or departments.

Section Seven. **Incompatible Service.**

No County Official or Employee shall engage in or accept private or public employment or render service for any private or public entity, when such employment or service is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment or action in the performance of his or her official duties, unless

otherwise permitted by law and unless public disclosure is made.

Section Eight. **Unauthorized Use of Public Property.**

No County Official or Employee shall request or permit the unauthorized use of county-owned vehicles and equipment, including but not limited to computers, pagers and cellular telephones, materials or property for personal convenience or profit.

Section Nine. **Political Recrimination and Activity.**

- (A) No County Official or Employee, whether elected or appointed, shall either cause the dismissal or threaten the dismissal from any county position as a reward or punishment for any political activity. No County Official or Employee shall direct any person employed by the County to undertake political activity on behalf of such County Official or Employee, any other County Official or Employee, or any other individual, political party, group or business organization, during such time that the Employee is required to conduct county business. This section does not prohibit incidental telephone calls made for the purpose of scheduling a County Official's daily county business.
- (B) Employees of the county are encouraged to exercise their right to vote, but no employee shall make use of government time or equipment to aid a political candidate, party or cause; or use a government position to influence, coerce, or intimidate any person in the interest of a political candidate, party or cause. No employee shall be hired, promoted, favored or discriminated against with respect to employments because of his or her political opinions or affiliations.
 - (1) *Seeking elective office.* A government employee seeking elective office within the county may, upon declaring candidacy, either resign or submit a

request in writing to the Chief of Operations (or his/her equivalent) for a leave of absence without pay from the date of his or her announcement through the duration of the campaign or announcement of the election results. In the alternative, the government employee seeking elective office within the County may continue to work for the County, provided, however, that the employee shall not engage in election activities during his or her County working hours or with use of County equipment. If elected to office, the employee shall immediately, upon the date of election, be separated from employment with the county upon written request and approval of the Chief of Operations (or his/her equivalent).

- (2) *Political campaign involvement.* A government employee may not be involved in any political activity which would constitute a conflict of interest; including participation in any aspect of any political campaign for any office in Barrow County Government.
- (3) *Solicitation of contributions.* A government employee may not knowingly solicit, accept or receive political contributions from any person, to be used in support of or opposition to any candidate for office in the county.

Section Ten. **Appearance Before County Entities.**

No County Official or Employee shall appear on behalf of any private person other than himself or herself, his or her spouse, or his or her minor children, before any county agency, authority or board. However, a member of the Board of Commissioners may appear before such groups on behalf of his constituents in the course of his duties as a representative of the electorate or in the performance of public or civic obligations.

Section Eleven. Timely Payment of Debts to the County and Fiscal Responsibility.

All County Officials and Employees shall pay and settle, in a timely and prompt fashion, all accounts between them and Barrow County, including the prompt payment of all taxes and shall otherwise demonstrate personal fiscal responsibility.

Section Twelve. Solicitation or Acceptance of Gifts.

- (A) County Officials and employees shall not accept gifts, gratuities or loans from organizations, business concerns, or individuals with whom he or she has official relationships on business of the county government. These limitations are not intended to prohibit the acceptance of articles of negligible value which are distributed generally, nor to prohibit employees from accepting social courtesies which promote good public relations, or to prohibit employees from obtaining loans from regular lending institutions. It is particularly important that inspectors, contracting officers and enforcement officers guard against relationships which might be construed as evidence of favoritism, coercion, unfair advantage or collusion.
- (B) Consistent with the provisions set forth in Articles Two and Three and Section 12(A) above, there shall be no violation of this Ordinance in the following circumstances:
- (1) Meals and beverages given in the usual course of entertaining associated with normal and customary business or social functions.
 - (2) An occasional gift from a single source of \$101.00 or less in any calendar year.
 - (3) Ceremonial gifts or awards.

- (4) Gifts of advertising value only or promotional items generally distributed
To public officials.
- (5) Awards presented in recognition of public service.
- (6) Reasonable expenses of food, travel, lodging and scheduled entertainment
for a meeting that is given in return for participation in a panel or speaking
engagement at the meeting.
- (7) Courtesy tickets or free admission extended for an event as a courtesy or
for ceremonial purposes, given on an occasional basis and not to include
season tickets of any nature.
- (8) Gifts from relatives or members of the County Official or Employee's
household.
- (9) Honorariums or awards for professional achievement.
- (10) Courtesy tickets or free admission to educational seminars, educational or
information conventions or other similar events.

Section Thirteen. Disclosure of Interest.

Any member of the Board who has a financial or personal interest in any proposed legislation or action before the Board shall immediately disclose publicly the nature and extent of such interest.

Any other County Official or Employee who has a financial or personal interest in any proposed legislation or action before the Board and who participates in discussion with or gives an official opinion or recommendation to the Board in connection with such proposed legislation or action shall disclose publicly the nature and extent of such interest.

Section Fourteen. Abstention to Avoid Conflicts of Interest.

- (A) Except as otherwise provided by law, no County Official or Employee shall participate in the discussion, debate, deliberation, vote or otherwise take part in the decision-making process on any item before him in which the County Official or Employee has a conflict of interest as set forth above.
- (B) To avoid the appearance of impropriety, if any County Official or Employee has a conflict of interest or has an interest that he or she has reason to believe either violates this Ordinance or may affect his or her official acts or actions in any matter, the County Official or Employee shall immediately leave the meeting room, except that if the matter is being considered at a public meeting, the County Official or Employee may remain in the meeting room.
- (C) In the event of a conflict of interest, the County Official or Employee shall announce his or her intent to abstain prior to the beginning of the discussion, debate, deliberation or vote on the item, shall not participate in any way, and shall abstain from casting a vote.

ARTICLE FIVE: THE BOARD OF ETHICS

Section One. Creation and Composition of Board of Ethics.

There is hereby created a five-member Barrow County Board of Ethics, which shall consist of the following members:

- (A) One appointee by the Board of Directors of the Barrow County Chamber of Commerce.
- (B) One appointee selected by a majority of the voting County elected officials (not including the members of the Board of Commissioners) who shall each have one vote for such appointee:

- (C) One appointee selected by a majority of the voting employees of Barrow County (not including the County elected officials or the members of the Board of Commissioners) who are in the employ of Barrow County on a full-time basis on The effective date of the vote, which vote shall be conducted by the Director of Human Resources or his/her designee;
- (D) One appointee of the Barrow County Personnel Review Board; and
- (E) One appointee of the Barrow County Board of Commissioners, which appointee Shall be selected by a majority vote of the Board of Commissioners.

Section Two. **Appointment Procedures.**

The initial appointments of the members of the Board of Ethics shall be accomplished as follows: Within five (5) business days of the effective date of this Ordinance, the Barrow County Chief of Operations (or his/her equivalent) or his/her designee shall notify the respective appointing body or individuals of the duty to appoint or vote upon a member for placement on the Board of Ethics. The body or individuals so notified shall have thirty (30) days in which to conduct their appointment process and provide the Chief of Operations (or his/her equivalent) with the name of the appointment, or the name of the individual for whom he or she is voting as the appointee in the case of the elected officials. Within five (5) business days of receipt of the appointment information or calculation of the votes as the case may be, the Chief of Operations (or his/her equivalent) shall thereafter provide the names of the appointees to the Board of Commissioners. The Board of Commissioners shall appoint the five persons so identified at the next regular meeting of the Board of Commissioners following receipt of the names of the appointees from the Chief of Operations (or his/her equivalent).

All appointments following the expiration of the initial terms and all appointments made

In the cases of vacancies created during a particular term shall be made by the applicable body or individuals as indicated in Section One of this Article. The Chief of Operations (or his/her equivalent) or his/her designee shall notify the applicable body or individuals responsible for making an appointment at least forty-five (45) days prior to the expiration of the respective term or immediately upon knowledge of a vacancy created during a term. Upon such notification, the appointment process shall proceed as set forth above in this Section.

Section Three. **Qualifications of Members of Board of Ethics.**

A person is eligible to be appointed as a member of the Board of Ethics if the person, while serving:

- (A) Resides in the County and is a registered voter;
- (B) Is not an Employee or County Official and has not been an Employee or County Official during the three (3) months immediately preceding his or her appointment
Or be the spouse, parent, child or sibling of an Employee or County Official;
- (C) Is not an officer or employee of any political party;
- (D) Does not hold any elected or appointed office and is not a candidate for office of the United States, this State or the County and has not held any elected or appointed office during the three (3) months immediately preceding his or her appointment.

Section Four. **Terms; Vacancies.**

Members of the Board of Ethics shall each serve a two (2) year term without compensation, and shall continue to serve until their successors are appointed and qualified. The Board positions appointed pursuant to sub-sections (A), (B), and (C) of Section One of this

Article shall serve an initial full two-year term and shall thereafter serve two-year terms upon appointment. The Board positions appointed pursuant to sub-sections (D) and (E) of Section One of this Article shall serve an initial one-year term and shall thereafter serve two-year terms upon appointment. If any vacancy occurs during a term, the remaining members shall at that time choose an alternate member mutually agreed upon to temporarily serve until the position is filled by appointment as provided in Section One and Section Two to fulfill the remainder of the then existing term.

Section Five. **Removal of Member.**

The Board of Commissioners may remove a member of the Board of Ethics on the grounds of neglect of duty, misconduct in office or engagement in political activity in violation of this Ordinance. Before initiating the removal of a member from the Board of Ethics, the Board of Commissioners shall give the member written notice of the reason for the intended action and the member shall have the opportunity to reply. Thereafter, the Board of Commissioners shall afford such member an opportunity for a hearing before the Board of Commissioners.

Section Six. **Organization and Internal Operating Regulations.**

- (A) Members of the Board of Ethics shall not be compensated.
- (B) The Board of Ethics shall elect one of its members to act as Chairperson for a term of one year or until a successor is duly elected. The Board of Ethics shall also elect one of its members to act as Vice-Chairperson for the same term and to act for the Chairperson in his or her absence, because of disqualification or vacancy.
- (C) There shall be no regularly scheduled monthly or bimonthly meetings of the

Board of Ethics, however, the Board of Ethics shall meet at least once annually in January of each year for purposes of election of officers and such other business as the Board of Ethics deems proper and in accordance with this Ordinance. Meetings shall be called by majority vote or by call of the chairperson. Meetings of the Board of Ethics shall be conducted in the public hearing room utilized by the Board of Commissioners, shall be duly publicized, and shall be otherwise conducted in accordance with the open meetings requirements under state law.

- (D) Three members of the Board of Ethics shall constitute a quorum for the transaction of business. The Chairperson shall be entitled to the same voting rights as the other members of the Board of Ethics.
- (E) No official action concerning complaints shall be taken by the Board of Ethics, except by the affirmative vote of at least four (4) members of the Board of Ethics.

Section Seven. Duties and Powers.

The Board of Ethics shall have the following duties and powers:

- (A) To establish any procedures, rules and regulations governing its internal organization and conduct of its affairs, provided that such procedures, rules and regulations do not conflict with any provision contained herein.
- (B) To receive and hear complaints of violations of standards required by this Ordinance.
- (C) To make investigations as it deems necessary to determine whether any person has violated this Ordinance, but only after a least four (4) members of the Board of Ethics have voted affirmatively to conduct the investigation.
- (D) To take such action as provided in this Ordinance as deemed appropriate because of any violation of this Ordinance.

- (E) To perform any other function authorized by this Ordinance.
- (F) To issue advisory opinions as provided in this Ordinance.

Section Eight. Staffing and Expenses.

The Board of Ethics shall be provided sufficient meeting space and other reasonable supportive services to carry out its duties required under this Ordinance. The Chief of Operations (or his/her equivalent) shall designate an administration employee who shall serve as the filing clerk for the Board of Ethics and who shall be authorized to receive all filings before the Board of Ethics to publish notices of all meetings upon request of the Board of Ethics' Chairperson and to serve as the recording clerk for the Board of Ethics.

Section Nine. Counsel.

The Board of Ethics may petition the Barrow County Board of Commissioners for appointment of counsel on a case-by-case basis to assist it in carrying out its responsibilities or to act as a hearing officer. Any such appointed counsel shall be approved by the Board of Commissioners, shall perform services at an approved hourly rate, and shall serve at the joint pleasure of the Board of Ethics and the Board of Commissioners.

Section Ten. Adherence to the Ethics Ordinance.

The Board of Ethics shall be governed by and subject to this Ordinance, except as to any requirements related to financial disclosures. If a member of the Board of Ethics has a conflict of interest or must disqualify himself under this Ethics Code or by law, the remaining members shall at that time choose an alternate person mutually agreed upon to hear that matter.

Section Eleven. Prohibition Against Certain Conflicting Political Activity.

(A) **Definitions.** The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

- (1) **“Member of the Board of Ethics”** means an individual who occupies the position of a member of the Board of Ethics or a prospective member of the Board of Ethics.
- (2) **“Political Party”** means a national political party, a state political party, a political action committee, and/or any affiliated organization.
- (3) **“Election”** includes a primary, special and general election.
- (4) **“Nonpartisan Election”** means:
 - (a) An election at which none of the candidates is to be nominated or elected as representing a political party, any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and
 - (b) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a governmental ordinance, or any question or issue of similar character
- (5) **“Partisan”** when used as an adjective, refers to a political party.
- (6) **“Political Fund”** means any fund, organization, political action committee or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or

anything of value or transfers money or anything of value to any other fund, political party, candidate, organization, political action committee or other entity.

- (7) “**Contribution**” means any gift, subscription, loan, advance, deposit of money, allotment of money, or anything of value given or transferred by one person to another, including in cash, by check, by draft, through a payroll deduction or allotment plan, by pledge or promise, whether or not enforceable, or otherwise.

(B) **Permissible Activities.** All members of the Board of Ethics are free to engage in political activity to the widest extent consistent with the restrictions imposed in this Section, which restrictions are imposed for the sole purpose of ensuring neutrality and the appearance of neutrality of the Board of Ethics. Each member of the Board of Ethics retains the right to:

- (1) Register and vote in any election;
- (2) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization or of a similar organization;
- (3) Be a member of a political party or other political organization and participate in its activities to the extent consistent with law;
- (4) Attend a political convention, rally, fundraising function, or other political gathering;
- (5) Sign a political petition as an individual;
- (6) Make a financial contribution to a political party or organization;
- (7) Take an active part, as a candidate or in support of a candidate, in a

nonpartisan election;

- (8) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a governmental ordinance or any other question or issue of a similar character;
- (9) Serve as an election judge or clerk or in a similar position to perform nonpartisan duties as prescribed by state or local law; and
- (10) Otherwise participate fully in public affairs in a manner which does not materially compromise his or her efficiency or integrity as a member of the Board of Ethics or the neutrality, efficiency or integrity of the Board of Ethics.

(C) Prohibited Activities.

- (1) A member of the Board of Ethics may not take an active part in political management or in a political campaign, except as permitted by subsection of this section.
- (2) A member of the Board of Ethics shall not take part in or be permitted to do any of the following activities:
 - (a) Serve as an officer of a political party, a member of a national, state or local committee of a political party, an officer or member of a committee of a partisan political club, or be a candidate for any of these positions;
 - (b) Organize or reorganize a political party organization or political club;
 - (c) Directly or indirectly solicit, receive, collect, handle, disburse, or

account for assessments, contributions or other funds for a partisan political purpose;

- (d) Organize, sell tickets to, promote or actively participate in a fundraising activity of a candidate in a partisan election or of a political party or political club;
- (e) Take an active part in managing the political campaign of a Candidate for public office in a partisan election or a candidate for political party office;
- (f) Become a candidate for, or campaign for, an elective public office In a partisan election;
- (g) Solicit votes in support of or in opposition to a candidate for Public office in a partisan election;
- (h) Act as recorder, watcher, challenger or similar officer at the polls on behalf of a political party or a candidate in a partisan election;
- (i) Drive voters to the polls on behalf of a political party or a candidate in a partisan election;
- (j) Endorse or oppose a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material;
- (k) Serve as a delegate, alternate or proxy to a political party convention;
- (l) Address a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan

candidate for public office or political party office;

(m) Initiate or circulate a partisan nominating position.

- (3) Nothing contained in this section shall prohibit activity in political management or in a political campaign by any member of the Board of ethics connected with a nonpartisan election or a nonpartisan issue of any type.

Section Twelve. Limitation of Liability.

No member of the Board of Ethics, or any person acting on behalf of the Board of Ethics, shall be liable to any person for any damages arising out of the enforcement or operation of this Ethics Ordinance, except in the case of willful or wanton conduct. This limitation of liability shall apply to the County, the members of the Board of Ethics, the employees of the Board of Ethics and any person acting under the direction of the Board of Ethics.

Section Thirteen. Advisory Opinion.

The Board of Ethics shall render an advisory opinion based on a real or hypothetical set of circumstances when requested to do so in writing by a County Official or Employee related to that County Official's or Employee's conduct or transaction of business. Such advisory opinions shall be rendered pursuant only to a written request, fully setting forth the circumstances to be reviewed by the Ethics Board. The proceedings of the Ethics Board pursuant to this section shall be held in public to the extent consistent with state law and the opinions of the Ethics Board shall be made available to the public.

Section Fourteen. Complaints.

The Board of Ethics shall be responsible for hearing and deciding any complaints filed regarding alleged violations of this Ordinance by any person. The following procedures shall be followed when filing a complaint:

(A) Any person may file a complaint alleging a violation of any of the provisions of This Ordinance by submitting it to the Chief of Operations (or his/her equivalent), who shall immediately deliver such complaint to the Chairman of the Board of Ethics or his or her designee. A copy of such complaint shall immediately be forwarded by registered mail to the County Official or Employee against whom the complaint was filed. The complaint must be supported by affidavits based on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. All documents referred to in an affidavit(s) should be attached to the affidavits(s). The person filing the complaint shall verify the complaint by his or her signature thereon. A complaint must be filed within six (6) months of the date the alleged violation is said to have occurred, or in case of concealment or nondisclosure within six (6) months of the date the alleged violation should have been discovered after due diligence. In the event the Board of Ethics makes an initial determination that a complaint is technically deficient, the Board of Ethics shall submit a list of deficiencies to the complainant and offer the complainant the opportunity to correct the deficiencies within seven (7) days prior to the complaint being dismissed for technical deficiencies.

(B) Upon receipt of a complaint alleging misconduct, the County Official or Employee against whom the complaint was filed may reply to the complaint within thirty (30) days, unless such time for reply is extended by the Board of Ethics upon good cause shown. The response of the County Official or Employee must be supported by affidavits based on personal knowledge, must set forth such facts as would be admissible in evidence and must show

affirmatively that the affiant is competent to testify to the matters stated therein.

All documents referred to in an affidavit(s) should be attached to the affidavit(s).

- (C) Within sixty (60) days of receipt of a complaint, the Board of Ethics shall conduct an investigatory review to determine whether specific substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this Ordinance. If after reviewing the complaint the Board of Ethics by vote determines that no specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this Ordinance or determines that no violation occurred, it may dismiss the complaint without further proceedings. In the event a complaint is dismissed based upon the merits of the complaint, the complaint may not be re-filed.
- (D) If the Board of Ethics determines that specific, substantiated evidence from a credible sources(s) exists to support a reasonable belief that there has been a violation of this Ordinance, certified written notice of a hearing, containing the time, date and place of such hearing, shall be given to each party by the Board of Ethics and a formal public hearing shall be conducted and both parties afforded an opportunity to be heard. Any formal public hearing shall be conducted in accordance with the requirements of due process. The Board of Ethics is authorized to swear witnesses.
- (E) Any final determination resulting from the hearing shall include written findings of fact and conclusions of law. The Board of Ethics shall determine if clear and convincing evidence shows any violation of this Ordinance.
- (F) Nothing in this section shall be considered to limit or encumber the right of the Board of Ethics to initiate an investigation on its own cognizance as it deems

Necessary to fulfill its obligations under this Ordinance.

Section Fifteen. Disciplinary Action.

- (A) Upon a determination that an employee has violated this Ordinance, the Board of Ethics may recommend the following penalties and actions:
 - (1) Written warning or reprimand;
 - (2) Suspension without pay;
 - (3) Termination of employment; and
 - (4) Repayment to the County of any unjust enrichment.

- (B) Upon a determination that a County Official has violated this Ordinance, the Board of Ethics may recommend the following penalties and actions:
 - (1) Written warning, censure or reprimand;
 - (2) Removal from office to the extent provided by Georgia law; and
 - (3) Repayment to the County of any unjust enrichment.

- (C) Upon direction of the Board of Ethics, a petition may be filed for injunctive relief, or any other appropriate relief, in the county superior court or in any other court having proper venue and jurisdiction, for the purpose of requiring compliance with the provisions of this Ordinance. In addition, the court may issue an order to cease and desist from the violation of the Ordinance. The court also may void an official action that is the subject of the violation, provided that the legal action to void the matter was brought within ninety (90) days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public. The Court, after hearing and considering all the circumstances in the case, may grant all or part of the relief sought. However, the court may not void any official action appropriating public funds, levying taxes or providing for the

issuance of bonds, notes or other evidence of public obligation under this Ordinance.

- (D) In addition to any other remedy provided herein, upon determination of a Violation of this Ordinance, the Board of Ethics may recommend to the Board of Commissioners in writing that any contract, bid or change order that was the Subject of the violation should be cancelled or rescinded. The Board of Commissioners, however, shall retain the discretion to determine whether such a Cancellation or rescission would be in the best interest of the County and shall not be bound in any way by a recommendation of the Board of Ethics.
- (E) The Ethics Board may also forward its findings of fact and conclusions of law to the Barrow County District Attorney's Office and/or the Office of the Governor for appropriate action.

Section Sixteen. Judicial review.

- (A) Any party against whom a decision of the Board of Ethics is rendered may obtain judicial review of the decision by writ of certiorari to the superior court of the County. The application for the writ must be filed within thirty (30) days from the date of the written decision. Judicial review shall be based upon the record. No party shall be entitled to a de novo appeal.
- (B) Upon failure to timely request judicial review of the decision by writ of certiorari as provided in this section, the decision shall be binding and final upon all parties.
- (C) The appellate rights afforded hereunder shall be in lieu of any right to appeal an adverse employment action under the Barrow County Civil Service

System, to the extent the County Official or employee may be subject to the Civil Service System.

ARTICLE SIX: MISCELLANEOUS

Section One. Severability.

If any provision of this Ordinance is found by a court of competent jurisdiction to be invalid or unconstitutional, or if the application of this Ordinance to any person or circumstances is found to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid or unconstitutional provision or application.

Section Two. Repealer

All laws, resolution, or ordinances or parts thereof that conflict with the provisions of this Ordinance are repealed.

Section Three. Effective Date.

The effective date of this Ordinance shall be July 1, 2004.

AMENDED:

Article Five, Section 1, Subparagraph (A) January 25, 2005

Article Five, Section 6, Subparagraph (C) January 8, 2008