

# Bid Documents

For

## **Level Grove Multipurpose Trail Restoration**

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**SECTION 01000 - GENERAL CONDITIONS**

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## **SECTION 01000 - GENERAL CONDITIONS**

### **Part 1: DEFINITION AND TERMS**

#### **1.01 Part of Contract Documents**

**A. The following documents and drawings, collectively referred to as the Contract Documents, are all made parts of this contract and supplement each other, viz:**

1. Advertisement for Bids
2. Proposal Form Executed and Submitted by the Contractor
3. Executed Bid Bond Submitted by the Contractor
4. Instructions & Information to Bidders
5. Contract Provisions
6. Executed Form of Contract Agreement
7. General Instructions for Bonds
8. Executed Form of Performance Bond
9. Executed Form of Payment Bond
10. General Conditions
11. Special Conditions
12. Detailed Specifications
13. Contract Drawings
14. All Addenda Issued by the Engineer Prior to the Time of the Opening of the Bids
15. Change Orders
16. Certificates of Insurance Coverage

#### **B. Titles Not to Limit Text**

The titles or headings of the various divisions, sections, paragraphs, subparagraphs, or of drawings, and the table of contents and the indexes as used in any part of the Contract Documents hereinbefore listed as a part of this contract, are for convenience of reference only and are not intended to limit, and shall not be construed as in any way limiting the application of the text.

#### **C. Definitions**

Wherever the words defined in this article, or pronouns used in their stead, occur in the Contract Documents, they shall have the meanings herein given.

##### **1. Proposal**

Proposal means the form prepared by the Owner on which the bidder is to submit or has submitted a proposal for the work contemplated.

##### **2. Documents**

Documents, unless otherwise limited by the context, mean and include each and every one of the Contract Documents, as listed in Paragraph A. above.

**3. Engineer**

Engineer refers to J M Smith Engineering, LLC, Consulting Engineers, Cornelia, Georgia, acting through agents duly authorized to act for and on its behalf.

**4. Contractor**

Contractor means the person or person partnership or corporation designated as such in the Contract Agreement, acting directly or through his, their, or its agents or employees.

**5. Subcontractor**

Subcontractor means a person, firm, or corporation, other than the Contractor, supplying labor and materials, or labor only, at the site of the work, having a direct contract with the Contractor.

**6. Unit Price**

Unit price means any price bid per unit of measurement under the respective items of the Proposal.

**7. Lump Sum Price**

Lump sum price means the lump sum bid for the completed work or any one of the several lump sum items on the Proposal.

**8. Contract Price**

Contract price means the lump sum of the amounts obtained by multiplying the respective unit prices by the quantities given on the Proposal Form, if any, plus the lump sum prices, subject to the reduction, if any, of the appropriate lump sum bid in the reduction proposal for the award of one or more additional contracts.

**9. Materials**

Materials means materials incorporated or to be incorporated in the contract work or used or to be used in the operation of the complete improvement.

**10. Structures**

Structures mean all permanent structures that are required to be built under this contract.

**11. Elevation**

The figures given in the contract and specifications or upon the drawings after the word "elevation" or abbreviation of it shall mean the distance in feet above the datum adopted by the Engineer.

**12. Rock**

The word "rock", wherever used as the name of an excavated material, shall mean boulders and pieces of concrete, slag or masonry exceeding one cubic yard in volume, or solid ledge rock which, in the opinion of the Engineer, requires for its removal drilling and blasting or wedging or sledging, or barring or breaking up with a power-operated tool. No soft or disintegrated rock or slag which can be removed with a hand pick or power-operated excavator or shovel, no loose, shaken, or previously blasted rock or broken stone in rock

fillings or elsewhere, and no rock interior to the maximum limits of measurement allowed, which may fall into the excavation, will be measured or allowed.

**13. Earth**

The word “earth”, wherever used as a name of material excavated or to be excavated, shall mean all kinds of material, except rock as above defined. Any pronouns used in relation to or in place of any of the words, or combinations of words, hereinbefore defined, shall have the same meaning as the words or combinations themselves.

**14. Surety**

Surety means the Guarantor for the Contractor, signing an instrument or instruments known as the bond or bonds guaranteeing that the Contractor will fully comply with the plans, specifications and contract.

**15. Work**

The term “work” of the Contractor shall mean and include all labor, all materials and all items of equipment as called for by the Plans and Specifications. Wherever, in the Contract Documents, the words “directed”, “required”, “permitted”, “ordered”, “designated”, “prescribed”, or words of like import, are used, it shall be understood that the direction, requirements, permission, order, designation or prescription of the Owner or its Engineer is intended; and, similarly, the words “approve”, “acceptable”, “suitable”, “satisfactory” or words of like import shall mean approved by (acceptable to, suitable to, or satisfactory to), the Owner or its Engineer in each case.

**D. Abbreviations**

Where any of the following abbreviations are used in the specifications, they shall have the meaning set forth opposite each:

ANSI	American National Standard Institute
ASTM	American Society for Testing Materials
ASCE	American Society of Civil Engineers
AWWA	American Water Works Association
AASHTO	American Association of State Highway and Transportation Officials
AISC	American Institute of Steel Construction
ASA	American Standards Association
ACI	American Concrete Institute
F.S.	Federal Specifications issued by the Federal Supply Service of the General Services Administration, Washington, D.C.

**PART 2: BIDDING REQUIREMENTS**

Bidders Bond or Check. Each separate proposal shall be accompanied by a certified check or acceptable collateral in the amount specified in the Instructions to Bidders made payable to the Owner. Bid bonds must be issued by a Surety licensed to do business in the home state of the Owner. Companies executing bonds must appear on the U.S. Treasury Department’s most current list (Circular 570 as amended).

### **PART 3: AWARD AND EXECUTION OF CONTRACT**

#### **A. Performance and Payment Bonds**

The successful bidder shall be required to furnish the Owner with a performance bond and a payment bond in the form required by law, each in an amount equal to 100 percent of the contract amount, based on the Lump Sum Bid and/or the anticipated quantities and unit prices.

This bond shall guarantee the proper prosecution and completion of the work by the successful bidder; and shall further guarantee the prompt payment by the successful bidder of all persons or firms furnishing labor, tools, materials and supplies for the work.

This bond shall be kept effective and in full force for one year after completion and acceptance of the work. The bond shall serve as a guarantee of the function and workmanship of the work. This bond shall make the Contractor's sureties responsible for underwriting the work against faulty workmanship or defective materials. Final acceptance of the work shall not relieve the sureties of responsibility for a period of one year after this final acceptance.

#### **B. Changes Not to Affect Bond**

It is distinctly agreed and understood that any changes made in the drawings and specifications for this work, (whether such changes increase or decrease the amount thereof) or any change in the manner or the time of payments made by the Owner to the Contractor, shall in nowise annul, release, or affect the liability of the Surety on the bond given by the Contractor.

#### **C. Guarantee**

Except where specified for a longer period, the Contractor will be required to guarantee the material and workmanship for a period of one year from and after the date of final acceptance of all work by the Owner. Contract Bonds are in full force and effect during the guarantee period.

If, within the guarantee period, repairs or changes are required in connection with guaranteed work which, in the opinion of the Owner, are rendered necessary as the result of the use of materials, equipment or workmanship which are inferior, defective, or not in accordance with the terms of the Contract, the Contractor shall, promptly upon receipt of notice from the Owner, and without expense to the Owner, (a) place in satisfactory condition in every particular all of such guaranteed work, correcting all defects therein; (b) make good all damages to the work or site, or equipment or contents thereof, which, in the opinion of the Owner, are the results of the use of materials, equipment or workmanship which are inferior, defective or not in accordance with the terms of the Contract; and (c) make good any work or material, or the equipment and contents of buildings, structures or sites disturbed in fulfilling any such guarantee.

If the Contractor, after notice, fails within ten days to proceed to comply with the terms of this guarantee, the Owner may have defects corrected, and the Contractor and his surety shall be liable for all expense incurred, provided, however, that in case of an emergency where, in the opinion of the Engineer, delay would cause serious loss or damage, repairs may be made before a notice is given to the Contractor and the Contractor shall pay the cost thereof.

Where special guarantees are called for, such guarantees shall be signed by the Contractor who shall be responsible for the entire work, and shall also be countersigned by the subcontractor who performs the work.



All special guarantees or warranties to specific parts of the work as may be stipulated in the Contract Specifications, or other papers forming a part of this Contract shall be subject to the terms of this Article during the life of each such guarantee. All guarantees called for in the specifications shall be on the guarantee form furnished by the Owner, a copy of which follows. All guarantees shall be signed by the Contractor and delivered to the Engineer before the final estimate under the contract will be approved for payment.

**D. Legal Address of Contractor**

Both the address given in the bid or proposal submitted by the Contractor and the Contractor's office at or near the site of the work are hereby designated as places to either of which notices, letters, and other communications to the Contractor shall be certified, mailed, or delivered. The delivering or depositing in a post paid wrapper, in any post office box regularly maintained by the Post Office Department, or any notice, letter, or other communication directed to the Contractor at either such address shall be deemed sufficient service thereof upon the Contractor, and the date of said service shall be the date of such delivery or mailing. The first named address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor and delivered to the Engineer. Nothing herein contained shall be deemed to preclude or render inoperative the service of any notice, letter, or communication upon the Contractor personally.

**PART 4: SCOPE OF WORK**

**A. Sequence of Operations**

Before starting the work and from time to time during its progress, as the Engineer may request, the Contractor shall outline to the Engineer the methods he plans to use in doing the work and the various steps he intends to take.

Within 15 days after delivery of the Notice to Proceed, the Contractor shall prepare for submission to the Engineer (a) a schedule fixing the dates at which additional drawings, if any, will be required, and (b) a schedule fixing the respective dates for the start and completion of various parts of the work, each such schedule to be subject to review and change from time to time during the progress of the work.

**CONTRACTOR'S GUARANTEE**

**CONTRACT NO.** \_\_\_\_\_

**GUARANTEE FOR** \_\_\_\_\_

We hereby guarantee that the \_\_\_\_\_ which we have installed as work done under the above contract has been done in accordance with the drawings and specifications and that the work as installed will fulfill the requirements of the guarantee included in the specifications. We agree to repair or replace any or all of our work, together with any other adjacent work which may be displaced in so doing, that may prove to be defective in its workmanship or material within a period of \_\_\_\_\_ from the date of acceptance by the Owner, of the work included under the above contract, without any expenses whatsoever to the Owner.

Within 10 days after being notified in writing by the Owner of any defects in the work, we agree to commence and prosecute with due diligence all work necessary to fulfill the terms of this guarantee, and to complete the work within a reasonable period of time, and in the event of our failure to so comply, Owner to proceed to have such work done and charges thereof upon demand and pay the cost and charges thereof upon demand.

We agree that, in case of emergency, where, in the opinion of the Owner, delay would cause serious loss or damage to the Owner, repairs may be made without notice, and we, collectively and separately, agree to pay the cost thereof upon demand.

**Dated** \_\_\_\_\_

**Signed** \_\_\_\_\_  
(Prime Contractor's Signature)

**Countersigned** \_\_\_\_\_  
(Subcontractor's Signature)

**B. Alterations**

The Engineer may make alterations in the line, grade, plan, form, dimensions or materials of the work or any part thereof, either before or after the commencement of construction. If such alterations increase or decrease the quantity of work they shall be made at the unit prices stipulated for such work, compensation for increased work shall be made under the item for Extra Work, and for decreased work the Contractor shall allow the Owner a reasonable credit as determined by the Engineer. If such alterations diminish the quantity of work to be done, they shall not warrant any claim for damages or for anticipated profits on the work that is dispensed with.

**C. Extra Work**

The Contractor shall do any work incidental to the proper completion of the contract not herein otherwise provided for when and as ordered in writing by the Engineer, either (a) at the price agreed upon before the work is commenced, and named in the order for the work or (b) if the Engineer so elects, for the reasonable cost of said work, as determined by the Engineer, plus 15 percent of such cost. No extra cost will be paid for unless specifically ordered as such by the Engineer in writing.

The Contractor shall, when requested by the Engineer so to do, furnish itemized statements of the cost of the work ordered and give the Engineer access to the accounts, bills, and vouchers relating thereto.

The Engineer shall include in the cost of extra work under (b) above, the reasonable cost to the Contractor of all materials used, of all machinery and of all equipment used upon the extra work for the period of such use.

The fair rental for all machinery and equipment shall be based upon the most recent edition of "Compilation of Rental Rates for Construction Equipment," as published by the Associated Equipment Distributors, or similar publication approved by the Engineer. Rental for machinery which was upon the work immediately before, or which shall be required by or used upon the work after the extra work is done, shall be based upon an appropriate fraction of the approved monthly rate schedule. If said work requires the use of machinery not upon the work or to be used upon the work, then the cost of transportation, not exceeding a distance of 100 miles, of such machinery to and from the work shall be added to the fair rental as accepted by the Engineer in writing prior to the rental of the machine. If any machine or piece of equipment becomes unusable due to breakdown or any other cause, the Owner shall not be required to pay any rental beyond a 24-hour period of loss of use and shall not be responsible for any repair costs.

The Engineer shall include in the cost of extra work. The cost to the Contractor of additional premiums paid on the required insurance on account of such extra work, and the cost of Social Security or other direct assessment upon the Contractor's payroll by Federal or other properly authorized public agencies. The Engineer shall not include in the cost of extra work any cost or rental of small tools, buildings, or any portion of the time of the Contractor, or his superintendent, or any allowance for use of capital or the premium on the bond as assessed upon the amount of extra work, these items being considered as being covered by the 15 percent added to the reasonable cost.

In the event that the extra work involves work or furnishing of materials by a subcontractor or supplier, the Contractor's itemized statement of cost shall include details of the subcontractor's or supplier's cost of the extra work. The subcontractor may add no more than 15 percent for overhead and profit and other items. In the event that the change results in a credit, the subcontractor or supplier shall add 10 percent to the itemized cost of the change.

The Prime Contractor may add to the total cost, including the subcontractor's cost and mark-up, no more than 5 percent for overhead and profit where the extra work and materials are furnished by the subcontractor or supplier. Under a credit for omission of work or materials by a subcontractor or supplier, the Prime Contractor shall add 5 percent to the credit amount as shown in the itemized statement of cost.

In situations where both a subcontractor and the Prime Contractor furnish work and materials for a change, the Prime Contractor may add on a pro-rated basis the percentages for profit, overhead and bond as specified above.

For changed work to be furnished by a supplier or vendor, the Contractor shall furnish the Engineer, on demand, a lump sum estimate or quotation of the cost of the item or items to the Contractor, signed by the supplier or vendor.

In preparing detailed estimates for proposed change orders which involve both added and omitted work. The Contractor shall separately estimate the cost of the added work on the basis specified above, and separately estimate the cost of the omitted work on the basis specified above, and the net difference between the two shall be in his proposed price for the changed work involved.

In the event that an agreement cannot be reach between the Contractor and the Engineer as to the cost of any proposed change in the work, the Engineer may then order the Contractor to proceed with the change on a cost plus basis.

#### **D. Contractor's Office and Telephones**

The Contractor shall maintain, during the performance of this contract, an office at the site of the work at which he or his authorized agent shall be present at all times while work is in progress. Instructions from the Engineer left at his office shall be considered as delivered to the Contractor.

Copies of the contract, the working drawings and specifications for the work shall be kept at said office, ready for use at any time.

The Contractor shall provide and at all times maintain during the performance of this contract, one-party line telephone connections with the lines of the telephone company.

#### **E. Engineering and Inspection Facilities**

The Contractor shall furnish and maintain suitable quarters in an approved location equipped for the exclusive use of the forces of the Engineer from the time of beginning work under this contract until construction work is completed. These quarters shall be a separate room not less than 12 feet by 16 feet with an outside entrance, or shall be a separate temporary building. The quarters shall be provided with heat, air conditioning, light, water of potable quality, disposal of garbage and sewage and janitor service. There shall be a sufficient number of windows to permit use of the room for engineering purposes in normal daylight, without artificial light. Doors and windows shall have adequate locks. A screen door shall also be provided.

A temporary building shall be of sheet metal, or sound wood construction, with tight tongue-and-groove wood flooring, waterproofed and lined with wall board. The room shall be wired and provided with lamps, and convenient outlets. The building may be of approved portable or "knockdown" construction or a construction trailer office satisfactory to the Engineer.

The furniture provided shall be new steel office furniture and shall consist of a table 36 inches by 60 inches with a drawer, one flat top desk with drawers, two stools, three chairs, and one swivel desk chair. The Contractor shall also furnish additional minor equipment such as tables, benches, storage cupboards, filing cases, water cooler, and shelving, as indicated.

Telephone service for the exclusive use of the Owner or Engineer shall be provided and maintained by the Contractor in the above-described building. This service shall be "individual line." The Contractor shall pay for all local calls. Long distance calls will be paid for by the Owner or Engineer.

Upon completion of the work, all office furniture shall be returned to the Contractor. This facility shall remain in operation and use until all contracts are completed.

#### **F. DRINKING WATER**

The water furnished by the Contractor shall include a sufficient supply of drinking water from approved sources, of acceptable quality and satisfactorily cooled for his employees and the engineers and employees of the Owner.

### **PART 5: CONTROL OF WORK**

#### **A. Subcontracts**

The Contractor shall submit in writing to the Engineer immediately after the signing of this contract, full information as to what portions of this work he proposed to sublet, if any, and to whom he proposes to sublet them.

It is hereby mutually agreed that the Engineer shall have the right to disapprove of any subcontractor, in which event the Contractor shall employ an approved subcontractor or do the work himself; or to disapprove of the performance of any portion of the work under subcontract, in which event the Contractor shall do the work himself. The Contractor agrees that the approval of such subletting of work or of subcontractors shall in nowise lessen his responsibility for strict compliance with all the provisions of the contract.

The Owner will not deal with any subcontractor.

#### **B. Not to Sublet or Assign**

The Contractor shall give his personal attention constantly to the faithful prosecution of the work, shall keep the same under his personal control and shall not assign by power of attorney or otherwise, nor sublet the work or any part thereof without the previous written consent of the Owner, and shall not either legally or equitably assign any of the moneys payable under this agreement, or his claim thereto, unless by and with the like consent of the Owner and the Surety on the Bond.

**C. Engineer to Decide**

The Engineer shall in all cases determine the amount, quality, acceptability and fitness of the several kinds of work and materials which are to be paid for under this contract; shall determine all questions in relation to said work and decide every question of the fact which may arise relative to the fulfillment of this contract on the part of the Owner and on the part of the Contractor. His estimate and decisions shall be final and conclusive upon both parties of this contract.

Any differences or conflicts which may arise between the Contractor and other contractors of the Owner in reward to their work shall be adjusted and determined by the Engineer.

**D. Engineer to Give Orders**

The Engineer shall make all necessary explanations as to the meaning and intention of the drawings and specifications, and may give necessary orders and directions.

The order or sequence of execution of the work and the general conduct of the work shall be subject to review by the Engineer, who shall have authority to direct the order or sequence where public necessity or welfare shall require, which approval or direction shall, however, in nowise affect the responsibility of the Contractor in the conduct of the work.

The Engineer will have authority to suspend the work either wholly or in part, due to failure of the Contractor to correct conditions unsafe for the workmen or the general public; for failure to carry out provisions of the contract; for failure to carry out orders; for such periods as he deems necessary due to unsuitable weather; for conditions considered unsuitable for prosecution of the work; or for any other conditions or reasons deemed to be in the public interest.

**E. Absence of Contractor**

Whenever the Contractor is not present on any part of the work where it may be desired to give directions, order may be given by the Engineer, and shall be received and obeyed by the superintendent or foreman who may have charge of the particular work in reference to which orders are given.

**F. Interference With and Protection of Streets and Waterways.**

The Contractor shall not close or obstruct any portion of a street, road, private way, waterway or river, without obtaining permits therefore from the proper authorities. He shall place and at all times keep proper guards and at night suitable and sufficient warning lamps for the prevention of accidents; shall furnish watchmen to direct traffic where required to protect life or property; and shall observe police regulations and local ordinances. If any such way shall be rendered unsafe by the Contractor's operations, he shall make such repairs or provide such temporary ways or guards as necessary.

When it is necessary to haul soft or wet material over the streets, the Contractor shall provide suitable watertight vehicles for the purpose.

Streets, roads, private ways, and walks shall be maintained passable by the Contractor at his expense, and the Contractor shall assume full responsibility for the adequacy and safety of provisions made.

#### **G. Sanitary Regulations**

The Contractor shall provide adequate sanitary conveniences for the use of those employed on the work, and their use shall be strictly enforced. Such conveniences shall be made available when the first employees arrive on the work, shall be constructed and maintained at such points and in such manner as may be approved and shall be removed after departure of the last employees from the job.

The Owner shall have the right to inspect any building erected, maintained, or used by the Contractor to determine whether or not the sanitary regulations have been complied with.

The Contractor shall rigorously prohibit the committing of nuisances upon the lands of the Owner, or others, about the works, or upon adjacent property.

#### **H. Access to Work**

The Owner and the Engineer, and their agents and employees may, for purposes already specified and for any other purposes, enter upon the work and the premises used by the Contractor, and the Contractor shall provide safe and proper facilities therefore. Representatives of the appropriate State and Federal regulatory agencies and the local governing body shall be provided access to the work during normal working hours.

#### **I. Inspection**

All materials and workmanship shall be subject to inspection. The Contractor shall afford every reasonable facility for inspecting the material and work at all times, on the site of construction or erection, even to the extent of uncovering or taking down portions of finished work upon order.

Should the Work thus exposed or examined prove satisfactory, the uncovering or taking down and the replacement of material and rebuilding of the work shall be considered and paid for as extra work unless the original work was done in the absence of the Engineer or his inspector without his written authorization, in which case that section of the Contract Provisions entitled "Work to Conform" shall govern. Taking down, replacing, and making good shall be at the expense of the Contractor. The presence of the Engineer shall in nowise lessen the responsibility of the Contractor.

#### **J. Work to Conform**

All work shall conform during its progress and on its completion truly to the lines, levels and grades indicated on the drawings or given by the Engineer and shall be built in a thoroughly substantial and workmanlike manner, in accordance with the plans and specifications and directions given from time to time by him. In no case shall any work in excess of the plan requirements and specifications be paid for unless ordered in writing.

All work done without proper lines or levels, or done during the absence of the Engineer or his agent, will not be estimated or paid for except when such work is authorized in writing. Work so done may be ordered uncovered or taken down, removed, and replaced at the Contractor's sole cost and expense.

**K. Defective Work**

The inspection of the work shall not relieve the Contractor of any of his obligations to fulfill his contract as herein prescribed, and defective work shall be made good and unsuitable materials shall be rejected, notwithstanding that such work and materials have been previously accepted by the Engineer or estimated for payment. If the work or any part thereof shall be found defective at any time before the final acceptance of the whole work, the Contractor shall forthwith make good such defect, and if any material brought upon the ground for use in the work, or selected for the same, shall be condemned as unsuitable or not in conformity with the specifications, the Contractor shall forthwith remove such materials from the vicinity of the work, and any material furnished by the Owner which shall be damaged or rendered defective by the handling or improper installation by the Contractor, his agents or employees, shall be made good and replaced at the Contractor's own expense.

**L. Mistakes of Contractor**

The Contractor shall pay to the Owner all expenses, losses and damages, incurred in consequence of any defect, omission or mistake of the Contractor, or his employees, or the making good thereof.

**M. Precautions During Adverse Weather**

During adverse weather, the Contractor shall take all necessary precautions so that the work may be properly done and satisfactory in all respects. When required, protection shall be provided by use of tarpaulins, wood and building paper shelters, or other approved means.

During cold weather, materials shall be preheated, if required and the materials and adjacent structures into which they are to be incorporated shall be made and kept sufficiently warm so that a proper bond will take place and a proper curing, aging or drying will result. Protected spaces shall be artificially heated according to the particular requirements of the work being protected. Ingredients for concrete and mortar shall be sufficiently heated so that the mixture shall be warm throughout when used.

The Engineer may suspend construction operation at any time when, in his judgment, the conditions are unsuitable or the proper precautions are not being taken, whatever the weather may be in any season.

If temporary heat is required for the protection of the work, the Contractor shall provide and install approved heating apparatus, and shall provide adequate and proper fuel and maintain fires as required.

Temporary heating apparatus shall be installed and operated in such manner that the finished work will not be damaged thereby.

**N. Obligation to Pay For Labor & Materials**

The Contractor shall pay for all materials furnished and services rendered for the performance of this contract, and any person, firm or corporation furnishing such materials or rendering such services may maintain an action to recover for the same against the Contractor and his Surety, or either of them. If so requested by the Owner, the Contractor and his subcontractors shall furnish lien waivers or certified statements from any party furnishing materials or rendering service in



connection with this project, that said party has been paid in full.

**O. Extension of Time on Account of Extra Work**

When extra work is ordered at any time during the progress of the work which requires, in the opinion of the Engineer, an unavoidable increase of time for the completion of the contract, a suitable extension of the time or completion shall be made.

**P. Stoppage of Work**

If the work to be done under this contract shall be abandoned, or if this contract or any part thereof shall be sublet without the previous written consent of the Owner, or if the contract or any claim thereunder shall be assigned by the Contractor otherwise than as herein specified, or if at any time the Engineer shall be of the opinion and shall so certify in writing, that the conditions herein specified as to the rate of progress are not fulfilled, or that the work or any part thereof is unnecessarily or unreasonably delayed or that the Contractor has violated any of the provisions of this contract, the Owner may notify the Contractor by a written order with a copy mailed to the home office of the Surety to discontinue all work, or any part thereof; and thereupon the Contractor shall discontinue such work or such part thereof as the Owner designates, and the Owner may thereupon, by contract or otherwise, as it may determine, complete the work, or such part thereof, and charge the entire expense of so completing the work or part thereof to the Contractor; and for such completion the Owner for itself or its contractors may take possession of work or part thereof, any of such materials, equipment, machinery, implements and tools of every description as may be found at the location of said work.

All expenses charged under this Article shall be deducted and paid by the Owner out of any money then due or to become due the Contractor under this contract, or any part thereof; and in such accounting the Owner shall not be held to obtain the lowest figures for the work of completing the contract or any part thereof, or for insuring its proper completion but all sums actually paid therefore shall be charged to the Contractor. In case the expenses so charged are less than the sum which would have been payable under this contract if the same had been completed by the Contractor, the Contractor shall be entitled to receive the difference; and in case such expenses shall exceed the said sum, the Contractor shall pay the amounts of the excess to the Owner.

**Q. Use of a Portion of the Work**

The Owner reserves the right to use any portion of the work prior to the completion of the Contract. Such use shall be subsequent to a written notice to the Contractor and shall not be held to be an acceptance thereof or a waiver of any of the requirements of the contracts. Any damage resulting to the work due to such use and not to defective materials or workmanship, or to the action of the elements or other natural causes, and which may result notwithstanding satisfactory precaution taken by the Contractor, shall be repaired or replaced at the expense of the Owner.

**R. Contract Drawings and Specifications**

The Owner will furnish the Contractor, free of charge, 5 copies of all Drawings and Specifications. Any additional Drawings and Specifications required by the Contractor shall be billed to the

Contractor at cost. The Contractor shall keep one complete set of contract drawings and specifications available on the principle site of the work at all times, and as many additional sets or parts of sets as directed to insure orderly progress. In case any part of the contract work is being prosecuted away from such principle site, the Contractor shall keep available at the site of such work such part or parts of the Contract Documents as ordered.

**S. Construction Plan-Storage of Materials**

The Contractor shall make arrangements for and furnish all space required for offices, plant and storage of material.

The Contractor shall arrange his plant and store his materials as compactly as practicable at points convenient for the Contractor and which do not damage the work or interfere with the work of other contractors or with free access to all parts of the site and to utility installations.

Materials shall be stored in a manner so as to facilitate inspection and to insure preservation of their quality and fitness for use. They shall be placed on wooden platforms or other clean surfaces and not on the ground and shall be placed under cover.

**T. Staking Work**

The Engineer will provide horizontal and vertical controls for the construction work. The protection and care of such stakes shall be the responsibility of the Contractor, and all stakes lost or destroyed will be replaced at the Contractor's expense. The actual layout and staking of individual items, including the placing of grade and line stakes for sewer construction, shall be done by and be the responsibility of the Contractor. Such work shall be subject to checks by the Engineer as to compliance with the Contract Drawings and Specifications. Copies of cut sheets and staking notes shall be furnished to the Engineer as the staking proceeds.

The Contractor shall employ a Registered Professional Engineer or Registered Land Surveyor who shall be responsible for and certify the staking work.

No separate payment will be made for the costs involved in the survey work, layout work or staking performed by the Contractor. All such costs will be considered as incidental to the contract.

The Contractor shall keep a set of plans on the site at all times and record all changes and revisions. The Contractor shall submit the revised plans to the Engineer at the close of the job for preparation of As-built plans.

**U. Supplemental Drawings**

Additional drawings for the purpose of explaining details of the work, or to show changes in the work will be furnished to the Contractor from time to time, as found necessary. Supplemental drawings bearing the signature of an authorized representative of the Owner shall upon issue become a part of the Contract Documents.

**V. Oral Modification**

No oral statement of any person whomsoever in any manner or degree shall modify or otherwise affect the terms of this Contract.

## **PART 6. CONTROL OF MATERIAL**

### **A. Right to Materials**

Nothing in this contract shall be construed as vesting in the Contractor any right of property in the materials used after they have been attached or affixed to the work or the soil, but all such materials shall, upon being so attached or affixed, become the property of the Owner.

### **B. "Or Equal" Clause**

Whenever in any section of the Contract Documents any article, material, or equipment is defined by describing a proprietary product, or by using the name of a manufacturer or vendor, the term "or equal" if not inserted shall be implied. The specific article, material, or equipment mentioned shall be understood as indicating the type, function, minimum standard of design, efficiency, and quality desired and shall not be construed in such a manner as to exclude manufacturer's products of comparable quality, design, and efficiency.

### **C. Shop and Working Drawings and Construction Drawings**

The Contractor shall submit to the Engineer a complete schedule of data on materials and equipment to be incorporated in the work. Submittals shall be supported by descriptive material, such as catalogs, cuts, diagrams, performance curves, and charts published by the manufacturer, to show conformance to specification and drawing requirements; model numbers alone will not be acceptable.

Each individual submittal item for materials and equipment shall be marked to show Specification Section and paragraph number which pertains to the item.

The purpose of shop drawing submittals is to demonstrate to the Engineer that the Contractor understands the design concept. The Engineer's review of such drawings, schedules, or cuts shall not relieve the Contractor from responsibility for deviation from drawings or Specifications unless he has, in writing, called the Engineer's attention to such deviation at the time of submission, and has received from the Engineer, in writing, permission for such deviations.

Shop drawings shall be stamped by the Engineer with the following classifications:

1. No Exceptions Taken

No corrections, no marks. Contractor shall submit copies for distribution.

2. Make Corrections Noted

A few minor corrections. Items may be ordered as marked up without further resubmission. Submit corrected copies for distribution.

3. Amend and Resubmit

Minor corrections. Item may be ordered at the Contractor's option. Contractor shall resubmit drawings with corrections noted.

4. Rejected-Resubmit

Major corrections or not in accordance with the Contract Documents. No items shall be ordered. Contractor shall correct and resubmit drawings.

Corrections to shop drawings shall not relieve the Contractor from the obligation to complete the project within the time allowed by the Contract Documents.

The Contractor shall submit shop or working drawings of concrete reinforcement, structural details, piping layout, wiring, materials fabricated especially for this project, materials for which drawings are specifically requested, and equipment. The Contractor shall also submit structural shop drawings, computations, and construction procedures for jacking pits, sheeted trenches, and cofferdams to be used in construction.

Such drawings shall show the principle dimensions, the weight, structural and operating features, space required, clearances, etc., depending on the subject of the drawing. When it is customary so to do, or when the dimensions are of particular importance, the drawings shall be certified by the manufacturer as correct for this project.

No material shall be purchased or fabricated for equipment or other features until the Engineer has reviewed the shop or working drawings. All materials and work involved in the construction shall then be represented by said drawings.

No work shall be done upon the foundations or any other part of a structure of which the design or construction is dependent upon the design of equipment or other features for which review is required until such review has been completed.

Six copies (unless otherwise specified) of all shop or working drawings shall be submitted to the Engineer through the Contractor. Only drawings which have been checked and corrected by the material fabricator shall be submitted. The Contractor shall be responsible for the prompt submission of all shop or working drawings, so that there shall be no delay to the work due to the absence of such drawings. Additional prints of drawings shall be furnished as required.

The review of shop and working drawings, etc., will be general and shall not relieve the Contractor from the responsibility for details of design, dimensions, etc., necessary for proper fitting and construction of the work required by the contract.

The Contractor shall furnish prints of all construction drawings in duplicate to the Engineer, who will retain one set and return the other, having marked thereon such changes as he may suggest. Examination, suggestions and review by the Engineer of drawings or other data submitted to him pursuant to the provisions of this paragraph shall relate only to the apparent fitness of the items thus explained as an aid in producing the general result which is the purpose of the contract. The Engineer's examination, suggestions and review will not be directed, and shall not be understood to relate to the strength, adequacy or sufficiency of such things, which are and will remain solely the responsibility of the Contractor. At the completion of all construction and subsequent modifications, the Contractor shall prepare and deliver to the Engineer six copies of all previously submitted preliminary and shop drawings, each modified to include all subsequent additions and revisions that were made during construction. These said six copies will be identified as AS-BUILT SHOP DRAWINGS.

The Contractor shall furnish the Engineer, during the progress of the work, as many prints of all construction drawings as may be required for construction purposes.

The Contractor shall not order any material, until the submitted detail drawings have been reviewed. If the Contractor departs from this procedure for his own convenience, such departure shall be at his own risk and expense, if any. The Contractor shall also give the Engineer notice, stating the quantity of material ordered and the location of the mill and shop where the material

will be rolled and fabricated.

#### **D. Electrical Energy**

The Contractor shall make all necessary applications and arrangements and pay all fees and charges for electrical energy for power and light required for the proper completion of this contract during its entire progress. He shall provide and pay for all temporary wiring, switches, connections and meters.

There shall be sufficient artificial light, by means of electricity, so that all work may be done in a workmanlike manner when there is not sufficient daylight.

The Contractor's responsibility for electrical service and its cost shall terminate on the date of final acceptance by the Owner of the work.

#### **E. Water Supply**

The Contractor shall make all arrangements and pay all fees and charges for water required for proper completion of this contract during its entire progress. All water used for concrete work, curing of concrete, testing of structures for watertightness, and all water used for other purposes where structures may be affected or discolored shall be clean and free from acid, alkali, and iron and from injurious amounts of vegetable matter and oil. Untreated stream water will not be permitted for these purposes.

#### **F. Materials-Samples-Inspection**

Unless otherwise indicated on the drawings or specified, only new materials shall be incorporated in the work. All materials furnished by the Contractor to be incorporated in the work shall be subject to the inspection and approval of the Engineer. No material shall be processed or fabricated for, or delivered to, the work without prior review by the Engineer, except at the risk of the Contractor.

As soon as possible after the contract has been executed, the Contractor shall submit to the Engineer, data relating to materials he proposes to furnish for the work. Such data shall be in sufficient detail to enable the Engineer to identify the particular product in question and to form an opinion as to its conformity to the contract requirements.

Facilities and labor for handling and inspection of all materials shall be furnished by the Contractor. Defective material shall immediately be removed from the site of the work.

If the Engineer so requires, either prior to beginning, or during the progress of the work, the Contractor shall submit samples of materials for such special tests as may be necessary to demonstrate that they conform to the specifications. Such samples shall be furnished, taken, packed, and shipped at the expense of the Contractor. The Contractor shall make arrangements for and pay for all tests.

All samples shall be packed so as to reach their destination in good condition, and shall be so labeled as to indicate the materials represented, the name of the building or work and location for which the material is intended, and the name of the Contractor submitting the sample. To insure consideration of samples, the Contractor shall notify the Engineer by letter that the samples have been shipped and shall properly describe the samples in the letter. In no case shall the letter of

notification be enclosed with the samples.

The Contractor shall submit data and samples, or place his orders, sufficiently early to permit consideration, inspection and testing before the materials are necessary for incorporation in the work. Any delay resulting from his failure so to do shall not be used as the basis of a claim against the Owner or Engineer.

In order to demonstrate the proficiency of workmen, or to facilitate the choice among several textures, types, finishes, surfaces, etc., the Contractor shall, at his own expense, provide such samples of workmanship, or wall, floor, finish, etc., as may be required.

The Contractor shall furnish to the Engineer triplicate certified copies of manufacturer's shop or mill tests (or reports from independent testing laboratories) relative to materials and concrete data.

After approval of the samples, data, etc., the material used on the work shall correspond therewith.

## **Part 7. LEGAL RELATIONS AND RESPONSIBILITY TO THE PUBLIC**

### **A. Discrepancies, Errors and Omissions**

The drawings and specifications are intended to be explanatory of each other, but should any discrepancy appear or any misunderstanding arise as to the import of anything contained in either, the interpretation and decision of the Engineer shall be final and binding on both parties to the contract.

Any correction of errors or omissions in drawings and specifications may be made by the Engineer when such correction is necessary for the proper fulfillment of their intention as construed by him. Where said correction of errors or omissions, except as provided in the next two paragraphs below, adds to the amount of work to be done by the Contractor, compensation for said additional work shall be made under the item for Extra Work except where the additional work may be classed under some item of work for which a unit price is included in the Proposal.

The fact that specific mention of a fixture, or of any part of the work, is omitted in the specifications, whether intentionally or otherwise, when the same is clearly shown or indicated on the drawings, or is usually and customarily required to complete fully such work as is specified herein, will not entitle the Contractor to consideration in the matter of any claim for extra compensation, but the said fixture or work or both, must be installed or done the same as if called for by both the drawings and specifications.

All work indicated on the drawings and not mentioned in the specifications, or vice versa, and all work and material usual and necessary to make the work complete in all its parts, whether or not they are indicated on the drawings or mentioned in the specifications, shall be furnished and executed the same as if they were called for by both the drawings and specifications.

All dimensions shown on contract plans are based on surveys or taken from plans of work not in existence or under construction. The Contractor shall check in the field all dimensions which govern the location or fit of work under this contract with work now in existence, under construction or proposed and immediately report any variations from the dimensions or elevations shown on the contract plans to the Engineer in writing. No adjustments of discrepancies other

than those called for in his contract shall be made by the Contractor, except at his own risk and responsibility. He shall also check the contract plans for any errors or omissions existing therein at the earliest date possible, and any errors found shall be reported to the Engineer for correction. If, in the progress of the work, the Contractor discovers any errors or omissions in any of the contract documents, or in the information furnished him by the Owner or in the work undertaken and executed or to be executed by him, he shall immediately notify the Engineer who will promptly investigate the same and take such action as he deems necessary.

If the Contractor knows or can reasonably be expected to have known of an error, discrepancy or conflict in any of the Contract Documents and fails to report the same, he shall not be entitled to compensation for any work or expense incurred by him, which is required to be redone or reincurred because of said error, discrepancy or conflict and which would have been avoided had he promptly reported said errors, discrepancy or conflict when he knew or should have known of the same.

#### **B. Obligations and Liability of Contractor**

The Contractor shall do all the work and furnish all the materials, tools, and appliances, except as herein otherwise specified, and everything necessary or proper for performing and completing the work required by the contract, in the manner and in the time hereinafter specified. He shall complete the entire work in accordance with the specifications and drawings herein mentioned, at the prices herein agreed upon and fixed therefore. All the work, labor and materials to be done and furnished under this contract shall be done and furnished strictly pursuant to, and in conformity with the Contract Documents under the terms of this contract.

All loss or damage arising out of the performance or nature of the work done under this contract or from any unforeseen obstruction or difficulties which may be encountered in the prosecution of the same, or from the action of the elements or from any cause or causes whatsoever, until the same shall have been finally accepted, shall be sustained and paid for by the Contractor.

The Contractor shall coordinate his operations with those of any other contractors who may be employed on other work of the Owner and shall avoid interference therewith and cooperate in the arrangements for storage of materials.

The Contractor shall conduct his work so as to interfere as little as possible with private business and public travel. He shall, at his own expense, wherever necessary or required, maintain fences, furnish watchmen, maintain lights, and take such other precautions as may be necessary to protect life and property.

The Contractor shall take all responsibility for the work done under this contract; for the protection of the work; and for preventing injuries to persons, and damage to property and utilities on or about the work. He shall in nowise be relieved of his responsibility by any rights of the Engineer to give permission or issue orders relating to any part of the work or by any such permission given or orders issued, or by failure of the Engineer to give such permission or issue such orders. The Contractor shall bear all losses resulting to him or to the Owner on account of the amounts or character of the work, or because the nature of the land in or on which the work is done is different from what was estimated or expected, or on account of the weather elements or other causes. The Contractor shall assume the defense of all claims of whatsoever character against the Contractor or the Owner, and indemnify, save harmless and insure the Owner, its officers or agents, against all claims arising out of injury or damage to persons, corporations, or property, whether said claims arise out of negligence or not, or whether said claims are for

unavoidable damage or not, and from all claims relating to labor and materials furnished for the work and from all expenses incurred in defending or settling such claims, including reasonable attorney's fee.

The Contractor shall so conduct his operations as not to damage existing structures or work installed either by him or by other Contractors. In case of any such damage resulting from his own operation, he shall repair and make good as new the damaged portions at his own expense.

**C. Protection, Support and Maintenance of Structures**

Unless otherwise provided in the Detailed Specifications, the Contractor shall maintain the service of, shore up, sling, support, protect and make good as directed, all water pipes, gas pipes, service pipes, sewers and sewer connections, conduits, manholes, drains, vaults, buildings, tracks or other structures, and substructures of municipalities and public utility companies, and all service lines and structures including substructures of private abutting owners that are located within the lines of the improvement, which may be liable to disturbance or injury during the progress of the work. He shall furnish and place at his own expense all necessary supports and shall supply all labor and materials necessary to reconnect and restore to the condition existing at the time they were uncovered all such structures which become disturbed or damaged.

**D. Rights-of-Way**

Where parts of the project traverse private property, rights-of-way shall be obtained by the Owner at no expense to the Contractor. Should it become necessary for the Owner to delay the Contractor for right-of-way procurement, the Owner reserves the right to do so, provided that such delay is reasonable. An extension of time will be granted for such a delay. No additional compensation will be granted to the Contractor for any delays.

Where the project or any part thereof traverses public roads or easements, the Contractor will make, with the adjacent property owners, all necessary arrangements for the construction of the project.

**E. Minimum Wage Rates**

The Contractor shall pay not less than the minimum wage rates established by any governmental agency having jurisdiction.

**F. Unfair Discriminatory Practices**

The Contractor agrees that he is bound by the laws of the State in which the work is performed as it applies to employment and by the following provisions:

1. In the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall by reason of race, creed, or color discriminate against any citizen who is qualified and available to perform the work to which the employment relates.
2. No contractor, subcontractor, nor any person on his behalf, shall, in any manner,



discriminate against or intimidate any employees hired for the performance of work under this contract on account of race, creed, or color.

3. This contract may be canceled or terminated by the Owner and all money due, or to become due hereunder, may be forfeited for a second or any subsequent violation of the terms or conditions of this portion of the contract.

#### **G. Jurisdictional Disputes**

The Engineer or the Owner shall not be brought into any dispute or controversy by reason of inadvertence of seeming necessity for issuing this specification in the form herewith presented. No arrangement of topics or other inter-relation or reference used throughout in connection with any contract documents shall be construed by anyone to be an interference on the part of either the Engineer or the Owner with any jurisdiction or other trade rules or agreement.

#### **H. Intoxicating Liquors and Illegal Drugs**

The Contractor shall not permit the presence or use of intoxicating liquors or illegal drugs upon or about the work covered under this contract.

#### **I. Insurance**

Without restricting the obligations and liability of the Contractor under these Contract Provisions, the Contractor shall, at his own cost and expense, carry and maintain until acceptance of the work insurance as follows:

1. Workmen's Compensation Insurance as required by the laws of the State in which the project is located.
2. Contractor's Direct Bodily Injury Liability Insurance.
3. Contractor's Direct Property Damage Liability Insurance, including Collapse, Blasting, Explosion and Underground Damages.
4. Contractor's Protective Bodily Injury Liability Insurance.
5. Contractor's Protective Property Damage Liability Insurance, including Collapse, Blasting, Explosion and Underground Damage.
6. Owner's Protective Bodily Injury Liability Insurance in the name of the Owner.
7. Owner's Protective Property Damage Liability Insurance, including Collapse, Blasting, Explosion and Underground Damage, in the name of the Owner.
8. Contractual Bodily Injury Liability Insurance covering the liability assumed by the Contractor.
9. Contractual Property Damage Liability Insurance covering the liability assumed by the Contractor.

10. Bodily Injury Liability Insurance covering all motor vehicles owned by the Contractor and all motor vehicles not owned by the Contractor while such vehicles are being operated in connection with the prosecution of the work under this contract.
11. Property Damage Liability Insurance covering all motor vehicles owned by the Contractor and all motor vehicles not owned by the Contractor while such vehicles are being operated in connection with the prosecution of the work under this contract.
12. Fire and Extended Coverage Insurance (including vandalism and malicious mischief coverage.) The policy shall cover all work incorporated in the building and all material for the same on or about the premises. The owner, contractor and all subcontractors shall be named as co-insured, as their respective interest may appear. Use the "completed value form."

All Bodily Injury Liability Insurance shall be in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) on account of one person and subject to such limit per person and One Million Dollars (\$1,000,000) on account of one accident.

All Property Damage Liability Insurance, except that covering motor vehicles, shall be in the amount of One Hundred Thousand Dollars (\$100,000) on account of one accident, and, subject to such limit per accident, One Million Dollars (\$1,000,000) on account of all accidents. Property Damage Liability Insurance covering the operation of motor vehicles shall be in the amount of One Hundred Thousand Dollars (\$100,000) per accident.

All policies shall be so written that the Owner will be notified of cancellation or restrictive amendment at least 30 days prior to the effective date of such cancellation or amendment. Certificates in triplicate from the insurance carrier stating the limits of liability and expiration date shall be filed with the Owner before operations are begun. Such certificates shall not merely name the type of policy provided, but shall specifically refer to this contract and section, and the above paragraphs or sections in accordance with which insurance is being furnished, and state that such insurance is as required thereby.

In addition, the Contractor shall, at his own cost and expense, carry and maintain until acceptance of the work such Protective (including Railroad Protective) and Contractual Bodily Injury Liability Insurance and such Protective (including Railroad Protective) and Contractual Property Damage Liability Insurance as shall be required by the railroads, street railway companies, and other utility companies whose property, facilities or rights-of-way may be affected by the work to be done under this contract, in such amounts and in such form as each such utility company may require.

#### **J. Permits and Licenses**

The Contractor, at his own cost and expense, shall take out all other necessary permits from railroad, street, highway and public utility companies and from the state, county, municipal and other public authorities, and shall comply with all regulations and execute and carry out all license or other agreements which may be required by those affected; shall give all notices required by law or ordinances; and shall post all bonds and pay all fees and charges incident to the due and lawful prosecution of the work covered by this contract.

For work within a railroad, street, highway or other utility company right-of-way, the Contractor

shall obtain permits from the proper officials of the company owning or operating the right-of-way in question before he proceeds to place any materials or falsework over, under or on the right-of-way. The Contractor shall obtain approval of all shoring, sheeting, bracing and supporting plans by the company whose right-of-way or tracks are involved, but such approval shall not relieve the Contractor from responsibility for injury or damage resulting from or arising out of the work.

All expense involved in connection with the possible placing of watchmen, flagmen and other protective services, or the erection of any temporary structures deemed necessary by the company or by the Owner, shall be borne by the Contractor. The Contractor shall reimburse the company for all expenses incurred by it in connection with such work, and shall be responsible for all damages incurred by the company or any other person by reason of an injury or damages to person or property arising out of the Contractor's work on or about any such right-of-way and shall pay the cost of all precautions taken by the company to prevent such damage or injury.

The Contractor shall file with the Engineer a copy of all permits and licenses secured.

Where applications for permits for state highways or other crossings must be submitted by the Owner. The Contractor shall prepare such forms for the Owner and shall pay all costs, charges, etc. The Contractor shall be responsible for meeting all conditions of permits and for acceptance of final work by all agencies concerned.

#### **K. Compliance With Laws**

The Contractor shall keep himself fully informed of all existing and future State and Federal Laws, all regulations of the various departments or agencies of the State in which the work is performed, and municipal ordinances and regulations in any manner affecting those engaged or employed in the work, or the materials used in the work, or in any way affecting the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for this work in relation to any such law, ordinance, regulation, order, or decree, he shall forthwith report the same to the Engineer in writing. He shall at all times himself observe and comply with, and cause all his agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the Owner, its officers and agency against any claim or liability arising from or based upon violation of any such law, ordinance, regulation, order, or decree, whether by himself or his employees or any subcontractor.

#### **L. Provisions Required by Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party, the contract shall forthwith be physically amended to make such insertion.

#### **M. Patents**

The Contractor shall indemnify and save harmless the Owner, and all persons acting for or on behalf of the Owner, from all claims and liability of any nature or kind, including costs and expenses, arising from or occasioned by any infringement or alleged infringement of patent rights

on any invention, process, article, or apparatus, or any part thereof, furnished and installed by said Contractor or arising from or occasioned by the use or manufacture thereof, including their use by the Owner.

**N. Occupying Private Land**

The Contractor shall not (except after consent from the proper parties) enter or occupy with men, tools, materials, or equipment, any land outside the easements or property of the Owner. The Contractor shall furnish signed copies of agreements with private parties involving use of private land in connection with the Contractor's work on this project before entering upon said private property.

**O. Safety and Health Regulations**

The Contractor shall comply with the safety and health standards of the United States Department of Labor, and of the State in which the work is performed, pursuant to the Williams-Steiger Occupational Safety Act of 1970. The Department of Labor has adopted regulations entitled "Safety and Health Regulation for Construction" and subsequent amendments promulgated by the Department of Labor, Chapter XVII of Title 29, Code of Federal Regulations (CFR), Part 1926 (formerly Chapter XIII of Title 29, CFR, part 1518).

The Contractor will maintain an accurate record of, and will report to the Engineer in the manner and on the forms prescribed by the Engineer, exposure data and all accidents resulting in death, traumatic injury, occupational disease, and damage to property, materials, supplies and equipment incident to work performed under this contract.

Compliance with the provisions of this Article by subcontractors will be the responsibility of the Contractor. Prior to commencement of the work, the Contractor will:

1. Submit in writing his proposals for effectuating this provision for accident prevention.
2. Meet in conference with representatives of the Owner to discuss and develop mutual understandings relative to administration of the overall safety program.

**P. Noise to be Minimized**

The Contractor shall so conduct all his operations that they will cause the least annoyance to the residents in the vicinity of the work. All reasonable precautions shall be taken to minimize the noise of the construction operations, such as providing effective mufflers on the exhausts of gasoline-operated machines and compressors.

Trucks carrying spoil, concrete or other materials shall be routed over such roads as will cause the least annoyance to the public.

**Q. Explosives and Blasting**

The responsibility of the Contractor to comply with all laws, rules and regulations with respect to the work to be done is set forth in Item k) above including rules and regulations of the State Departments and local municipalities governing the keeping, storage, use, manufacture, sale, handling, transportation or other disposition of explosives. Explosives in sufficient quantity to prevent delay to the work shall be kept on hand by the Contractor, but in no case shall an

excessive amount be brought onto the work. They shall be stored in fireproof magazines located in approved places, and the exploders shall be separately stored. A daily record shall be kept by the Contractor and a copy of the record furnished daily to the Engineer, showing the amounts of explosives on hand, the total quantities received and issued to date, the amounts used the previous day, and the purpose for which issued. The reports shall be signed by the Contractor or his authorized agent. All operations involving the handling, storage and use of explosives shall be conducted with every precaution by a few trained, reliable men under satisfactory experienced supervision. Blasts shall not be fired until all persons in the vicinity have had ample notice and have reached positions out of danger. Blasting shall be done with explosives of such power and in such quantities and positions as will not make the excavation unduly large nor shatter the rock upon or against which masonry may be built nor damage any existing structures. The Contractor shall take special precautions on blasting to prevent damage to surface structures, water supply mains, sewers, storm drains, or other buried structures. The Contractor shall notify the Engineer in advance of the hour when charges are to be set off. The Contractor will be held responsible for and shall make good any damage to property, whether or not owned by the Owner. To this end, he shall regulate his blasting operations to those using charges of proper magnitude with proper timing of detonation.

## **Part 8. PROSECUTION AND PROGRESS**

### **A. Time of Beginning Work**

Except as herein provided, the Contractor shall commence work at such points as the Engineer may approve, within the time stated in the proposal or Special Conditions.

Such time of starting may be postponed by written agreement between the Owner and the Contractor because of unexpected delays in receipt of materials and equipment, or if the season be unsuitable for commencement of the work, or because of other contingency clearly beyond the control or responsibility of the Contractor. Unless stipulated otherwise in said agreement, the Contractor shall commence work within 10 days after the receipt of a written order from the Owner to start work.

### **B. Time of Completion**

The rate of progress shall be such that the whole work shall be performed in accordance with the terms of this contract within the time stated in the Contract Documents after the date of execution of the contract, unless and except as any part may be delayed under the provisions of this contract.

It is agreed that the rate of progress herein required has been purposely made low enough to allow for the ordinary delays incident to construction work of this character. No extension of time will be made for ordinary delays, inclement weather and accidents, and the occurrence of such will not relieve the Contractor from the necessity of maintaining this rate of progress.

If delays are caused by acts of God, acts of Government or State, strikes, extra work, floods or other contingencies clearly beyond the control or responsibility of the Contractor, the Contractor shall be entitled to a reasonable time extension to perform and complete this contract.

The proceeding paragraph will be interpreted to include delays in receipt of equipment to be incorporated in the work provided that the Contractor placed an order and submitted shop drawings for such equipment promptly after execution of the contract, that he has shown due diligence in following the progress of the order and that the time required for delivery is in accordance with conditions generally prevailing in the industry.

Time in which this contract is to be performed and completed is of the essence of this agreement.

**C. Liquidated Damages**

In the case the Contractor fails to satisfactorily complete the entire work contemplated and provided for under this contract on or before the date of completion determined as described above, the Owner shall deduct from the payment due the Contractor each month the amounts stated in the proposal and in the contract for each calendar day (Sundays and legal holiday excluded) of delay, which sum is agreed upon not as a penalty, but as fixed and liquidated damages for each day of such delay, to be paid in full and subject to no deduction. If the payments due the Contractor are less than the amount of such liquidated damages, said damages shall be deducted from any other moneys due or to become due the Contractor, and in case damages shall exceed the amount of all moneys due or to become due the Contractor, then the Contractor or his surety shall pay the balance to the Owner.

**D. Employ Sufficient Labor and Equipment**

If the Contractor is not employing sufficient labor or equipment to complete this contract within the time specified, the Contractor shall employ such additional labor and equipment as may be necessary to enable the work to progress properly.

**E. Character of Workmen and Equipment**

The Contractor shall employ such workmen as are careful and competent, and the Engineer may, in writing, demand the dismissal of any person or persons employed by the Contractor in, about or upon the work, who shall misconduct himself or be incompetent or negligent in the performance of his or their duties or neglects or refuses to comply with directions given. Any such person or persons shall not be employed again thereon without the written consent of the Engineer. Should the Contractor continue to employ, or again employ, such person or persons, the Owner may withhold all payments which are or may become due. No minors shall be employed by the Contractor.

The Contractor shall keep at the work, at all times during progress of the work and until completion thereof, a competent superintendent and any necessary assistants. The superintendent shall not be changed unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. The superintendent shall represent the Contractor in his absence and all directions given to him shall be as binding as if given to the Contractor. Important directions shall be confirmed in writing to the Contractor. Other directions shall be so confirmed on written request of the Contractor.

**F. Night Work**

No night work requiring the presence of an engineer or inspector will be permitted, except in case of emergency and then only to such an extent as is absolutely necessary, provided that this clause shall not operate in case of a gang organized for regular and continuous night work, and on work which can be satisfactorily performed at night.

**g. Work on Sunday and Holidays**

No Sunday work will be permitted, except in case of great emergency and then only upon written notification of the Engineer.

The Contractor shall not allow any work to be done under this contract on holidays except upon written notification to the Engineer. Any request by the Contractor to work on a holiday shall be submitted in writing at least 48 hours in advance.

**H. Final Inspection**

After the cleaning up of the work, premises, adjacent property, streets, alleys, manholes, catch basins, or other areas or structures in any way connected with the performance of the Contract, the work as a whole shall be observed by the Engineer. Any workmanship or materials found not meeting the requirements of the Contract Documents shall be removed by and at the expense of the Contractor and good and satisfactory workmanship or material substituted therefore. All settlement, defects or damage upon any part of the work shall be remedied and made good by the Contractor.

**I. Deductions for Uncorrected Work**

If the Engineer, with the approval of the Owner, deems it inexpedient to correct damaged work or work not done in accordance with the contract, an equitable deduction from the Contract Price shall be made therefore.

**J. Correction of Work Before Final Payment**

The Contractor shall promptly remove from the site of the work and replace and/or redo, in accordance with the contract and without expense to the Owner, all work failing to conform to the Contract, whether or not incorporated in the work, and shall bear the expense of making good all work of other contractors damaged or destroyed by such removal and replacement.

**K. Owner's Right to Terminate Contract**

If the Contractor fails to complete the work under contract within the time specified, or fails to perform the work with sufficient workmen and equipment or with sufficient materials to insure the completion of said work within the specified time, or shall perform the work unsuitably or shall neglect or refuse to remove materials or perform a new work as shall be rejected as defective and unsuitable, or shall discontinue the prosecution of the work, or if the Contractor shall become

insolvent or be declared bankrupt, or commit any act of bankruptcy or insolvency, or shall make an assignment for the benefit of creditors, or from any other cause whatsoever, shall not carry on the work in an acceptable manner or shall fail to maintain at all times the bonds and insurance herein required, the Engineer shall give notice in writing to the Contractor and his Surety by registered mail of such delays, neglect, or default, specifying the same, and if the Contractor, with a period of 10 days after such notice, shall not proceed in accordance therewith, then the Owner shall, upon written certificates from the Engineer of the fact of such delays, neglect or default and the Contractor's failure to comply with such notice, have full power and authority without violating the Contract, to take the prosecution of the work out of the hands of said Contractor, to take possession and utilize any or all materials and equipment on the ground as may be suitable and acceptable and may enter into an agreement for the completion of said Contract according to the terms and provisions thereof, or such other methods as, in its opinion, shall be required for the completion of said Contract in an acceptable manner. If costs and charges incurred by the Owner are less than the sum which would have been payable under the Contract, if it had been completed by said Contractor, then said Contractor shall be entitled to receive the difference. In case such expense shall exceed the sum which would have been payable under the Contract, then the Contractor and the Surety shall be liable and shall pay to the Owner the amount of said excess.

## **Part 9. MEASUREMENT AND PAYMENT**

### **A. Breakdown of Lump Sum Prices**

After the award of the Contract and before any progress estimate is paid, the Contractor shall supply an itemized statement or breakdown of any lump sum prices in the Proposal subdivided in such detail as shall meet the Engineer's approval. When approved, this breakdown may be used as an aid in determining the amount due the Contractor on progress estimates.

### **B. Prices for Work**

The Owner shall pay and the Contractor shall receive the prices stipulated in the proposal attached hereto, subject to the reduction, if any, of the appropriate lump sum bid in the reduction proposal for the award of one or more contracts in addition to this present contract, as full compensation for everything furnished and done by the Contractor under this contract, including all work required, but not specifically mentioned, and also for all loss or damage arising out of the nature of the work aforesaid, or from action of the elements, or from any unforeseen obstruction or difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by or in consequence of the suspension or discontinuance of the work as herein specified, and for well and faithfully completing the work and the whole thereof, as herein provided.

### **C. Materials Stored on Site**

Materials may be stored on site after shop drawings have been approved. They shall be properly stored and protected in the immediate area of the project. The Contractor shall be responsible for all material stored on site and the protection thereof and shall make good any loss or damage thereto and shall be responsible for the entire work until it is finally accepted by the Owner.



If the Engineer is of the opinion that proper protection is not being maintained on materials in storage for which the Owner has made payment as set forth in the preceding paragraph, he may, after notice in writing to the Contractor, retain from subsequent progress estimates all or any portion of the amount paid for such materials until such time as suitable protection is afforded or the materials are placed or set in the works and accepted.

Payment for materials stored on site will be made provided an invoice is included with the monthly payment request. The following month, evidence of payment of the stored material must be submitted or the earlier credit will be deducted from the next month's payment request. Payments for materials stored on site will be subject to retainage.

#### **D. Progress Estimates and Payments**

Except as hereinafter provided, the Engineer shall, on or about a day of the month to be established by the Owner, make a monthly estimate in writing of the total amount of the work done to the time of such estimate and the value thereof. The Owner shall retain 10 percent of such estimated value as part security for fulfillment of this contract by the Contractor. The owner shall pay to the Contractor the sum due as estimated above for all completed work after deducting the accumulated retained percentage, all payments previously made, and all deductions authorized under the provisions of this contract, except that payment may be withheld at any time if the work is not proceeding in accordance with the contract.

No progress estimate or payment shall be required to be made when, in the judgment of the Engineer, the total value of the work done since the last estimate amounts to less than One Thousand Dollars (\$1,000.00).

Estimates of lump sum items shall be based on a schedule dividing each sum into its appropriate component parts, together with a quantity and a unit price for each part, so that the sum of the products of prices and quantities will equal the contract price for the item. This schedule shall be submitted by the Contractor before the first estimate becomes due. The Contract unit or lump sum prices to be used in both the progress and final estimates shall be subject to the reduction, if any, of an appropriate proportion of the lump sum bid in the reduction proposal for the award of one or more contracts in addition to this present contract.

#### **E. Payment Withheld**

The Engineer may, for cause shown to exist, withhold issuance or approval of any certificate for payment to the extent necessary to protect the Owner from loss on account of:

1. Defective work not remedied.
2. Claims filed or reasonable evidence indicating probable filing of claims.
3. Failure of the Contractor to make payments promptly to subcontractors for material and labor.
4. A reasonable doubt that the contract can be completed for the balance unpaid.
5. Damage to another contractor.
6. Failure to complete the contract within the time specified.

7. Failure to carry out the contract in any respect.

In the event of withholding payment for any of the above causes, as soon as the reason for withholding payment has been removed, certificates will be issued for amounts withheld.

The Contractor shall not by reason of said payments be relieved from responsibility for the said materials and the protection thereof and shall make good any loss or damage thereto and shall be responsible for the entire work until the same is finally accepted by the Owner.

If the Engineer is of the opinion that proper protection is not being maintained on materials in storage for which the Owner has made payment as set forth in the preceding paragraph, he may, after notice in writing to the Contractor, retain from subsequent progress estimates all or any portion of the amount paid for such materials until such time as suitable protection is afforded or the materials are placed or set in the works and accepted.

**F. Final Estimate and Payment**

The Engineer shall determine the date upon which all the Work required by the Contract Documents has been completed; and, as soon thereafter as practicable, shall submit to the Owner in writing an estimate of the total amount earned by the Contractor, showing the completion date.

The Owner shall pay to the Contractor an amount equal to the total amount earned, less the amount of all previous payments and any amounts to be retained under the provisions of this contract. All prior estimates and payments shall be subject to correction in the final estimate and payment.

The approval of the final estimate and payment by the Owner, and the payment of the amount due to the Contractor, shall constitute acceptance of the work.

The Contractor, the Surety, and each assignee under an assignment in effect at the time of final payment shall, if required by the Owner, execute and deliver at the time of and as a condition precedent to final payment, a release in form and substance satisfactory to and containing such exceptions as may be found appropriate by the Owner, discharging the Owner, its officers, agents, and employees of and from liabilities, obligations, and claims arising under this contract.

**G. Contractor's Certificate and Surety Company**

**Statement**

Before payment of the final estimate is made, the Contractor shall furnish a Contractor's certificate stating that all bids for labor and material and all outstanding claims and indebtedness, including state and federal taxes requested to be withheld, of whatsoever nature arising out of the performance of this contract has been paid.

The Contractor shall also furnish a statement by the Surety that, after making a careful examination of the books and records of the Contractor, it is satisfied that payment of all the above such bills, claims, and indebtedness has been made.

**H. Money May Be Retained**

The Owner may keep any money which would otherwise be payable at any time hereunder, and apply the same or so much as may be necessary therefore, to the payment of any expenses, losses, or damages, incurred by the Owner, and may retain, until all claims are settled, so much of such money as the Owner shall be of the opinion will be required to settle all claims filed with the Owner, its officers and agents, relating to this contract.

**I. Repairs**

If, at any time within the said period of guaranty, any part of the work constructed under the terms of this contract shall require repairing, the Owner may notify the Contractor in writing to make the required repairs. If the Contractor shall neglect to make such repairs to the satisfaction of the Owner within 10 days from the date of giving or mailing such notice, then the Owner may employ other persons to make the same. The Contractor shall reimburse the Owner for the cost of such work.

**J. Liability of Owner**

No person, firm or corporation, other than the signer of this contract as Contractor, now has any interest hereunder, and no claim shall be made or be valid, and neither the Owner, nor any agent of the Owner, shall be liable for, or be held to pay any money, except as herein provided. The acceptance by the Contractor of the payment of the final estimate shall operate as and shall be a release to the Owner, and every agent of the Owner, from all claim and liability to the Contractor for anything done or furnished or relating to the work, or for any act or neglect of the Owner or of any person relating to or affecting the work except the claim against the Owner for the remainder, if any there be, of the amounts kept or retained as herein provided.

**K. Waivers**

The Owner shall not be precluded or stopped by any measurement, estimate or certificate made by or for the Owner either before or after the completion and acceptance of the work and payment therefore, from showing the true amount and character of the work performed and materials furnished by the Contractor, or from showing that any such measurement, estimate or certificate is untrue or incorrectly made, or the work or materials do not comply in fact with the Contract. The Owner shall not be precluded or stopped, notwithstanding any such measurement, estimate, certificate, or payment in accordance therewith, from recovering from the Contractor and sureties such damages as it may sustain by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Owner, or any representative of the Owner, nor any payment for, nor acceptance of the whole or any part of the work, nor any extension of time, nor any possession taken by the Owner, shall operate as a waiver of any portion of the Contract or of any right or power therein given, expressly or by implication, or arising there from. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

**L. Claims for Damages**

If the Contractor claims compensation for any damages sustained by breach of Contract or otherwise, be the same based on claims that due and full credit has not been given the

Contractor for work performed or material furnished in accordance with the terms of the contract or for any other cause, he shall promptly after the sustaining of any such damage, make a written statement of the nature of the damage sustained, to the Engineer, and shall on or before the fifteenth day of the month following that in which the damage shall have been sustained, file with the Engineer an itemized statement of the details and amount of such damage, and unless such statement is made as thus required, his claim for compensation shall be forfeited and invalidated and he shall not be entitled to payment on account of any such damage.

**M. Computation of Quantities**

For the estimating of quantities in which the computation of areas are involved, simple geometric methods shall be used unless the computation of such areas by geometric methods would be comparatively laborious. It is stipulated and agreed that the planimeter shall be considered an instrument of precision adapted to the measurement of such areas.

It is further stipulated and agreed that the computation of the volume of prisms shall be by the method of average end areas.

END OF SECTION

# INSTRUCTIONS TO BIDDERS

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## **ARTICLE 1 – DEFINED TERMS**

1.01 Terms used in these Instructions to Bidders have the meanings indicated in the General Conditions and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:

A. *Issuing Office* – The office from which the Bidding Documents are to be issued and where the bidding procedures are to be administered.

City of Cornelia  
181 Larkin Street  
Cornelia, GA 30531  
(706) 778-8585

## **ARTICLE 2 – COPIES OF BIDDING DOCUMENTS**

2.01 Complete sets of the Bidding Documents in the number and for the sum of \$50, if any, stated in the advertisement or invitation to bid may be obtained from the Issuing Office.

2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

## **ARTICLE 3 – QUALIFICATIONS OF BIDDERS**

3.01 To demonstrate Bidder's qualifications to perform the Work, within 5 days of Owner's request, Bidder shall submit written evidence such as financial data, previous experience, present commitments, and such other data as may be called for below.

A. Evidence of Bidder's authority to do business in the state where the Project is located.

B. Bidder's state contractor license number.

3.02 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

## **ARTICLE 4 – EXAMINATION OF BIDDING DOCUMENTS, OTHER RELATED DATA, AND SITE**

4.01 *Subsurface and Physical Conditions*

A. The Supplementary Conditions identify:

1. Those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).

- B. Copies of reports and drawings referenced in Paragraph 4.01.A will be made available by Owner to any Bidder on request. Reproduction and/or costs will apply for production of this data. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in the General Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

#### 4.02 *Underground Facilities*

- A. Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site is based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

#### 4.03 *Hazardous Environmental Condition*

- A. The Supplementary Conditions identify any reports and drawings known to Owner relating to a Hazardous Environmental Condition identified at the Site.
- B. Copies of reports and drawings referenced in Paragraph 4.03.A will be made available by Owner to any Bidder on request. Reproduction and/or costs will apply for production of this data. Those reports and drawings are not part of the Contract Documents, but the “technical data” contained therein upon which Bidder is entitled to rely as provided in Paragraph 4.06 of the General Conditions has been identified and established in Paragraph 4.06 of the Supplementary Conditions. Bidder is responsible for any interpretation or conclusion Bidder draws from any “technical data” or any other data, interpretations, opinions, or information contained in such reports or shown or indicated in such drawings.

- 4.04 Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in the General Conditions. Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to a Hazardous Environmental Condition at the Site, if any, and possible changes in the Contract Documents due to any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, appear in the General Conditions.

- 4.05 On request, Owner will provide Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies as Bidder deems necessary for submission of a Bid. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies. Bidder shall comply with all applicable Laws and Regulations relative to excavation and utility locates.

- 4.06 A. Reference is made to Article 7 of the Supplementary Conditions for the identification of the general nature of other work that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) that relates to the Work contemplated by these Bidding

Documents. On request, Owner will provide to each Bidder for examination access to or copies of contract documents (other than portions thereof related to price) for such other work.

- B. Paragraph 6.13.C of the General Conditions indicates that if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.07 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and the other related data identified in the Bidding Documents;
- B. visit the Site and become familiar with and satisfy Bidder as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
- C. become familiar with and satisfy Bidder as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. carefully study all: (1) all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified.;
- E. consider the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs;
- F. agree at the time of submitting its Bid that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- G. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- H. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
- I. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work.



- 4.08 The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article 4, that without exception the Bid is premised upon performing and furnishing the Work required by the Bidding Documents and applying any specific means, methods, techniques, sequences, and procedures of construction that may be shown or indicated or expressly required by the Bidding Documents, that Bidder has given Engineer written notice of all conflicts, errors, ambiguities, and discrepancies that Bidder has discovered in the Bidding Documents and the written resolutions thereof by Engineer are acceptable to Bidder, and that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work.

#### **ARTICLE 5 – PRE-BID CONFERENCE**

- 5.01 No pre-bid conference will be held due to time constraints of this project.

#### **ARTICLE 6 – SITE AND OTHER AREAS**

- 6.01 The Site is identified in the Bidding Documents. Easements for permanent structures or permanent changes in existing facilities are to be obtained and paid for by Owner unless otherwise provided in the Bidding Documents. All additional lands and access thereto required for temporary construction facilities, construction equipment, or storage of materials and equipment to be incorporated in the Work are to be obtained and paid for by Contractor.

#### **ARTICLE 7 – INTERPRETATIONS AND ADDENDA**

- 7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda mailed or delivered to all parties recorded by Engineer as having received the Bidding Documents. Questions received less than ten days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.
- 7.02 Addenda may be issued to clarify, correct, or change the Bidding Documents as deemed advisable by Owner or Engineer.

#### **ARTICLE 8 – BID SECURITY**

- 8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price and in the form of a certified check, bank money order, or a Bid bond (on the form attached) issued by a surety meeting the requirements of the General Conditions.
- 8.02 The Bid security of the Successful Bidder will be retained until such Bidder has executed the Contract Documents, furnished the required contract security and met the other conditions of the Notice of Award, whereupon the Bid security will be returned. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults. The Bid security of other Bidders whom Owner believes to

have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Agreement or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be returned.

- 8.03 Bid security of other Bidders whom Owner believes do not have a reasonable chance of receiving the award will be returned within seven days after the Bid opening.

#### **ARTICLE 9 – CONTRACT TIMES**

- 9.01 The times [by which Milestones are to be achieved and] for Substantial Completion and readiness for final payment are to be set forth by Bidder in the Bid and will be entered into the Agreement (or incorporated therein by reference to the specific language of the Bid). Substantial Completion is desired on or before April 15, 2009. The times will be taken into consideration by Owner during the evaluation of Bids, and it will be necessary for the apparent Successful Bidder to satisfy Owner that it will be able to achieve Substantial Completion and be ready for final payment within the times designated in the Bid.

#### **ARTICLE 10 – LIQUIDATED DAMAGES**

- 10.01 Provisions for liquidated damages, if any, are set forth in the Agreement.

#### **ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS**

- 11.01 The Contract, if awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration of possible substitute or “or-equal” items. Whenever it is specified or described in the Bidding Documents that a substitute or “or-equal” item of material or equipment may be furnished or used by Contractor if acceptable to Engineer, application for such acceptance will not be considered by Engineer until after the Effective Date of the Agreement.

#### **ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS AND OTHERS**

- 12.01 If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, individuals, or entities to be submitted to Owner in advance of a specified date prior to the Effective Date of the Agreement, the apparent Successful Bidder, and any other Bidder so requested, shall within five days after Bid opening, submit to Owner a list of all such Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work for which such identification is required. Such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, individual, or entity if requested by Owner. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit a substitute, in which case apparent Successful Bidder shall submit an acceptable substitute, Bidder’s Bid price will be increased (or decreased) by the difference in cost occasioned by such substitution, and Owner may consider such price adjustment in evaluating Bids and making the Contract award

- 12.02 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, individuals, or entities. Declining to make requested substitutions will not constitute grounds for forfeiture of the Bid security of any Bidder. Any Subcontractor, Supplier, individual, or entity so listed and against which Owner or Engineer makes no written objection prior to the giving of the Notice of Award will be deemed acceptable to Owner and Engineer subject to revocation of such acceptance after the Effective Date of the Agreement as provided in Paragraph 6.06 of the General Conditions.
- 12.03 Contractor shall not be required to employ any Subcontractor, Supplier, individual, or entity against whom Contractor has reasonable objection.

### **ARTICLE 13 – PREPARATION OF BID**

- 13.01 The Bid Form is included with the Bidding Documents. Additional copies may be obtained from The City of Cornelia 181 Larkin Street Cornelia, GA 30531 (706) 778-8585
- 13.02 All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each [section, Bid item, alternative, adjustment unit price item, and unit price item] listed therein. In the case of optional alternatives the words “No Bid,” “No Change,” or “Not Applicable” may be entered.
- 13.03 A Bid by a corporation shall be executed in the corporate name by the president or a vice-president or other corporate officer accompanied by evidence of authority to sign. The corporate seal shall be affixed and attested by the secretary or an assistant secretary. The corporate address and state of incorporation shall be shown.
- 13.04 A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The official address of the partnership shall be shown.
- 13.05 A Bid by a limited liability company shall be executed in the name of the firm by a member and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- 13.06 A Bid by an individual shall show the Bidder’s name and official address.
- 13.07 A Bid by a joint venture shall be executed by each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.
- 13.08 All names shall be printed in ink below the signatures.
- 13.09 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 13.10 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

13.11 The Bid shall contain evidence of Bidder's authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder's state contractor license number, if any, shall also be shown on the Bid Form.

## **ARTICLE 14 – BASIS OF BID; COMPARISON OF BIDS**

### **14.01 *Lump Sum***

A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.

### **14.02 *Unit Price***

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the Bid schedule.
- B. The total of all estimated prices will be the sum of the products of the estimated quantity of each item and the corresponding unit price. The final quantities and Contract Price will be determined in accordance with the General Conditions.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

### **14.03 *Allowances***

A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with Paragraph 11.02.B of the General Conditions.

### **14.04 *Completion Time Comparisons***

A. Bid prices will be compared after adjusting for differences in the time designated by Bidders for Substantial Completion. The adjusting amount will be determined at the rate set forth in the Contract Documents for liquidated damages for failing to achieve Substantial Completion for each day before or after the desired date appearing in Article 9 above.

## **ARTICLE 15 – SUBMITTAL OF BID**

15.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the following documents:

- A. Required Bid security
- B. List of Proposed Subcontractors;
- C. List of Proposed Suppliers;

- D. List of Project References;
- E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;
- F. Contractor's License No.: \_\_\_\_\_ Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;

15.02 A Bid shall be submitted no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "Level Grove Road Multipurpose Trail Phase 2A" A mailed Bid shall be addressed to City of Cornelia, 181 Larkin Street, Cornelia, GA 30531 ATTN: Donald Anderson.

#### **ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID**

- 16.01 A Bid may be modified or withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids.
- 16.02 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder will be disqualified from further bidding on the Work.

#### **ARTICLE 17 – OPENING OF BIDS**

- 17.01 Bids will be opened at the time and place indicated in the Advertisement or Invitation to Bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

#### **ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE**

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

#### **ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT**

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner further reserves the right to reject the Bid of any Bidder whom it finds, after reasonable inquiry and evaluation, to not be responsible. Owner may also reject the Bid of any Bidder if Owner believes that it would not be in the best

interest of the Project to make an award to that Bidder. Owner also reserves the right to waive all informalities not involving price, time, or changes in the Work and to negotiate contract terms with the Successful Bidder.

- 19.02 More than one Bid for the same Work from an individual or entity under the same or different names will not be considered. Reasonable grounds for believing that any Bidder has an interest in more than one Bid for the Work may be cause for disqualification of that Bidder and the rejection of all Bids in which that Bidder has an interest.
- 19.03 In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the Bid Form or prior to the Notice of Award.
- 19.04 In evaluating Bidders, Owner will consider the qualifications of Bidders and may consider the qualifications and experience of Subcontractors, Suppliers, and other individuals or entities proposed for those portions of the Work for which the identity of Subcontractors, Suppliers, and other individuals or entities must be submitted as provided in the Supplementary Conditions.
- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders, proposed Subcontractors, Suppliers, individuals, or entities proposed for those portions of the Work in accordance with the Contract Documents.
- 19.06 If the Contract is to be awarded, Owner will award the Contract to the Bidder whose Bid is in the best interests of the Project.

## **ARTICLE 20 – CONTRACT SECURITY AND INSURANCE**

- 20.01 The General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner's requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the executed Agreement to Owner, it shall be accompanied by such bonds.

## **ARTICLE 21 – SIGNING OF AGREEMENT**

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the required number of unsigned counterparts of the Agreement along with the other Contract Documents which are identified in the Agreement as attached thereto. Within 15 days thereafter, Successful Bidder shall sign and deliver the required number of counterparts of the Agreement and attached documents to Owner. Within ten days thereafter, Owner shall deliver one fully signed counterpart to Successful Bidder with a complete set of the Drawings with appropriate identification.

**BID FORM**  
**Level Grove Multipurpose Trail Phase 2A**  
**April 9, 2021**

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**ARTICLE 1 – BID RECIPIENT**

1.01 This Bid is submitted to:

City of Cornelia  
Attention Donald Anderson  
181 Larkin Street  
Cornelia, GA 30531

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

**ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS**

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

**ARTICLE 3 – BIDDER’S REPRESENTATIONS**

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, other related data identified in the Bidding Documents, and the following Addenda, receipt of which is hereby acknowledged:

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

B. Bidder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

C. Bidder is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.

D. Bidder has carefully studied all: (1)All drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities) that have been identified in SC-4.02 as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in SC-4.06 as containing reliable "technical data."

E. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from

visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents; and (3) Bidder's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 3.01.E above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- G. Bidder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents.
- H. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and the written resolution thereof by Engineer is acceptable to Bidder.
  - 1. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

#### **ARTICLE 4 – BIDDER'S CERTIFICATION**

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;

3. “collusive practice” means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
4. “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

#### **ARTICLE 5 – BASIS OF BID**

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s) using the form provided which will be part of this bid document:

Unit Prices have been computed in accordance with those listed in the General Conditions.

Bidder acknowledges that estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents.

#### **ARTICLE 6 – TIME OF COMPLETION**

6.01 Bidder agrees that the Work will be substantially complete on or before 1 November 2021, and will be completed and ready for final payment in accordance with Paragraph the General Conditions on or before 1 February 2022.

6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

#### **ARTICLE 7 – ATTACHMENTS TO THIS BID**

7.01 The following documents are submitted with and made a condition of this Bid:

- A. Required Bid security;
- B. List of Proposed Subcontractors;
- C. List of Proposed Suppliers;
- D. List of Project References;
- E. Evidence of authority to do business in the state of the Project; or a written covenant to obtain such license within the time for acceptance of Bids;

F. Contractor's License No.: \_\_\_\_\_ Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;

**ARTICLE 8 – DEFINED TERMS**

8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the General Conditions, and the Supplementary Conditions.

**ARTICLE 9 – BID SUBMITTAL**

9.01 This Bid is submitted by:

If Bidder is:

An Individual

Name (typed or printed): \_\_\_\_\_

By: \_\_\_\_\_  
(Individual’s signature)

Doing business as: \_\_\_\_\_

A Partnership

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

By: \_\_\_\_\_  
(Signature of general partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

A Corporation

Corporation Name: \_\_\_\_\_ (SEAL)

State of Incorporation: \_\_\_\_\_

Type (General Business, Professional, Service, Limited Liability): \_\_\_\_\_

By: \_\_\_\_\_  
(Signature -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

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

Attest \_\_\_\_\_

Date of Qualification to do business in [State where Project is located] is  
\_\_\_\_ / \_\_\_\_ / \_\_\_\_.

A Joint Venture

Name of Joint Venture: \_\_\_\_\_

First Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of first joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

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

Second Joint Venturer Name: \_\_\_\_\_ (SEAL)

By: \_\_\_\_\_  
(Signature of second joint venture partner -- attach evidence of authority to sign)

Name (typed or printed): \_\_\_\_\_

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

(Each joint venturer must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address \_\_\_\_\_

\_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

E-mail \_\_\_\_\_

SUBMITTED on \_\_\_\_\_, 20\_\_\_\_.

State Contractor License No. \_\_\_\_\_. *[If applicable]*

**BID BOND**

Any singular reference to Bidder, Surety, Owner, or other party shall be considered plural where applicable.

BIDDER *(Name and Address):*

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

OWNER *(Name and Address):*

The City of Cornelia  
181 Larkin Street  
Cornelia, GA 30531

BID

Bid Due Date: April 9, 2021  
Description *(Project Name and Include Location):*  
Level Grove Multipurpose Trail Phase 2A, Cornelia, GA 30531

BOND

Bond Number: \_\_\_\_\_  
Date (Not earlier than Bid due date): \_\_\_\_\_  
Penal sum \_\_\_\_\_ \$ \_\_\_\_\_  
(Words) (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER** \_\_\_\_\_ (Seal) **SURETY** \_\_\_\_\_ (Seal)  
Bidder's Name and Corporate Seal Surety's Name and Corporate Seal

By: \_\_\_\_\_ By: \_\_\_\_\_  
Signature Signature (Attach Power of Attorney)

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

\_\_\_\_\_  
Title Title

Attest: \_\_\_\_\_ Attest: \_\_\_\_\_  
Signature Signature

\_\_\_\_\_  
Title Title

*Note: Above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint venturers, if necessary.*

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder any difference between the total amount of Bidder's Bid and the total amount of the Bid of the next lowest, responsible Bidder who submitted a responsive Bid as determined by Owner for the work required by the Contract Documents, provided that:
  - 1.1 If there is no such next Bidder, and Owner does not abandon the Project, then Bidder and Surety shall pay to Owner the penal sum set forth on the face of this Bond, and
  - 1.2 In no event shall Bidder's and Surety's obligation hereunder exceed the penal sum set forth on the face of this Bond.
  - 1.3 Recovery under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.



**FORM OF AGREEMENT  
BETWEEN OWNER AND CONTRACTOR  
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between \_\_\_\_\_ The City of Cornelia \_\_\_\_\_ (“Owner”) and  
\_\_\_\_\_  
\_\_\_\_\_ (“Contractor”).

Owner and Contractor hereby agree as follows:

**ARTICLE 1 – WORK**

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

**ARTICLE 2 – THE PROJECT**

2.01 The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

**ARTICLE 3 – ENGINEER**

3.01 The Project has been designed by J M Smith Engineering, LLC (Engineer), which is to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 4 – CONTRACT TIMES**

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Dates for Substantial Completion and Final Payment*

A. The Work will be substantially completed on or before November 1, 2021, and completed and ready for final payment in accordance with Part 9 (f) of the General Conditions on or before 1 February 2022.

4.03 *Liquidated Damages*

A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and

difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$200 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$500 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

## ARTICLE 5 – CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A, 5.01.B, and 5.01.C below:

A. For all Work other than Unit Price Work, a lump sum of: \$ \_\_\_\_\_

All specific cash allowances are included in the above price.

B. For all Unit Price Work, an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the actual quantity of that item. A unit price breakdown is required as part of the contract.

The Bid prices for Unit Price Work set forth as of the Effective Date of the Agreement are based on estimated quantities. Estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

C. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

## ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance Part 9 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 *Progress Payments; Retainage*

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the Last day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Engineer may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
  - a. 5 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
  - b. 75 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Engineer shall determine in accordance Part 9 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

### 6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Part 9 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in Part 9.

## **ARTICLE 7 – INTEREST**

- 7.01 All moneys not paid when due as provided in Part 9 the General Conditions shall not accrue interest.

## **ARTICLE 8 – CONTRACTOR'S REPRESENTATIONS**

- 8.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
  - A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
  - D. Contractor has carefully studied all: (1) all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have

been identified in Paragraph SC-4.02 of the Supplementary Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Paragraph SC-4.06 of the Supplementary Conditions as containing reliable "technical data."

- E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## ARTICLE 9 – CONTRACT DOCUMENTS

### 9.01 *Contents*

- A. The Contract Documents consist of the following:
  - 1. This Agreement (pages 1 to \_\_, inclusive).
  - 2. Performance bond (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - 3. Payment bond (pages \_\_\_\_ to \_\_\_\_, inclusive).
  - 4. Other bonds (pages \_\_\_\_ to \_\_\_\_, inclusive).
    - a. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
    - b. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).
    - c. \_\_\_\_ (pages \_\_\_\_ to \_\_\_\_, inclusive).

5. General Conditions (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  6. Supplementary Conditions (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  7. Specifications as listed in the table of contents of the Project Manual.
  8. Drawings consisting of 42 sheets with each sheet bearing the following general title: Level Grove Road Multipurpose Trail Phase 2A.
  9. Addenda (numbers \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  10. Exhibits to this Agreement (enumerated as follows):
    - a. Contractor's Bid (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - b. Documentation submitted by Contractor prior to Notice of Award (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
  11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Notice to Proceed (pages \_\_\_\_\_ to \_\_\_\_\_, inclusive).
    - b. Work Change Directives.
    - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

### *10.01 Terms*

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

### *10.02 Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an

assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

#### 10.03 *Successors and Assigns*

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

#### 10.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### 10.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
  - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
  - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
  - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
  - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

*NOTE TO USER*

*See I-21 and correlate procedures for format and signing of the documents.*

This Agreement will be effective on \_\_\_\_\_ (which is the Effective Date of the Agreement).

*NOTE TO USER*

*The Effective Date of the Agreement and the dates of any Construction Performance Bond (EJCDC C-610) and Construction Payment Bond (EJCDC C-615) should be the same, if possible. In no case may the date of any bonds be earlier than the Effective Date of the Agreement.*

OWNER:

The City of Cornelia \_\_\_\_\_

By: Donald Anderson \_\_\_\_\_

Title: City Manager \_\_\_\_\_

Attest: \_\_\_\_\_

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

Address for giving notices:

City of Cornelia, City Manager \_\_\_\_\_

181 Larkin Street \_\_\_\_\_

Cornelia, GA 30531 \_\_\_\_\_

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR

\_\_\_\_\_

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

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

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: \_\_\_\_\_

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

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

License No.: \_\_\_\_\_

(Where applicable)

*NOTE TO USER: Use in those states or other jurisdictions where applicable or required.*

Agent for service of process:

\_\_\_\_\_

**PERFORMANCE BOND**

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*): SURETY (*Name, and Address of Principal Place of Business*):

OWNER (*Name and Address*):

The City of Cornelia  
181 Larkin Street  
Cornelia, GA 30531

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*): Level Grove Road Multipurpose Trail Phase 2A

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Contractor's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

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

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Provide execution by additional parties, such as joint venturers, if necessary.*



Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner for the performance of the Contract, which is incorporated herein by reference.

1. If Contractor performs the Contract, Surety and Contractor have no obligation under this Bond, except to participate in conferences as provided in Paragraph 2.1.
2. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
  - 2.1 Owner has notified Contractor and Surety, at the addresses described in Paragraph 9 below, that Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with Contractor and Surety to be held not later than 15 days after receipt of such notice to discuss methods of performing the Contract. If Owner, Contractor, and Surety agree, Contractor shall be allowed a reasonable time to perform the Contract, but such an agreement shall not waive Owner's right, if any, subsequently to declare a Contractor Default; and
  - 2.2 Owner has declared a Contractor Default and formally terminated Contractor's right to complete the Contract. Such Contractor Default shall not be declared earlier than 20 days after Contractor and Surety have received notice as provided in Paragraph 2.1; and
  - 2.3 Owner has agreed to pay the Balance of the Contract Price to:
    1. Surety in accordance with the terms of the Contract; or
    2. Another contractor selected pursuant to Paragraph 3.3 to perform the Contract.
3. When Owner has satisfied the conditions of Paragraph 2, Surety shall promptly, and at Surety's expense, take one of the following actions:
  - 3.1 Arrange for Contractor, with consent of Owner, to perform and complete the Contract; or
  - 3.2 Undertake to perform and complete the Contract itself, through its agents or through independent contractors; or
  - 3.3 Obtain bids or negotiated proposals from qualified contractors acceptable to Owner for a contract for performance and completion of the Contract, arrange for a contract to be prepared for execution by Owner and contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract, and pay to Owner the amount of damages as described in Paragraph 5 in excess of the Balance of the Contract Price incurred by Owner resulting from Contractor Default; or
  - 3.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:
    1. After investigation, determine the amount for which it may be liable to Owner and, as soon as practicable after the amount is determined, tender payment therefor to Owner; or
    2. Deny liability in whole or in part and notify Owner citing reasons therefor.
4. If Surety does not proceed as provided in Paragraph 3 with reasonable promptness, Surety shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond, and Owner shall be entitled to enforce any remedy available to Owner. If Surety proceeds as provided in Paragraph 3.4, and Owner refuses the payment tendered or Surety has denied liability, in whole or in part, without further notice Owner shall be entitled to enforce any remedy available to Owner.
5. After Owner has terminated Contractor's right to complete the Contract, and if Surety elects to act under Paragraph 3.1, 3.2, or 3.3 above, then the responsibilities of Surety to Owner shall not be greater than those of Contractor under the Contract, and the responsibilities of Owner to Surety shall not be greater than those of Owner under the Contract. To the limit of the amount of this Bond, but subject to commitment by Owner of the Balance of the Contract Price to mitigation of costs and damages on the Contract, Surety is obligated without duplication for:

- 5.1 The responsibilities of Contractor for correction of defective Work and completion of the Contract;
- 5.2 Additional legal, design professional, and delay costs resulting from Contractor's Default, and resulting from the actions of or failure to act of Surety under Paragraph 3; and
- 5.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or non-performance of Contractor.

6. Surety shall not be liable to Owner or others for obligations of Contractor that are unrelated to the Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than Owner or its heirs, executors, administrators, or successors.

7. Surety hereby waives notice of any change, including changes of time, to Contract or to related subcontracts, purchase orders, and other obligations.

8. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the Work or part of the Work is located, and shall be instituted within two years after Contractor Default or within two years after Contractor ceased working or within two years after Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

9. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the address shown on the signature page.

10. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

11. Definitions.

- 11.1 Balance of the Contract Price: The total amount payable by Owner to Contractor under the Contract after all proper adjustments have been made, including allowance to Contractor of any amounts received or to be received by Owner in settlement of insurance or other Claims for damages to which Contractor is entitled, reduced by all valid and proper payments made to or on behalf of Contractor under the Contract.
- 11.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 11.3 Contractor Default: Failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
- 11.4 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – <i>(Name, Address and Telephone)</i> Surety Agency or Broker: Owner's Representative <i>(Engineer or other party)</i> :
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# PAYMENT BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

CONTRACTOR (*Name and Address*):

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

OWNER (*Name and Address*):

The City of Cornelia  
181 Larkin Street  
Cornelia, GA 30531

CONTRACT

Effective Date of Agreement:

Amount:

Description (*Name and Location*): Level Grove Road Multipurpose Trail Phase 2A

BOND

Bond Number:

Date (*Not earlier than Effective Date of Agreement*):

Amount:

Modifications to this Bond Form:

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Payment Bond to be duly executed by an authorized officer, agent, or representative.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Contractor's Name and Corporate Seal (Seal)

\_\_\_\_\_  
Surety's Name and Corporate Seal (Seal)

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

By: \_\_\_\_\_  
Signature (Attach Power of Attorney)

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

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

*Note: Provide execution by additional parties, such as joint venturers, if necessary.*

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to Owner to pay for labor, materials, and equipment furnished by Claimants for use in the performance of the Contract, which is incorporated herein by reference.
2. With respect to Owner, this obligation shall be null and void if Contractor:
  - 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and
  - 2.2 Defends, indemnifies, and holds harmless Owner from all claims, demands, liens, or suits alleging non-payment by Contractor by any person or entity who furnished labor, materials, or equipment for use in the performance of the Contract, provided Owner has promptly notified Contractor and Surety (at the addresses described in Paragraph 12) of any claims, demands, liens, or suits and tendered defense of such claims, demands, liens, or suits to Contractor and Surety, and provided there is no Owner Default.
3. With respect to Claimants, this obligation shall be null and void if Contractor promptly makes payment, directly or indirectly, for all sums due.
4. Surety shall have no obligation to Claimants under this Bond until:
  - 4.1 Claimants who are employed by or have a direct contract with Contractor have given notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
  - 4.2 Claimants who do not have a direct contract with Contractor:
    1. Have furnished written notice to Contractor and sent a copy, or notice thereof, to Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials or equipment were furnished or supplied, or for whom the labor was done or performed; and
    2. Have either received a rejection in whole or in part from Contractor, or not received within 30 days of furnishing the above notice any communication from Contractor by which Contractor had indicated the claim will be paid directly or indirectly; and
    3. Not having been paid within the above 30 days, have sent a written notice to Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to Contractor.
5. If a notice by a Claimant required by Paragraph 4 is provided by Owner to Contractor or to Surety, that is sufficient compliance.
6. When a Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at Surety's expense take the following actions:
  - 6.1 Send an answer to that Claimant, with a copy to Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
  - 6.2 Pay or arrange for payment of any undisputed amounts.
7. Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by Surety.
8. Amounts owed by Owner to Contractor under the Contract shall be used for the performance of the Contract and to satisfy claims, if any, under any performance bond. By Contractor furnishing and Owner accepting this Bond, they agree that all funds earned by Contractor in the performance of the Contract are dedicated to satisfy obligations of Contractor and Surety under this Bond, subject to Owner's priority to use the funds for the completion of the Work.

9. Surety shall not be liable to Owner, Claimants, or others for obligations of Contractor that are unrelated to the Contract. Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders, and other obligations.

11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the Work or part of the Work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Paragraph 4.1 or Paragraph 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to Surety, Owner, or Contractor shall be mailed or delivered to the addresses shown on the signature page. Actual receipt of notice by Surety, Owner, or Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory requirement in the location where the Contract was to be performed, any provision in this Bond conflicting with said statutory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory Bond and not as a common law bond.

14. Upon request of any person or entity appearing to be a potential beneficiary of this Bond, Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

15. Definitions

15.1 Claimant: An individual or entity having a direct contract with Contractor, or with a first-tier subcontractor of Contractor, to furnish labor, materials, or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms “labor, materials or equipment” that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Contract, architectural and engineering services required for performance of the Work of Contractor and Contractor’s subcontractors, and all other items for which a mechanic’s lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

15.2 Contract: The agreement between Owner and Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of Owner, which has neither been remedied nor waived, to pay Contractor as required by the Contract, or to perform and complete or otherwise comply with the other terms thereof.

FOR INFORMATION ONLY – *(Name, Address, and Telephone)*

Surety Agency or Broker:

Owner’s Representative *(Engineer or other)*:

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	Unit Price	Estimate
150-1000	Traffic Control	LUMP SUM	SUM		
444-1000	Sawed Joints in Existing Pavement	2,100	LF		
610-0340	Remove Concrete Curb - All Sizes	135	LF		
610-2586	Remove Asphalt Pavement	250	SY		
610-2815	Remove Concrete Sidewalk	100	SY		
610-6515	Remove Highway Signs	28	EA		
611-5360	Reset Highway Signs	28	EA		
<b>EROSION CONTROL</b>					
163-0550	Construct and Remove Inlet Sediment Trap	16	EA		
165-0030	Maintenance of Temporary Silt Fencing, TP C	2,100	LF		
165-0105	Maintenance of Inlet Sediment Trap	16	EA		
171-0030	Temporary Silt Fence, TP C	2,100	LF		
163-0232	Temporary Grassing	5	AC		
163-0300	Construction Exit	1	EA		
165-0101	Maintenance of Construction Exit	2	EA		
167-1000	Water Quality Monitoring and Sampling	2	EA		
167-1500	Water Quality Inspections		MO		
<b>SITE CONSTRUCTION</b>					
			Lump		
210-0100	Grading Complete - 0010693	1	Sum		
310-5050	Graded Aggregate Base Crs, 6" Incl. Matl	100	SY		
402-3103	Recycled Asph Conc, 9.5mm SP, GP 2, Incl. Bitum. Matl & H Lime	745	TN		
413-1000	Bituminous Tack Coat	550	GAL		
441-0016	Concrete Driveway, 6" Thick	648	SF		
441-0104	Concrete Sidewalk, 4" Thick	20,352	SF		
441-XXXX	2' brick red died and Stamped beauty strip	4,356	SF		
441-6012	Concrete Curb & Gutter, 6" x 24", TP 2	1,865	LF		
500-3110	Concrete Retaining Wall	360	LF		
500-9999	Class B Concrete, Base or Pvmt Widening	150	CY		
611-4890	Reset Fence	50	LF		
611-5010	Reset Chain Link Fence 4 ft	150	LF		
611-8010	Adjust Hydrant to grade	3	EA		

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	Unit Price	Estimate
611-8050	Adjust Manhole to grade	2	EA		
611-8120	Adjust Water meter box to grade	16	EA		
611-9460	Reset Street Pole with Banner	5	EA		
636-1020	Sign, TP 1 Material, Reflective Sheeting, TP 9	50	SF		
636-2070	Galvanized Steel Posts, TP 7	70	LF		
653-1501	Thermoplastic Solid Traffic Stripe, 5", White	5,500	LF		
653-1502	Thermoplastic Solid Traffic Stripe, 5", Yellow	4,742	LF		
653-1704	Thermoplastic Solid Traffic Stripe, 24", White	150	LF		
653-1804	Thermoplastic Solid Traffic Stripe, 8", White	1,140	LF		
515-2020	Handrail	360	LF		
			Lump		
009-2000	Landscaping	1	Sum		
STORM SEWER					
550-1180	HDPE Storm Drain Pipe, 18", H1'-10'	281	LF		
550-1240	HDPE Storm Drain Pipe, 24", H1'-10'	423	LF		
550-1360	HDPE Storm Drain Pipe, 36", H1'-10'	186	LF		
550-1180	Reinforced Concrete Pipe, 18", H1'-10'	60	LF		
550-1360	Reinforced Concrete Pipe, 36", H1'-10'	64	LF		
668-1200	Single Wing Catch Basin	1	EA		
668-2100	Weir Inlet	6	EA		
668-2100	Drop Inlet, GP	9	EA		
668-0811	Concrete Headwall, 18"	1	EA		
			Lump		
005-1000	Utility Relocations	1	Sum		
PROJECT COST ESTIMATE					
Cornelia Bike Pedestrian Trail Phase 2					