



## MEMORANDUM

**To:** Parties Interested in RFP2026-09  
**From:** Cindy Clack, Purchasing Manager  
**Date:** November 5, 2026  
**Re:** RFP2026-09 – Design-Build Contractor Services – Splash Pad at Victor Lord Park

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RFP2026-09 is attached for your consideration. Anyone accessing this Request for Proposal from the Barrow County website, [www.barrowga.org](http://www.barrowga.org), is responsible to ensure 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 ensure an awareness of any updates.***

Please ensure proposals are submitted exactly as specified in the RFP. If you have any questions, please submit them in writing as called for in the RFP.

Thank you.



## **REQUEST FOR PROPOSALS RFP2026-09**

**DESIGN-BUILD CONTRACTOR SERVICES –  
SPLASH PAD at VICTOR LORD PARK**

**BARROW COUNTY, GEORGIA  
NOVEMBER 5, 2025**

**DATE OF OPENING: DECEMBER 4, 2025**

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

## REQUEST FOR PROPOSALS

RFP2026-09

### DESIGN-BUILD CONTRACTOR SERVICES – SPLASH PAD at VICTOR LORD PARK BARROW COUNTY BOARD OF COMMISSIONERS

Date: November 5, 2025

**PURPOSE:** The purpose of this request is to provide qualified contractors or companies (hereafter called “vendors”) with sufficient information to enable them to submit a uniform proposal for the County’s review for design-build contractor service – splash pad at Victor Lord Park (VLP) (hereafter called “project”) required by the Barrow County Board of Commissioners. Also, to set forth a systematic method that will be fair and impartial to all parties concerned and to generate a response that can be equally evaluated by the County. This proposal will be evaluated and governed according to the Barrow County Purchasing Policy.

**GENERAL:** Barrow County Board of Commissioners is interested in entering into an agreement with a vendor that would provide services associated with design-build contractor services -- splash pad at VLP for the Barrow County Parks & Recreation Department.

**OBJECTIVE:** Barrow County Board of Commissioners desires to have design-build contractor services -- splash pad at VLP for the Barrow County Parks & Recreation Department located at 175 Second Street, Winder, Ga. 30680.

**COMPLIANCE WITH THE REQUEST FOR PROPOSAL (RFP):** Each prospective vendor must comply with all requirements of this RFP. Notice is hereby given to all vendors 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. The vendor’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:** Vendor shall provide a fixed price (lump sum) proposal to the County for design-build contractor services—splash pad at VLP.

**TERM:** It is intended that Barrow County Board of Commissioners will enter into an agreement with a vendor beginning at time of execution by Barrow County Board of Commissioners with project to be completed by May 31, 2026.

**RIGHT TO SUBMITTED MATERIALS:** All responses, inquires, or correspondence relating or in reference to this schedule, exhibit, and other documentation by the vendor shall be properly identified as to vendor and will become the property of Barrow County when received. Barrow County will not be responsible for any expenses incurred by any Vendor 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 Vendor even if the Board of Commissioners has formally accepted a recommendation

**CLARITY AND THOROUGHNESS:** Barrow County must determine which vendor best meets its immediate and long-term objectives. It is the proposing vendor'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.

**PRE-SUBMITTAL CONFERENCE:**

Barrow County Parks & Recreation will offer an on-site **MANDATORY** pre-submittal conference which will be held at the **Barrow County Parks & Recreation Department Offices, 175 2<sup>nd</sup> Street, Winder, GA 30680 on Thursday, November 20, 2025 at 2:00 p.m.** Proposers **must** attend to be eligible to submit a Response.

**INQUIRIES:** Proposing vendors, 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 Manager (email: [cclack@barrowga.org](mailto:cclack@barrowga.org)). Deadline for questions is Friday, November 21, 2025 at 12:00 noon “Local Time”.** All questions submitted by this date will be answered and posted as an addendum on the website [www.barrowga.org](http://www.barrowga.org).

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

- Issue Request for Proposal -----November 5, 2025
- Mandatory Pre-Submittal Conference---November 20, 2025  
(2:00 p.m.“Local Time”)
- Deadline for Questions -----November 21, 2025  
(12:00 Noon “Local Time”)
- Proposal Due Date -----December 4, 2025  
(2:00 p.m. “Local Time”)
- Proposal Opening -----December 4, 2025  
(2:00 p.m. “Local Time”)

**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 **“RFP2026-09 Design-Build Contractor Services—Splash Pad at Victor Lord Park”**. 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 **“RFP2026-09 Design-**

**Build Contractor Services – Splash Pad at Victor Lord Park".** 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

Abril Olivas, County Clerk's Office

30 North Broad Street

Winder, GA 30680

Sealed proposals will be accepted in the Clerk's Office, no later than **2:00 PM “Local Time” Thursday, December 4, 2025.** Proposals will be opened in the Commission Meeting Room on the Second Floor at 30 North Broad Street, Winder, Ga. 30680 at 2:00 PM “Local Time” Thursday, December 4, 2025. All proposals will be evaluated and the project will be awarded, if it is awarded, within 60 days of the proposal opening.

**LIABILITY AND RISK MANAGEMENT:** See attached Agreement for Requirements.

**PROPOSAL FORMAT:** Vendor should submit an original (unbound) and four (4) copies of the requested proposal. The proposal shall consist of the following in the order shown:

- All pages are to be numbered sequentially, single-sided and closely follow the requested formats. Page limits to the Proposal Response are as follows:
- **Mandatory** - Letter of Interest and Minimum Qualifications maximum limit of two (2) pages typed and formatted to letter size (8.5" x 11") paper.
- Electronic Submittals ***are not*** allowed.
- **Pricing** – Use the attached “Design-Build Contractor Services—Splash Pad at Victor Lord Park Proposal Form” in submitting a lump sum price to County.
- **References** – Please complete the attached References Document.
- **Agreement** – All submitted proposals are to include an **executed** Agreement (the “Agreement”) included in this package to indicate a willingness to comply with all terms of the Agreement. Upon award of the Project to the winning vendor, the County will execute the Agreement. Please be advised that the proposing vendor'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. ***(Exhibits E, G.1, J and signature page must be executed. Please leave date of agreement blank).***

- Proposer Responsibility to Provide Full Response It is the Proposer's responsibility to respond in a manner that does not require interpretation or clarification by Barrow County Parks & Recreation.
- The Proposer is to provide all requested materials, forms, and information. The Proposer is to ensure the materials submitted properly and accurately reflect the Proposer's offering.
- During scoring and evaluation (prior to interviews if any), Barrow County Parks & Recreation will rely upon the submitted materials and shall not accept materials from the Proposer after the Proposal Response deadline.

**SELECTION PROCESS:**

All Responses that meet qualifications will move forward to be reviewed by the Response Committee. The Proposal Evaluation Response Committee will evaluate proposals using the criteria below. Responses will be evaluated, scored, and ranked.

Category Points	100
Experience and Qualifications	50
Selection and Pricing	30
References	20

**DOCUMENTS:** The following are included in this “Request for Proposal”:

- Memo (1 Page)
- Request For Proposal (6 Pages)
- Scope of Work (2 Pages)
- Overall VLP Site Plan – For Reference Only (1 Page)
- VLP Sanitary Sewer Plan – For Reference Only (1 Page)
- VLP Site Plan Splash Pad Area – For Reference Only (1 Page)
- VLP Water Distribution Plan Splash Pad – For Reference Only (1 Page)
- VLP Splash Pad Satellite Photo (1 Page)
- Proposal Form (1 Page)
- References Document (1 page)
- Agreement (69 Pages)
- Ethics Ordinance (30 Pages)

**Total Pages: 115**

**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 compensation. 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, at its sole discretion, also reserves the right to waive any informalities or technicalities relative to any or all proposals. Where two or more vendors are deemed equal, the County reserves the right to make the award to one of the vendors. At the County's discretion, presentations may be requested as part of the evaluation process.

**ASSIGNMENT OF CONTRACTUAL RIGHTS:** It is agreed that the vendor 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.

## **RFP2026-09 Splashpad at Victor Lord Park Scope of Work**

### **Project Components**

The selected contractor shall include, at minimum, the following elements in their proposed scope:

#### **1. Design & Engineering**

- Site assessment, survey, and verification of utilities.
- Conceptual design options for Owner review and approval.
- Final stamped construction drawings, including:
  - Layout of splash pad features
  - Mechanical and water circulation systems
  - Drainage, grading, erosion control, and utility connections
  - Electrical and control systems
  - Shade structures, seating, fencing (if applicable)
  - Concrete and surfacing specifications
- Compliance with ADA, ASTM, CPSC, NSF/ANSI 50, and all applicable state/local codes.
- Include geotechnical investigation, stormwater compliance, and hydraulic calculations.
- Permitting of civil plans
- Permitting of any structures

#### **2. Water Play Features & Equipment**

- Provide high-quality, commercial-grade splash features suitable for public use.
- Splash pad area should be a minimum of 2,500 sq. ft.
- Include both ground sprays and above-ground interactive elements.
- All equipment shall be corrosion-resistant and vandal-resistant.
- Provide detailed equipment lists and warranties (minimum 1-year labor, 5-year parts preferred).
- Specify manufacturer approval (i.e. Vortex, Water Odyssey, etc.) or require pre-approved equals.

#### **3. Mechanical & Water Treatment System**

- Design a recirculating system with filtration and chemical treatment.
- Provide pump house or underground vault, control panels, surge tanks, and all required components. Include automated systems for flow control, sequencing, and water conservation.

#### **4. Site Construction & Installation**

- Locate utilities for connection

- Excavation, grading, and sub-base preparation.
- Installation of all splash pad features, plumbing, electrical, drainage, and surfacing.
- Installation of mechanical system, vaults, and service enclosures.
- Backfilling, concrete flatwork, and site restoration.
- Erosion control BMPs, inspection milestones, and minimum concrete reinforcement standards. Coordinate with other park improvements and ADA paths.
- Construction materials inspections and testing

## **5. Additional Amenities**

- Restroom facilities to include men's, women's, and a single family restroom.
- Shade structures, seating/benches, perimeter fencing or barriers.
- Landscaping and adjacent hardscape integration.
- Drinking fountain/bottle filler, trash receptacles, and signage

## **6. Testing, Training & Closeout**

- Full system inspection, leak testing, and operational testing.
- Staff training on operation and maintenance procedures.
- Provide as-built drawings, O&M manuals, and warranty documentation in CAD/PDF formats
- Start-up assistance for first season
- Punch list close-out

## **Deliverables**

- Conceptual and final design drawings
- Construction schedule and milestones
- Product data sheets and warranties
- Operations and maintenance manuals
- As-built plans upon project completion
- Project schedules with milestones
- Warranty logs

## **Owner Responsibilities (If Applicable)**

Barrow County Parks and Recreation will provide the following:

- Site access for construction equipment
- Final design approval prior to construction



Site plan showing the layout of a residential area with various streets and property boundaries. The plan includes five sanitary sewer lines labeled as follows:

- MH 1-5**: STA=11+46.96, N=1446981.0245, E=2433287.8612. This line is shown in the upper central part of the map.
- MH 1-6**: STA=13+24.88, N=1446842.4947, E=2433399.5070. This line is shown in the lower left part of the map.
- MH 1-11**: STA=11+00.00, N=1446981.0245, E=2433287.8612. This line is shown in the upper left part of the map.
- SANITARY SEWER LINE #1**: This line is shown in the middle left part of the map, with stations 12+00.00, 13+00.00, and 0+00.00.
- SANITARY SEWER LINE #5**: This line is shown in the middle part of the map, with station 1+21.40.

The plan also includes property lines, street names like 948, 946, 944, 942, 950, 952, 954, 956, 958, and 960, and various building footprints. A scale bar at the bottom right indicates a scale of 1" = 50', and a north arrow is also present.

**For Reference Only**

**PROFILE VIEW OF SSWR LINE #5**

**Site Plan Labels:**

- MH 1-5:** STA=11+46.96, N=1446981.0245, E=2433287.8612
- MH 1-6:** STA=13+24.88, N=1446842.4947, E=2433399.5070
- SANITARY SEWER LINE #1:** 11+00.00, 12+00.00, 13+00.00, 14+00.00, 15+00.00
- SANITARY SEWER LINE #5:** 1+00.00, 1+21.40
- SANITARY SEWER LINE #10:** 948, 950, 952, 954, 956

**Profile View Labels:**

- MH 1-6:** STA:13+24.88, RIM:951.28, INV IN:940.79, INV OUT:941.12, RIM OUT:940.59, 8" PVC TO:MH 1-5
- CO 5-1:** STA:1+21.40, RIM:950.56, INV OUT:942.01, 6" TO:MH 1-6
- PROPOSED GRADE:** 24" HDPE A-13 TO A-15 INV:937.52
- EXISTING GRADE:** 121.40' of 6" DIP @ 1.00%

**Scale:** 1" = 50' H, 1" = 5' V

**Scale Bar:** 0 50 100 150

**Text:** SCALE: 1" = 50'

# LÖSE DESIGN

SPACES FOR LIFE.

WING AND THE DESIGN SHOWN IS THE PROPERTY  
OF THE ARCHITECT. REPRODUCTION, COPYING, OR USE OF THE  
DESIGN WITHOUT THEIR WRITTEN CONSENT IS PROHIBITED.  
INFRINGEMENT IS SUBJECT TO LEGAL ACTION.



# VICTOR LORD PARK EXPANSION SITE DEVELOPMENT PLAN

BARROW COUNTY BOARD OF COMMISSIONERS

## **ISSUE FOR BID**

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## SANITARY SEWER PLAN AND PROFILE

ECT NO. 57	DATE 11/01/2018
N BY	SCALE 1" = 50'
KED BY	
IT NO.	



**Know what's below.  
Call before you dig.**

## C5.04



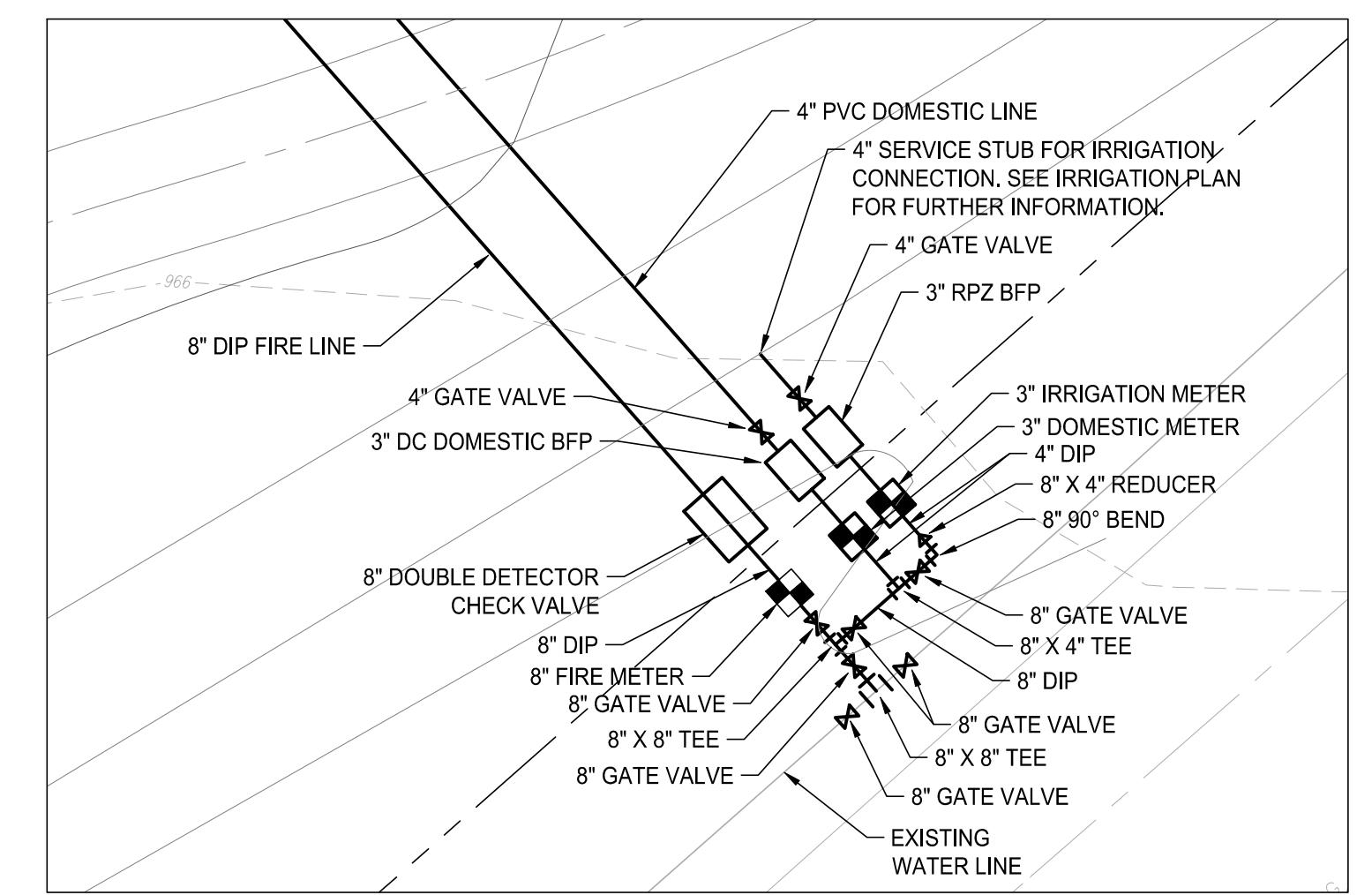
For Reference Only

SEE WATER CONNECTION DETAIL 1 THIS SHEET

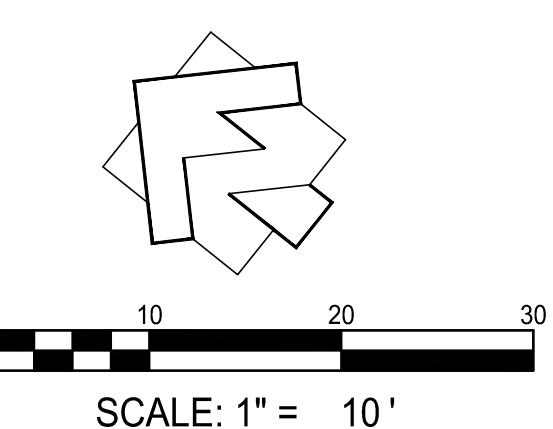
EXISTING FIRE HYDRANT

FIRETOWER ROAD

0

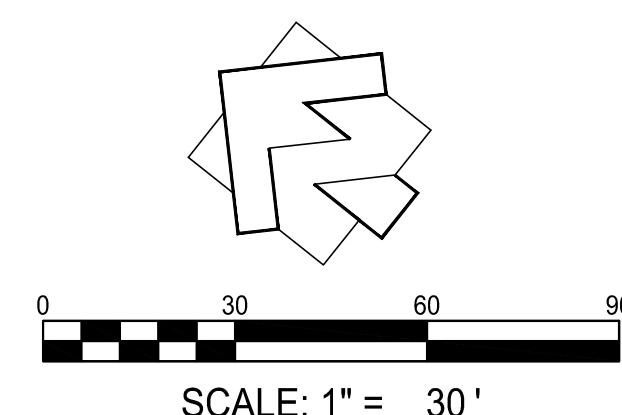


## 1 WATER CONNECTION DETAIL



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SCALE: 1" = 10'



SCALE: 1" = 30'



# VICTOR LORD PARK EXPANSION SITE DEVELOPMENT PLAN

# BARROW COUNTY BOARD OF COMMISSIONERS

## ISSUE FOR BID

# WATER DISTRIBUTION PLAN

ECT NO. 57	DATE 11/01/201
W/N BY	SCALE 1" = 40'
CHED BY	
T NO.	

## C5.12

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## **PROPOSAL FORM**

### **RFP2026-09 Design-Build Contractor Services – Splash Pad at Victor Lord Park**

**PROPOSALS ARE DUE BY 2:00 P.M. “Local Time” December 4, 2025**  
**to Barrow County Board of Commissioners**  
**Abrial Olivas, County Clerk’s Office**  
**30 North Broad Street**  
**Winder, Georgia 30680**

Having thoroughly reviewed the RFP documents, I/we propose to deliver, assemble and install per the scope of work of this Request for Proposal (RFP Design-Build Contractor Services – Splash Pad at Victor Lord Park. We offer the following project cost listed below:

**Total Cost of Project**

\_\_\_\_\_  
(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 Proposers have been read and understood).

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Phone Number)

\_\_\_\_\_  
(Email Address)

### **ADDENDUM ACKNOWLEDGMENT**

Addendum # 1 \_\_\_\_\_

Addendum # 2 \_\_\_\_\_

Addendum #3 \_\_\_\_\_

Addendum #4 \_\_\_\_\_

Addendum #5 \_\_\_\_\_

Addendum #6 \_\_\_\_\_

REQUEST FOR PROPOSALS  
RFP2026-09  
DESIGN-BUILD CONTRACTOR SERVICES – SPLASH PAD at VICTOR LORD PAEK

REFERENCES – AGENCIES YOU HAVE PROVIDED SIMILAR SERVICES (PROVIDE 3 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: \_\_\_\_\_  
\_\_\_\_\_

## **DESIGN-BUILD CONSTRUCTION SERVICES AGREEMENT**

### **SPLASH PAD AT VICTOR LORD PARK (RFP2026-09)**

This Design-Build Construction Services Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date"), by and between **BARROW COUNTY, GEORGIA**, a political subdivision of the State of Georgia, acting by and through its governing authority, the Barrow County Board of Commissioners ("County") and \_\_\_\_\_ [INSERT FULL LEGAL NAME OF CONTRACTOR], a \_\_\_\_\_ [INSERT STATE WHERE CONTRACTOR ENTITY WAS FORMED (E.G., GEORGIA) AND THE TYPE OF ENTITY (E.G., CORPORATION, LIMITED LIABILITY COMPANY, PARTNERSHIP, ETC.)] (hereinafter referred to as the "Contractor"), collectively referred to herein as the "Parties".

#### **W I T N E S S E T H:**

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

**WHEREAS**, the County solicited proposals for design and construction of the Project pursuant to the Request for Proposals, dated November 5, 2025, attached hereto as "**Exhibit A**" and incorporated herein by reference; and

**WHEREAS**, the Contractor submitted a complete and timely proposal, attached hereto as "**Exhibit B**" and incorporated herein by reference, and met all proposal requirements such that the County awarded Project Number **RFP2026-09 Design-Build Contractor Services – Splash Pad at Victor Lord Park** to the Contractor; and

**WHEREAS**, the County finds that specialized knowledge, skills, and training are necessary to perform the Work (defined below) 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, 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, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance

of Work, and Contractor is aware that it must be licensed to do business in the State of Georgia.

**NOW THEREFORE**, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements 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**

This Agreement along with the following documents, attached hereto (except as expressly noted otherwise below) and incorporated herein by reference, constitute the “Contract Documents”:

- A. Request for Proposals, attached hereto as “**Exhibit A**”;
- B. Contractor Proposal Documents dated \_\_\_\_\_, 2025, attached hereto as “**Exhibit B**”;
- C. Scope of Work, attached hereto as “**Exhibit C**”;
- D. Any required Performance Bond and/or Payment Bond, attached hereto collectively as “**Exhibits D.1 and D.2**”;
- E. Noncollusion Affidavit of Prime Proposer, attached hereto as “**Exhibit E**”;
- F. Final Affidavit, attached hereto as “**Exhibit F**”;
- G. Alien Employment affidavits, attached hereto as “**Exhibits G.1 and G.2**”;
- H. Plans, drawings and specifications, attached hereto collectively as “**Exhibit H**”;
- I. Additional Payment/Retainage Requirements, attached hereto as “**Exhibit I**”;
- J. Key Personnel, attached hereto as “**Exhibit J**”;
- K. Contract Administration provisions (if issued), attached hereto as “**Exhibit K**”;
- L. General Conditions (if issued), attached hereto as “**Exhibit L**”;
- M. Supplementary Conditions (if issued), attached hereto as “**Exhibit M**”;
- N. Notice of Award, attached hereto as “**Exhibit N**”;
- O. Barrow County Code of Ethics (codified in the official Code of Barrow County);
- P. The following, which may be delivered or issued after the Effective Date of the

Agreement and are not attached hereto: All Change Orders (defined in Section 6 below), other 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; Contract Administrator**

- A. Project. A general description of the Project is as follows: design and construction of a new splash pad at the County's Victor Lord Park (the "Project").
- B. Contract Administrator. The Contract Administrator for this Agreement shall be: Zach Churchill ("Director of Parks and Recreation").

## **Section 3. The Work**

- A. The Work. The Work to be completed under this Agreement (the "Work") includes, but shall not be limited to, the work described in the Scope of Work provided in "**Exhibit C**", attached hereto and incorporated herein by reference. The Work includes all material, labor, insurance, tools, equipment, machinery, water, heat, utilities, transportation, facilities, services 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 proper execution and completion of the Work may not be shown on the drawings or included in the specifications or Scope of Work, but they are a requirement of the Work if they are a usual and customary component of the Work or are otherwise necessary for proper and 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.
- B. Notice to Proceed. The County will issue a Notice to Proceed, which Notice to Proceed shall state the dates for beginning Work ("Commencement Date") and the Expected Date of Final Completion (defined in Section 4(A) below). 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.
- C. Plans; Drawings and Specifications. The plans, drawings and specifications provided in "**Exhibit H**", attached hereto, are hereby acknowledged by the Parties and incorporated herein by reference.
- D. Shop Drawings, Product Data, and Samples. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents, but must be in conformity therewith. The purpose of their submittal is to demonstrate, for those

portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

- (i) “Shop Drawings” are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.
- (ii) “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.
- (iii) “Samples” are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

The Contractor shall review for compliance with the Contract Documents and shall approve and submit to the Contract Administrator Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the County or of separate contractors. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Contract Administrator without action. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved in writing by the Contract Administrator, provided that submittals that are not required by the Contract Documents may be returned without action.

The Work shall be completed in accordance with approved submittals, provided that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Contract Administrator’s approval of Shop Drawings, Product Data, Samples or similar submittals, unless the Contractor has specifically informed the Contract Administrator in writing of such deviation at the time of submittal and (1) the Contract Administrator has given written approval to the specific deviation as a minor change in the Work, or (2) a written Change Order has been issued and approved to authorize the deviation. The Contract Administrator’s approval of the Shop Drawings, Product Data, Samples or similar submittals shall not relieve the Contractor of responsibility for errors or omissions therein.

The Contractor shall, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, direct the Contract Administrator's attention to any additional revisions included other than those requested by the Contract Administrator on previous submittals. In the absence of such written notice drawing the Contract Administrator's attention to such additional revisions, the Contract Administrator's approval of a resubmission shall not apply to such additional revisions.

The Contractor shall maintain at the Project site(s) one record copy of the Contract Documents in good order and marked currently to record field changes and selections made during construction and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the County and Contract Administrator and shall be delivered to the Contract Administrator or County upon completion of the Work.

**Section 4. Contract Term; Liquidated Damages; Expedited Completion; Partial Occupancy or Use**

- A. Contract Term. The term of this Agreement ("Term") shall commence on the Effective Date and continue until the earlier of the Expected Date of Final Completion or the proper termination and non-renewal of this Agreement (provided that certain obligations, including but not limited to Warranty obligations, will survive termination/expiration of this Agreement). 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 within five (5) business days of the Commencement Date provided by the County and the Parties intend that all Work shall be completed on or before **May 31, 2026** (the "Expected Date of Final Completion"). Every effort will be made by Contractor to shorten this period. If the Term of this Agreement continues beyond the calendar year in which this Agreement is executed, 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) calendar days prior to the end of the then current calendar year. Title to any supplies, materials, equipment, or other personal property shall remain in Contractor until fully paid for by the County.
- B. Time is of the Essence; Liquidated Damages. Contractor specifically acknowledges 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 the County **Five Hundred Dollars (\$500.00)** for each and every calendar day that expires after a deadline provided in the Contract Documents.

C. Expediting Completion. The Contractor is accountable for completing the Work within the time period provided in the Contract Documents. 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 ensure 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 and such approval is provided in writing by the County.

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

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

- A. Maximum Contract Price. The total amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed \$ \_\_\_\_\_ (the “Maximum Contract Price”), except as outlined in Section 6 below. The compensation for Work performed shall be based upon flat fee, and Contractor represents that the Maximum Contract Price is sufficient to perform all of the Work set forth in and contemplated by this Agreement.
- B. Additional Payment Requirements. Additional payment requirements are included as “**Exhibit I**”, attached hereto and incorporated herein by reference.
- C. Material Deviations. 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 written Change Orders, as described in Section 6 below. Whenever the Contract Administrator considers it necessary or advisable, it shall have authority to require inspection or testing of the Work. However, neither this authority of the Contract Administrator nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Contract Administrator to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- D. Taxes. The County is a governmental tax-exempt entity and shall not be responsible for paying any taxes on any materials or services provided for herein. At Contractor’s request, County shall provide evidence of its tax-exempt status. To the extent, if any, that the County furnishes tangible personal property to Contractor for incorporation into the Project, Contractor shall be responsible for paying the amount of tax owed for such tangible personal property.

## **Section 6. Change Orders**

- A. Change Order Defined. A “Change Order” means a written modification of the Contract Documents, signed by representatives of the County and the Contractor with appropriate authorization.
- B. Right to Order Changes. 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. Change Order Requirement. 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. Authority to Execute Change Order. 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 Maximum Contract Price, as set forth in Section 5(A) above. Any such Change Orders materially altering the terms of this Agreement, or any Change Order increasing the price by more than twenty-five thousand dollars (\$25,000.00), must be approved by resolution of the Barrow County Board of Commissioners.
- E. Minor Changes in the Work. The Contract Administrator will have the authority to order minor changes in the Work not involving adjustment in the Maximum Contract Price or extension of the Term and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order signed by the Contract Administrator. The Contractor shall carry out such written orders promptly. If the minor changes subsequently may affect adjustments in the Maximum Contract Price or the Term, the changes shall then be converted to a written Change Order by the requesting Party.

## **Section 7. Covenants of Contractor**

- A. Ethics Code; Conflict of Interest. 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. Contractor certifies that to the best of his knowledge no circumstances exist which will cause a conflict of interest in performing the Work. Should Contractor become aware of any circumstances that may cause a conflict of interest during the Term of this Agreement, Contractor shall immediately notify the County. If the County determines that a conflict of interest exists, the County may require that Contractor take action to remedy the conflict of interest or terminate the Agreement without liability. The County shall have the right to recover any fees paid for services rendered by Contractor when such services were performed while a conflict of interest existed, if Contractor had knowledge of the conflict of interest and did not notify the County within five (5) business days of becoming aware of the existence of the conflict of interest.
- B. 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 this Agreement at no additional cost to the County.

Meetings will occur as problems arise and will be coordinated by the County or the Contract Administrator. The Contractor will be given a minimum of three (3) full business 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 failure to make a good faith effort to resolve problems, may result in termination of the contract for cause.

- 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, and Contractor shall employ only persons duly qualified in the appropriate area of expertise to perform the Work described in this Agreement.
- D. Proper Execution by 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 federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project, including, but not limited to, O.C.G.A. § 50-5-63, any applicable records retention requirements, and Georgia's Open Records Act (O.C.G.A. § 50-18-70, *et seq.*). Any additional work or costs incurred as a result of error and/or omission by Contractor as a result of not complying with the Contract Documents or not meeting the applicable standard of care or quality, including but not limited to those of repeated procedures and compensation for the Contract Administrator's services or expenses, will be provided at Contractor's expense and at no additional cost to the County. This provision shall survive termination of this Agreement.

It is the Contractor's responsibility to be reasonably aware of all applicable laws, statutes, ordinances, building codes, and rules and regulations. If the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Contract Administrator and the County in writing of any portions of the Contract Documents that are at variance with the applicable laws, statutes, ordinances, building codes, and rules and regulations.

The Contractor's duties shall not be diminished by any approval by the County or Contract Administrator of Work completed or produced; nor shall any approval by the County or Contract Administrator of Work completed or produced release the Contractor from any liability therefor, 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.

Organization of the specifications into divisions, sections and articles, and arrangement of drawings shall not control the Contractor in dividing the Work among subcontractors or in establishing the extent of Work to be performed by any trade.

E. Familiarity with the Work.

(i) *Contractor Familiarity with Work.* 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. Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Contract Documents, site conditions, authorities, tests, reports and studies relative to that portion of the Work, as well as the information furnished by the County, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project site(s) affecting it. Contractor 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. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, inconsistencies, or ambiguities in the Contract Documents; however, any errors, inconsistencies, omissions, or ambiguities discovered by the Contractor shall be reported promptly to the Contract Administrator and County in writing. Contractor represents that it has given the County written notice of all errors, omissions, inconsistencies, or ambiguities that the Contractor has discovered in the Contract Documents so far, and the written resolution thereof by the County is acceptable to the Contractor. Further, Contractor acknowledges that its obligation to give notice of all such errors, omissions, inconsistencies, or ambiguities shall be continuing during the Term of this Agreement. Any failure on the part of the Contractor to notify the Contract Administrator and County in writing of any errors, omissions, inconsistencies, or ambiguities in the Contract Documents that Contractor discovered or reasonably should have discovered shall result in a waiver and full release by the Contractor of any future arguments or defenses based on such errors, omissions, inconsistencies, or ambiguities against the County. Further, if the Contractor fails to perform its obligations pursuant to this paragraph, the Contractor shall pay such costs and damages to the County as would have been avoided if the Contractor had performed such obligations.

(ii) *Inspection of Prior Work.* If part of the Contractor's Work depends for proper execution or results upon construction or operations by a separate

contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Contract Administrator apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the County's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable, and Contractor shall be responsible for all costs and damages resulting from its failure to report reasonably discoverable defects.

(iii) *Contractor Requests for Information.* If, with undue frequency (as determined by the County in its sole discretion), the Contractor requests information that is obtainable through reasonable examination and comparison of the Contract Documents, site conditions, and previous correspondence, interpretations or clarifications, the Contractor shall be liable to the County for reasonable charges from the Contract Administrator for the additional services required to review, research and respond to such requests for information.

F. Supervision, Inspection and Construction Procedures. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety therefor and, except as stated below, shall be fully and solely responsible for the jobsite safety for such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the County and Contract Administrator and shall not proceed with that portion of the Work without further written instructions from the County or Contract Administrator as approved in writing by the County.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Agreement. The Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees and other persons who may be affected, (b) the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site(s), under care, custody or control of the Contractor or Contractor's subcontractors or sub-subcontractors, and (c) other property at the Project site(s) or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall give notices and comply with applicable laws, ordinances,

rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the Project site(s) by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the County and Contract Administrator in writing.

G. Tests and Inspections. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, or ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made promptly at an appropriate time to avoid unreasonable delay in the Work. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the County, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Contract Administrator timely notice of when and where tests and inspections are to be made so that the Contract Administrator may be present for such procedures. Required permits or certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and delivered to the Contract Administrator within ten (10) calendar days of issuance.

H. 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.

I. 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 principles.

- J. 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.
- K. Uncovering and Correction of Work. If a portion of the Work is covered contrary to the Contract Administrator's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Contract Administrator, be uncovered for examination by the Contract Administrator and be replaced at the Contractor's expense without change in the Agreement Term.

If a portion of the Work has been covered which the Contract Administrator has not specifically requested to examine prior to its being covered or which the Contract Documents did not require to remain uncovered until examined, the Contract Administrator may request to see such Work, and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the County's expense, which expense shall be agreed upon in writing prior to being incurred. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor's expense, unless the condition was caused by the County, in which event the County shall be responsible for payment of such costs including reasonable charges, if any, by the Contract Administrator for additional service, which expense shall be agreed upon in writing prior to being incurred.

If the County prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the County may do so instead of requiring its removal and correction, in which case the Maximum Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

- L. Clean Up. Contractor shall keep the Project site(s) and surrounding area free from accumulation of waste materials or rubbish caused by operations under this Agreement. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up as provided in the Contract Documents, the County may do so, and the cost thereof shall be charged to the Contractor.

M. Contractor's Representative. \_\_\_\_\_ shall be authorized to act on Contractor's behalf with respect to the Work as Contractor's designated representative.

N. 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. Nothing contained in this Agreement shall be construed to make the Contractor or any of its employees, servants or subcontractors an employee, servant or agent of the County for any purpose. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; 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 benefits and 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. There shall be no contractual relationship between any subcontractor or supplier and the County by virtue of this Agreement with the Contractor. 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. It is further understood that this Agreement is not exclusive, and the County may hire additional entities to perform Work related to this Agreement.

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.

O. 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. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the County and the County's elected and appointed officials, officers,

boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers (individually an “Indemnified Party” and collectively “Indemnified Parties”) from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including, but not limited to, attorney’s fees and costs of defense (“Liabilities”), which may arise from or be the result of an alleged willful, negligent, or tortious act or omission 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 act or omission 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 an Indemnified Party. 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 an Indemnified Party, by any employee of the Contractor, its 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 Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

P. 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 as 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 coverage and limits no less than:
  - (a) *Commercial General Liability:* \$2,000,000 (two million dollars) combined single limit per occurrence comprehensive/extended/enhanced Commercial General Liability policy with coverage including bodily and personal injury, sickness, disease or

death, injury to or destruction of property, including loss of use resulting therefrom, damage to premises/operations, products/completed operations, independent consultants and contractual liability (specifically covering the indemnity), broad-from property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on “an occurrence” basis (“claims made” coverage is not acceptable). If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location, and the general aggregate limit shall be twice the required occurrence limit.

- (b) *Commercial Automobile Liability (owned, non-owned, hired):* \$1,000,000 (one million dollars) combined single limit per occurrence \$2,000,000 (two million dollars) aggregate for comprehensive Commercial Automobile liability coverage (owned, non-owned, hired) including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.
- (c) *Professional Liability:* \$2,000,000 (two million dollars) limit Professional Liability policy for claims arising out of professional services and caused by the Contractor’s errors, omissions, or negligent acts.
- (d) *Workers’ Compensation and Employers’ Liability:* Workers’ Compensation policy with limits as required by the State of Georgia and Employers’ Liability limits of \$1,000,000 (one million dollars) per occurrence or disease. (If Contractor is a sole proprietor, who is otherwise not entitled to coverage under Georgia’s Workers’ Compensation Act, Contractor must secure Workers’ Compensation coverage approved by both the State Board of Workers’ Compensation and the Commissioner of Insurance. The amount of such coverage shall be the same as what is otherwise required of employers entitled to coverage under the Georgia Workers’ Compensation Act. Further, the Contractor shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)
- (e) *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 Maximum 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 County; and iii) Performance of Work in connection with construction operations insured by the County, by its agents or lessees, or other contractors of the County or using agency.” The insurance coverage shall include extended coverage, and providing coverage for transit, with sub-limits sufficient to insure the full replacement value of the property or equipment removed from its site and while located away from its site until the date of final acceptance of the Work.

- (f) *Contractors Pollution Liability Insurance:* Contractors Pollution Liability insurance applicable to the project with liability limits of at least \$1,000,000 (one million dollars) per claim or occurrence to cover bodily injury, property damage, cleanup costs, removal, storage, disposal, and/or use of the pollutant, and defense costs and expenses incurred.
- (g) *Commercial Umbrella Liability Coverage:* \$2,000,000 (two million dollars) per occurrence shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability, Commercial Automobile Liability, Employers’ Liability, and Professional Liability.

If higher limits are maintained by Contractor than shown above, the County shall be entitled to coverage for any additional insurance proceeds in excess of the specified minimum limits maintained by the Contractor.

- (3) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County in writing so that the County may ensure the financial solvency of the Contractor; self-insured retentions should be included on the certificate of insurance.
- (4) Other Insurance Provisions: Each policy shall contain, or be endorsed to contain, the following provisions respectively:
  - (a) General Liability, Automobile Liability and Umbrella Liability Coverage.
    - (i) *Additional Insured Requirement.* The County and County’s elected and appointed officials, officers, boards, commissioners, employees, representatives, consultants, servants, agents and volunteers (individually “Insured Party” and collectively “Insured Parties”) shall be named as additional 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 Insured Parties. Nothing contained in this section shall be construed to require the Contractor to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.

- (ii) *Primary Insurance Requirement.* The Contractor's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Contractor's insurance and shall not contribute with it.
- (iii) *Reporting Requirement.* Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.
- (iv) *Separate Coverage.* Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of insurance provided.
- (v) *Defense Costs/Cross Liability.* 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) *Subrogation.* The insurer shall agree to waive all rights of subrogation against the Insured 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 Insured Parties for losses arising from Work performed by the Contractor for the County.

- (c) All Coverages:

- (i) *Notice Requirement.* Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be reduced, suspended, voided, or canceled except after

thirty (30) calendar days prior written notice (or 10 calendar days if due to non-payment) has been given to the County. In addition, Contractor shall provide written notice to County at least thirty (30) days prior to any reduction, suspension, voiding, or cancellation of coverage. The County reserves the right to accept alternate notice terms and provisions, provided they meet the minimum requirements under Georgia law.

(ii) *Starting and Ending Dates.* Policies shall have concurrent starting and ending dates.

(iii) *Incorporation of Indemnification Obligations.* Policies shall include a Project-specific endorsement incorporating the indemnification obligations assumed by the Contractor under the terms of this Agreement, including but not limited to Section 7(O) of this Agreement.

(5) Acceptability of Insurers: The insurance to be maintained by Contractor must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurer(s) with an A.M. Best Policyholder's rating of no less than "A-" and with a financial rate of Class VII or greater. The Contractor shall be responsible for any delay resulting from the failure of its insurer to provide proof of coverage in the proscribed form.

(6) Verification of Coverage: Contractor shall furnish to the County for County approval certificates of insurance and endorsements to the policies evidencing all coverage required by this Agreement prior to the start of work. Without limiting the general scope of this requirement, Contractor is specifically required to provide an endorsement naming the County as an additional insured when required. The certificates of insurance and endorsements for each insurance policy are to be on a form utilized by Contractor's insurer in its normal course of business and are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. 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 prior to the expiration of the coverage.

(7) Subcontractors: Contractor shall either (1) ensure that its insurance policies (as described herein) cover all subcontractors and the Work performed by such subcontractors or (2) ensure that any subcontractor secures separate policies covering that subcontractor and its Work. All coverage for subcontractors shall be subject to all of the requirements stated in this

Agreement, including, but not limited to, naming the Insured 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, and have an effective date which is on or prior to the Effective Date.

(9) Progress Payments: The making of progress payments to the Contractor shall not be construed as relieving the Contractor or its subcontractor or insurance carriers from providing the coverage required in this Agreement.

Q. Bonds. Prior to beginning any work on the Project, the Contractor shall provide Performance and Payment bonds to the County on the forms attached hereto as “**Exhibits D.1 and D.2**” and 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 this Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

R. Assignment of Agreement. The Contractor covenants and agrees not to assign or transfer any interest in, or 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.

S. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit. Pursuant to O.C.G.A. § 13-10-91, the County shall not enter into a contract for the physical performance of services unless:

- (1) the Contractor shall provide evidence on County-provided forms, attached hereto as “**Exhibits G.1 and G.2**” (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 its subcontractors have registered with, are authorized to use and use 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, and that they will continue to use the federal work authorization program throughout the contract period, **or**
- (2) the Contractor provides evidence that it is not required to provide an affidavit because it is an *individual* licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

The Contractor hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in "**Exhibit G.1**", and submitted such affidavit to County or provided the County with evidence that it is an individual not required to provide such an affidavit because it is licensed and in good standing as noted in sub-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 Georgia Department of Labor 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 G.2**", 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 sub-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 five (5) 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.

- 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.

T. Records, Reports and Audits.

(1) Records:

(a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for the County under this Agreement (“Records”) shall be established and maintained by the Contractor in accordance with applicable law and requirements prescribed by the County with respect to all matters covered by this Agreement. Except as otherwise authorized or required, such Records shall be maintained for at least three (3) years from the date that final payment is made to Contractor by County under this Agreement. Furthermore, Records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.

(b) All costs claimed or anticipated to be incurred in the performance of this Agreement 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 Records in the form requested by the County. All Records stored on a computer database must be of a format compatible with the County’s computer systems and software.

(3) Audits and Inspections: At any time during normal business hours and as often as the County may deem necessary, Contractor shall make available to the County or County’s representative(s) for examination all Records.

The Contractor will permit the County or County's representative(s) to audit, examine, and make excerpts or transcripts from such Records. Contractor shall provide proper facilities for County or County's representative(s) to access and inspect the Records, or, at the request of the County, shall make the Records available for inspection at the County's office. Further, Contractor shall permit the County or County's representative(s) to observe and inspect any or all of Contractor's facilities and activities during normal hours of business for the purpose of evaluating Contractor's compliance with the terms of this Agreement. In such instances, the County or County's representative(s) shall not interfere with or disrupt such activities.

U. 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 Records 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.

V. Licenses, Certifications and Permits. The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits, or the like required of the Contractor by any and all national, state, regional, county or 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. The Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work, which are customarily secured after execution of the Agreement and which are legally required. Contractor shall furnish copies of such permits, licenses, etc. to the County within ten (10) days after issuance.

W. Key Personnel. All of the individuals identified in “**Exhibit J**”, attached hereto, 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 J**”, 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 paragraph shall constitute a material breach of Contractor’s obligations under this Agreement and shall be grounds for termination.

X. 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.

Y. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product, and other materials, including those in electronic form, 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 Materials in the form prescribed by the County. Any Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the Work shall be delivered immediately to the County whether or not the Project or Work is commenced or completed, provided, however, that Contractor may retain a copy of any deliverables for its records. The Contractor assumes all risk of loss, damage or destruction of or to 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.

Z. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, 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 paragraph in every subcontract for services contemplated under this Agreement.

## **Section 8. Covenants of the County**

- A. Right of Entry. County shall provide for right of entry for Contractor and Contractor's equipment as required for Contractor to complete the Work; provided that Contractor shall not unreasonably encumber the Project site(s) with materials or equipment.
- B. County's Representative. Zach Churchill, Director of Parks and Recreation shall be authorized to act on County's behalf with respect to the Work as the County's designated representative on this Project; provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section 6 above.

## **Section 9. Final Project Documents; Warranty**

- A. Final Project Documents. Prior to final payment, Contractor shall deliver to County a written assignment of all warranties, guaranties, certificates, permits, and other documents, including without limitation, all contractors' and manufacturers' warranties. At such time, Contractor shall also deliver to the County copies of all as-built drawings, operations, and maintenance manuals, and any other pertinent documents relating to the construction and operation of the Work that is not otherwise in the possession of the County.
- B. Warranty. The Contractor warrants to the County and the Contract Administrator that materials and equipment furnished under the Agreement will be of good quality and new, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, is considered defective. This warranty excludes remedy for damage or defect caused by abuse by the County or modifications to the Work not executed by the Contractor or an employee/subcontractor/sub-subcontractor thereof.

Except as may be otherwise specified or agreed, the Contractor shall repair or replace all defects in materials, equipment, or workmanship appearing within \_\_\_\_\_ year(s) **[INSERT WARRANTY PERIOD]** (the "Warranty Period") from the date of Final Completion (as defined in "**Exhibit I**", attached hereto and incorporated herein by reference) at no additional cost to the County. Further, Contractor shall provide all maintenance services, including parts and labor, for \_\_\_\_\_ year(s) **[INSERT MAINTENANCE PERIOD]** (the "Maintenance Period") 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 respective Warranty Period/Maintenance Period to identify any issues that must be resolved by the Contractor. After the expiration of the Maintenance 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 any Warranty Period or Maintenance Period shall not affect the Contractor's continued liability under an implied warranty of merchantability and fitness. All warranties implied by law, including fitness for a particular purpose and suitability, are hereby preserved and shall apply in full force and effect beyond any Warranty Period or Maintenance 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. For Convenience. 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.
- B. For Cause. The Contractor shall have no right to terminate this Agreement prior to completion of the Work, except in the event of County's failure to pay the Contractor within thirty (30) calendar days of Contractor providing the County with notice of a delinquent payment and an opportunity to cure. The County may terminate this Agreement for cause as provided in Section 11 of this Agreement. The County shall give Contractor at least seven (7) calendar days' written notice of its intent to terminate the Agreement for cause and the reasons therefor, 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.
- C. Statutory Termination. In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed terminated as provided in Section 4(A) of this Agreement. Further, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of the County.
- D. Payment. Provided that no damages are due to the County for Contractor's failure to perform in accordance with this Agreement, and except as otherwise provided herein, the County shall, upon termination for convenience or statutory termination, pay Contractor for Work performed prior to the date of termination in accordance with Section 5 herein. The County shall have no further liability to Contractor for such termination. 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 Maximum Contract Price.

If this Agreement is terminated for cause, the County will make no further payment to the Contractor or its Surety until the Project is completed and 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 shall pay the difference to the County.

- E. Assumption of Contracts. 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.
- F. Conversion to Termination for Convenience. 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 converted to and treated as a termination for convenience under the terms of Section 10(A) above.
- G. Requirements Upon Termination. Upon termination, the Contractor shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible if requested to do so by the County, and not incur any new obligations, unless the County 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.
- H. Reservation of Rights and Remedies. 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. County's Rights; Contractor Default**

- A. County Rights Related to the Work.
  - (i) *County's Right to Stop the Work.* If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, as required by the Contract Administrator, or persistently fails to carry out Work in accordance with the Contract Documents, the County may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the County to stop the Work shall not give rise to a duty on the part of the County to exercise this right for the benefit of the Contractor or any other person or entity. Such a stoppage of Work shall not extend the Expected Date of Final Completion of the Work.
  - (ii) *County's Right to Carry Out the Work.* If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a

seven (7) calendar day period after receipt of written notice from the County to commence and/or continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including County's expenses and compensation for the Architect/Engineer's and/or Contract Administrator's additional services (if any) made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County.

B. Contractor Default. For the purposes of this Agreement, Contractor shall be in default if any of the following occur during the Term of this Agreement: (a) a failure to fulfill in a timely and proper manner Contractor's obligations under this Agreement; (b) Contractor violates any of the material provisions, agreements, representations or covenants of this Agreement or any applicable city, state, or federal laws, which do not fall within the force majeure provisions of this Agreement; (c) the Contractor becomes insolvent or unable to pay its debts as they mature, or makes an assignment for the benefit of creditors, or files a bankruptcy petition under the United States Bankruptcy Code; or (d) Contractor is the subject of a judgment or order for payment of money, which judgment or order exceeds \$100,000 and is no longer subject to appeal or, in the opinion of the County, would be fruitless to appeal and where (i) such judgment or order shall continue un-discharged or unpaid for a period of thirty (30) calendar days, (ii) an insurer acceptable to the County has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance, or (iii) the County is otherwise reasonably satisfied that such judgment or order is not likely to be satisfied or complied with within sixty (60) calendar days of its issuance.

In the event of Contractor's default under this Agreement, the County shall send written notice to the Contractor setting forth the specific instances of the default and providing the Contractor with at least seven (7) calendar days to cure or otherwise remedy the default to the reasonable satisfaction of the County. If the default is not remedied during the stated cure period, then the County may, at its election: (a) in writing terminate the Agreement in whole or in part; (b) cure such default itself and charge the Contractor for the costs of curing the default against any sums due or which become due to the Contractor under this Agreement; and/or (c) pursue any other remedy then available, at law or in equity, to the County for such default.

## **Section 12. Construction Administration**

If a Contract Administrator other than the County has been hired in relation to the Project, the Contract Administrator's administration of the construction of the Project shall be as described in "**Exhibit K**", attached hereto. The Contractor agrees to the construction administration provisions contained in "**Exhibit K**."

## **Section 13. Miscellaneous**

- A. Complete Agreement. This Agreement, including all of 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 or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.
- B. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to choice of law principles. 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, and Contractor submits to the jurisdiction and venue of such court.
- C. 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.
- D. Invalidity of Provisions; Severability. Should any article(s) or section(s) of this Agreement, or any part thereof, later be deemed illegal, invalid or 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 that may for any reason be hereafter declared invalid.
- E. 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, unless Contractor provides evidence that no such license is required.
- F. 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 Zach Churchill 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 calendar 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 Party at the addresses given below, or at a substitute address previously furnished to the other Party by written notice in accordance herewith:

**NOTICE TO COUNTY** shall be sent to:

Barrow County  
County Manager  
Barrow County Historic Courthouse  
30 N. Broad Street  
Winder, GA 30680

**NOTICE TO CONTRACTOR** shall be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- G. 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. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.
- H. Survival. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations, warranties, and insurance maintenance requirements.
- 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 of County's elected or appointed officials,

officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. No such individual 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, except where Contractor is a sole proprietor. 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 elected or appointed official, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.

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, or 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. Subject to the provision of this Agreement regarding assignment, 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.

O. Agreement Construction and Interpretation. Contractor represents that it has reviewed and become familiar with this Agreement. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of

the Agreement. In the interest of brevity, the Contract Documents may omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

- P. Material Condition. Each term of this Agreement is material, and Contractor’s breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other remedies available to the County at law or in equity.
- Q. Use of Singular and Plural. Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires contrary meaning.

[SIGNATURES ON FOLLOWING PAGE]

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

**CONTRACTOR:** \_\_\_\_\_

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

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

Its: \_\_\_\_\_

[CORPORATE SEAL]  
(required if corporation)

**Attest/Witness:**

\_\_\_\_\_

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

Its: \_\_\_\_\_

**BARROW COUNTY, GEORGIA**

By: \_\_\_\_\_  
Pat Graham, Chairman

[COUNTY SEAL]

**Attest:**

\_\_\_\_\_

Abril Olivas, County Clerk

**“EXHIBIT A”**  
**REQUEST FOR PROPOSALS**

**“EXHIBIT B”**

**PROPOSAL DOCUMENTS FROM CONTRACTOR**

**“EXHIBIT C”**

**SCOPE OF WORK**

**“EXHIBITS D.1 AND D.2”**

**PAYMENT AND PERFORMANCE BONDS**

**“EXHIBIT  
D.1”**

**PERFORMANCE BOND**

**BARROW  
COUNTY**

**KNOW ALL MEN BY THESE PRESENTS THAT** \_\_\_\_\_ (as CONTRACTOR, hereinafter referred to as the "Principal"), and \_\_\_\_\_ (as SURETY, hereinafter referred to as the "Contractor's Surety"), jointly and severally, and their heirs, executors, administrators, successors, and assigns, are held and firmly bound unto Barrow County, Georgia (as OWNER, hereinafter referred to as the "County"), for the performance due under the Contract in the sum of \_\_\_\_\_.

**WHEREAS**, the Principal has entered, or is about to enter, into a certain written agreement with the County for the construction of a project known as the Splash Pad at Victor Lord Park (hereinafter referred to as "the Project"), which agreement is incorporated herein by reference in its entirety (hereinafter referred to as the "Contract").

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

1. That if (a) 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 (b) the Principal 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 or 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 Principal and Surety shall have no obligation hereunder; otherwise this Performance Bond shall 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 or default of the Contract:

- a. The Contractor's Surety shall commence performance of Principal's obligations and undertakings under this Bond no later than thirty (30) calendar days after written notice from the County to the Contractor's Surety, though the failure of County to provide such notice shall not constitute a failure to comply with a condition precedent to Contractor's Surety's obligations hereunder or release Contractor's Surety from its obligations hereunder;
- b. The means, method or procedure by which the Contractor's Surety undertakes to perform the obligations under this Performance Bond shall be subject to the advance written approval of the County.
- c. Upon notice of the County of Principal's failure of performance or default under or breach of the Contract, Contractor's Surety shall promptly and at its own expense take one of the following actions:
  - (i) Arrange for Principal, with the County's consent, to perform and complete the performance required under the Contract;
  - (ii) Undertake to perform and complete the performance due under the Contract itself, through its agents or independent contractors;
  - (iii) Obtain bids or negotiated proposals from qualified contractors acceptable to the County for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by the County and a contractor selected with the County's

concurrence, and in accordance with applicable bidding requirements, to be secured with performance and payment bonds provided by a qualified surety equivalent to the bonds issued in connection with the Contract, and pay to the County the amount of damages County has incurred as a result of Principal's default under the Contract; or

- (iv) Determine, subject to the approval of the County, the amount for which Contractor's Surety is liable to County and promptly make payment of said amount to County.

3. If Contractor's Surety does not proceed to perform as required hereunder within the thirty (30) day time limit prescribed herein, Contractor's Surety shall be deemed to be in default on the Performance Bond and the County shall be entitled to enforce any remedy available to County at law or equity.
4. Contractor's Surety shall also be responsible for : (a) the responsibilities of the Contractor for the correction of defective work and completion of the performance due under the Contract; (b) any additional legal, design professional, and delay cost resulting from Contractor's default; (c) any liquidated damages due under the Contract, or actual damages if liquidated damages are not provided for in the Contract; and (d) any damages resulting from the failure of Contractor's Surety to perform as required hereunder.
5. This Performance Bond shall be governed by Georgia law, not including Georgia choice-of-law provisions. Exclusive venue for any litigation regarding this performance bond shall be in the Superior Court of Barrow County, Georgia.
6. The County is an intended beneficiary of this Performance Bond.

7. The Contractor's Surety hereby waives notice of any and all modifications, omissions, additions, changes, (including without limitation changes to the contract price), and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Performance Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments.

8. 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.

9. Notices hereunder shall be given by certified mail, return receipt requested, or by overnight delivery and shall be effective upon receipt or refusal by the recipient. Addresses for notices hereunder are as follows:

For Notices to Principal:

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For Notices to Contractor's Surety:

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(Signatures appear on following page)

**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, as set forth below.

**CONTRACTOR ("Principal"):**

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By: \_\_\_\_\_ (signature)

\_\_\_\_\_ (print)

Title: \_\_\_\_\_ (SEAL)

Attest:

Date: \_\_\_\_\_

\_\_\_\_\_ (signature)

\_\_\_\_\_ (print)

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

Date: \_\_\_\_\_

**CONTRACTOR'S SURETY:**

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By: \_\_\_\_\_ (signature)

\_\_\_\_\_ (print)

Title: \_\_\_\_\_ (SEAL)

Attest:

Date: \_\_\_\_\_

\_\_\_\_\_ (signature)

\_\_\_\_\_ (print)

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

Date: \_\_\_\_\_

(ATTACH SURETY'S POWER OF ATTORNEY)

**“EXHIBIT  
D.2”**

**PAYMENT BOND**

**BARROW  
COUNTY**

**KNOW ALL MEN BY THESE PRESENTS THAT** \_\_\_\_\_

(as CONTRACTOR, hereinafter referred to as the “Principal”), and \_\_\_\_\_  
(as SURETY, hereinafter referred to as the “Contractor's Surety”), jointly and severally, and their  
heirs, executors, administrators, successors, and assigns, are held and firmly bound unto Barrow  
County, Georgia (as OWNER, hereinafter referred to as the “County”), to pay for labor, materials,  
services, and equipment furnished for use and in the performance of the Contract in the sum of  
any “Claimant,” as hereinafter defined, in the sum of \_\_\_\_\_ Dollars.

**WHEREAS**, the Principal has entered, or is about to enter, into a certain written agreement  
with the County for the construction of a project known as the Splash Pad at Victor Lord Park  
(hereinafter referred to as “the Project”), which agreement is incorporated herein by reference in  
its entirety (hereinafter referred to as the “Contract”).

**NOW THEREFORE**, the condition of this obligation is such that if the Principal shall  
promptly make payment to all Claimants, as hereinafter defined, for all labor, equipment, services,  
and materials used or reasonably required for use in the performance of the Contract, and defends,  
indemnifies and holds harmless the County from claims, demands, liens, or suits by any person or  
entity seeking payment for labor, equipment, services, or materials furnished for use in the  
performance of the Contract, then the Principal and Contractor's Surety shall have no obligation  
under this Payment Bond; otherwise it shall remain in full force and effect.

1. A "Claimant" shall be defined herein as any Subcontractor (at any level), or other person or entity furnishing labor, equipment, services, or materials used or reasonably required for use in the performance of the Contract, without regard to whether such labor, equipment, services, or materials are sold, leased, or rented, and without regard to whether such Claimant is or is not in privity of Contract with the Principal or any Subcontractor performing Work on the Project. A "Claim" shall mean any written claim or demand or suit for payment for the furnishing of labor, equipment, services, or materials used, or reasonably required for use, in the performance of the Contract, made or brought by a Claimant.

**2. Contractor's Surety's Duty to County**

Upon notification by the County of any Claim against the County, or of a Lien filed against the property of the County by a Claimant, Contractor's Surety shall promptly, and at the expense of Contractor's Surety, defend, indemnify, and hold harmless the County against such Claim and shall either settle or resolve the Claim and shall remove, or cause the removal, of any such Lien by bond or otherwise.

**3. Contractor's Surety's Duty to a Claimant**

Upon notice to Contractor's Surety, either by the County or a Claimant, of a Claim, Contractor's Surety shall, within 30 days after receipt of notice of the Claim, respond to such Claimant, with a copy of such response to be furnished to the County and Principal, which response shall: (a) identify and components of such Claim which are undisputed, and (b) identify any components of such Claim which are disputed and the basis for such dispute. Surety shall then pay or tender, or arrange for payment or tender by Contractor, of any amounts indisputably due to such Claimant, within ten days after said response is given. The fact that Contractor's Surety disputes a portion

of a Claim shall not relieve Contractor's Surety from its obligation to defend, indemnify, and hold harmless the County hereunder.

4. This Payment Bond shall be governed by Georgia law, not including Georgia choice-of-law provisions. Exclusive venue for litigation regarding this payment bond shall be in the Superior Court of Barrow County, Georgia.

5. The County is an intended beneficiary of this payment bond.

6. Amounts owed by the County to the Principal under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any construction performance bond issued in connection with the Contract.

7. By the Principal furnishing and the County accepting this Payment Bond, both agree that all funds earned by the Principal in the performance of the Contract shall be dedicated to satisfy obligations of Principal and Contractor's Surety under this Payment Bond, subject to the County's priority to use such funds for the completion of the Work under the Contract and to satisfy amounts due by Principal to the County in connection therewith.

8. The Contractor's Surety hereby waives notice of any and all modifications, omissions, additions, changes (including without limitation changes to the contract price), 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.

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

10. Notices hereunder shall be given by certified mail, return receipt requested, or by overnight delivery and shall be effective upon receipt or refusal by the recipient. Addresses for notices hereunder are as follows:

For Notices to Principal:

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For Notices to Contractor's Surety:

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**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, as set forth below.

[SIGNATURES ON FOLLOWING PAGE]

**CONTRACTOR:**

\_\_\_\_\_  
By: \_\_\_\_\_ (signature)

\_\_\_\_\_  
(printed)

Title: \_\_\_\_\_ (SEAL)

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed)

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

Date: \_\_\_\_\_

**CONTRACTOR'S SURETY:**

\_\_\_\_\_  
By: \_\_\_\_\_ (signature)

\_\_\_\_\_  
(printed)

Title: \_\_\_\_\_ (SEAL)

Date: \_\_\_\_\_

Attest:

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed)

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

Date: \_\_\_\_\_

(ATTACH SURETY'S POWER OF ATTORNEY)

**“EXHIBIT E”**  
**NONCOLLUSION AFFIDAVIT OF PRIME PROPOSER**

**RFP2026-09 Design-Build Contractor Service – Splash Pad at Victor Lord Park**

**STATE OF \_\_\_\_\_**  
**COUNTY OF \_\_\_\_\_**

\_\_\_\_\_, being first duly sworn, deposes and says that:

(1) He/she is \_\_\_\_\_ (e.g., Owner, Partner, Officer, Representative, or Agent) of \_\_\_\_\_ (the “Proposer”) that has submitted the attached Proposal;

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

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

(4) Neither the said Proposer 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, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from proposing in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other proposer, firm or person to fix the price or prices in the attached Proposal or of any other proposer, or to fix any overhead, profit or cost element of the proposal price of any other proposer 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 are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this Affiant.

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

\_\_\_\_\_  
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  
\_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
[NOTARY SEAL]

\_\_\_\_\_  
My Commission Expires:

**“EXHIBIT F”**

**FINAL AFFIDAVIT**

**STATE OF \_\_\_\_\_**  
**COUNTY OF \_\_\_\_\_**

**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 **RFP2026-09 Design-Build Contractor Service – Splash Pad at Victor Lord Park** for Barrow County, Georgia, have been paid and satisfied in full as of \_\_\_\_\_, 2025, and that there are no outstanding obligations or claims of any kind for the payment of which Barrow County, Georgia 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 \_\_\_\_\_, 2025, \_\_\_\_\_, who under oath deposes and says that he/she is \_\_\_\_\_ of the firm of \_\_\_\_\_, that he/she has read the above statement, and that to the best of his/her knowledge and belief same is an exact true statement.

\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

\_\_\_\_\_  
My Commission Expires

## “EXHIBIT G.1”

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

### 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

RFP2026-09 Design-Build Contractor Service –  
Splash Pad – Victor Lord Park  
Name of Project

Barrow County, Georgia  
Name of Public Employer

I hereby declare under penalty of perjury that the foregoing is true and correct.  
Executed on \_\_\_\_\_, 2025, 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  
\_\_\_\_\_, 2025.

\_\_\_\_\_  
Notary Public

[NOTARY SEAL]

My Commission Expires:

**“EXHIBIT G.2”**  
**SUBCONTRACTOR AFFIDAVIT**

**STATE OF** \_\_\_\_\_  
**COUNTY OF** \_\_\_\_\_

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

RFP2026-09 Design-Build Contractor Service –  
Splash Pad – Victor Lord Park  
Name of Project

Barrow County, Georgia  
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 H”**

**APPROVED PROJECT PLANS, DRAWINGS AND SPECIFICATIONS**

**RFP2026-09 Design-Build Contractor Service – Splash Pad at Victor Lord Park**

\*To be developed during Design Phase of the Scope of Services and updated/amended following completion of the Construction Phase of the Scope of Services.

See Exhibits A, B, and C above for additional information and specification.

## “EXHIBIT I”

### ADDITIONAL PAYMENT TERMS

#### **RFP2026-09 Design-Build Contractor Service – Splash Pad at Victor Lord Park**

A. Defined Terms. Terms used in this Agreement shall have their ordinary meaning, unless otherwise defined below or elsewhere in the Contract Documents.

- (i) “Substantial Completion” means when the Work or designated portion thereof is complete in accordance with the Contract Documents so that any remaining Work includes only (1) Minor Items that can be completed or corrected within the following thirty (30) calendar days, (2) Permitted Incomplete Work that will be completed by the date agreed upon by the Parties, and (3) any Warranty Work. Substantial Completion shall require complete operation of all applicable building systems including, but not limited to, mechanical, electrical, plumbing, fire protection, fire alarm, telecom, data, security, elevators, life safety, and accessibility (if any).
- (ii) “Minor Item” means a portion or element of the Work that can be totally complete within thirty (30) calendar days.
- (iii) “Permitted Incomplete Work” means Work that is incomplete through no fault of the Contractor, as determined by the County in its sole discretion.
- (iv) “Final Completion” means when the Work has been completed in accordance with terms and conditions of the Contract Documents.

B. Payment for Work Completed and Costs Incurred. County agrees to pay the Contractor for the Work performed and costs incurred by Contractor upon certification by the Contract Administrator and the County that the Work was actually performed and costs actually incurred in accordance with this Agreement. Payment shall be based on the value of the Work completed, as provided in the Contract Documents, plus the value of materials and equipment suitably stored, insured, and protected at the construction site, and, only if approved in writing by the County (which approval shall be given at the sole discretion of the County), such materials and equipment suitably stored, insured, and protected off site at a location approved by the County in writing, less retainage (as described below). 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, along with all supporting documents required by the Contract Documents or requested by the County to process the invoice. Invoices shall be submitted on a monthly basis, and such invoices shall reflect costs incurred versus costs 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.

The County shall pay the Contractor within thirty (30) calendar days after approval of the invoice by County staff, less any retainage as described in Section D below. 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.

C. Evaluation of Payment Requests. The Contract Administrator will evaluate the Contractor's applications for payment and will either issue to the County a Certificate for Payment (with a copy of the Contractor's application for payment) for such amount as the Contract Administrator determines is properly due, or notify the Contractor and County in writing of the Contract Administrator's reasons for withholding certification in whole or in part. The Contract Administrator may reject Work that does not conform to the Contract Documents and may withhold a Certificate of Payment in whole or in part, to the extent reasonably necessary to protect the County. When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

Even following a Certificate of Payment, the County shall have the right to refuse payment of any invoice or part thereof that is not properly supported, or where requests for payment for Work or costs are in excess of the actual Work performed or costs incurred, or where the Work product provided is unacceptable or not in conformity with the Contract Documents, as determined by the County in its sole discretion. The County shall pay each such invoice or portion thereof as approved, provided that neither the approval or payment of any such invoice, nor partial or entire use or occupancy of the Project by the County, shall be considered to be evidence of performance by the Contractor to the point indicated by such invoice, or of receipt or acceptance by the County of Work covered by such invoice, where such work is not in accordance with the Contract Documents.

D. Final Payment and Retainage. The 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-five percent (95%) of that portion of the Work completed during the term covered by such invoice. Payment for the remaining ten percent (5%) of Work completed and covered by such invoices shall be retained by the County until Substantial Completion. 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.

At Substantial Completion of the Work and as the Contract Administrator determines the Work to be reasonably satisfactory, the County shall, within thirty (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 or Permitted Incomplete Work, an amount equal to 200 percent of the value of each Minor Item or Permitted Incomplete Work, as determined by the Contract Administrator in its sole discretion, shall be withheld until such item, items or work 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 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 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.

Final payment of any retained amounts to the Contractor shall be made after certification by the Contract Administrator that the Work has been satisfactorily completed and is accepted in accordance with the Agreement and Contract Documents.

Neither final payment nor any remaining retainage shall become due until the Contractor submits to the Contract Administrator (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 thirty (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.

## **“EXHIBIT J”**

## **KEY PERSONNEL**

RFP2026-09 Design-Build Contractor Service – Splash Pad at Victor Lord Park

The following individuals are designated as Key Personnel under this Agreement and, as such, are necessary for the successful prosecution of the Work:

**“EXHIBIT K”**

**CONTRACT ADMINISTRATION**

**Zach Churchill (“Director of Parks and Recreation”)** is the County’s Contract Administrator.

- A. Communications. Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, the County and the Contractor shall endeavor to communicate with each other through the Contract Administrator about matters arising out of or relating to the Agreement. The Contract Administrator’s decisions in matters relating to aesthetic effect shall be final if consistent with the intent of this Agreement.
- B. Submittals. The Contract Administrator will review and approve or take other appropriate action upon the Contractor’s submittals, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- C. Contractor Responsibilities Unchanged. The duties, obligations, and responsibilities of the Contractor under this Agreement shall in no manner whatsoever be changed, altered, discharged, released, or satisfied by any duty, obligation, or responsibility of the Contract Administrator, architect, engineer or any other party hired by the County. The Contractor is not a third-party beneficiary of any Agreement by and between the County and any other party. It is expressly acknowledged and agreed that the duties of the Contractor to the County are independent of, and are not diminished by, any duties of the Contract Administrator, architect, engineer or any other party to the County.

**“EXHIBIT L”**

**GENERAL CONDITIONS**

**RFP2026-09 Design-Build Contractor Service – Splash Pad at Victor Lord Park**

**A. Contractor’s Services and Responsibilities**

**1. General Services.**

**1.1** Contractor’s Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Contractor’s Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Contractor. Contractor’s Representative may be replaced only with the mutual agreement of Owner and Contractor.

**1.2** Contractor shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the Agreement; and (v) other items that require resolution so as not to jeopardize Contractor’s ability to complete the Work for the Contract Price and within the Contract Time(s).

**1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Contractor shall prepare and submit, at least three (3) days prior to the meeting contemplated by subsection 1.4 below, a schedule for the execution of the Work for Owner’s review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Contractor to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner’s review of, and response to, the schedule shall not be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

**2. Design Professional Services.**

**2.1** Contractor shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Contractor, or procured from qualified, independent licensed Design Consultants, the necessary design services,

including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Contractor to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

### **3. Standard of Care for Design Professional Services.**

**3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

### **4. Design Development Services.**

**4.1** Contractor and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Minutes of the meetings, including a full listing of all changes, will be maintained by Contractor and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Contractor's schedule.

**4.2** Contractor shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in subsection 4.1 above. Contractor shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**4.3** Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Contractor to Owner.

**4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Contractor may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **5. Legal Requirements.**

**5.1** Contractor shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Contractor is required to make to the Construction Documents because of changes in Legal Requirements.

## **6. Government Approvals and Permits.**

**6.1** Except as identified in an Owner's Permit List in or attached as an exhibit to the Agreement, Contractor shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**6.2** Contractor shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **7. Contractor's Construction Phase Services.**

**7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete construction of the Project consistent with the Contract Documents.

**7.2** Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**7.3** Contractor shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Contractor's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Contractor's cost and/or time of performance.

**7.4** Contractor assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**7.5** Contractor shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control,

Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**7.6** Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **8. Contractor's Responsibility for Project Safety.**

**8.1** Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Contractor shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.

**8.2** Contractor and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**8.3** Contractor's responsibility for safety under this Section 8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **9. Contractor's Warranty.**

**9.1** Contractor warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Contractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 9 or the Contract Documents. Contractor will provide Owner with all manufacturers' warranties upon Substantial Completion.

**10. Correction of Defective Work.**

**10.1** Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**10.2** Contractor shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Contractor fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Contractor shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**10.3** The one-year period referenced in subsection 10.1 above applies only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Contractor's other obligations under the Contract Documents.

**B. Owner's Services and Responsibilities**

**1. Duty to Cooperate.**

**1.1** Owner shall, throughout the performance of the Work, cooperate with Contractor and perform its responsibilities, obligations and services in a timely manner to facilitate Contractor's timely and efficient performance of the Work and so as not to delay or interfere with Contractor's performance of its obligations under the Contract Documents.

**1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Contractor's schedule.

**1.3** Owner shall give Contractor timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

**2. Furnishing of Services and Information.**

**2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Contractor's information and use the following, all of which Contractor is entitled to rely upon in performing the Work:

**2.1.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**2.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

**2.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Contractor to perform the Work;

**2.1.4** A legal description of the Site;

**2.1.5** To the extent available, record drawings of any existing structures at the Site; and

**2.1.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Contractor to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

**3. Government Approvals and Permits.**

**3.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in the Owner's Permit List attached in or as an exhibit to the Agreement.

**3.2** Owner shall provide reasonable assistance to Contractor in obtaining those permits, approvals and licenses that are Contractor's responsibility.

**4. Owner's Separate Contractors.**

**4.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with,

Contractor in order to enable Contractor to timely complete the Work consistent with the Contract Documents.

**“EXHIBIT M”**

**SUPPLEMENTARY CONDITIONS (IF ISSUED)**

**“EXHIBIT N”**

**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 include 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.

(I) **“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 at 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 source(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