MEMORANDUM

To: Parties Interested In RFP2018-14
From: Cindy Clack
Date: September 13, 2017
Re: RFP2018-14 Stormwater On-Call Maintenance & Repair Services

RFP2018-14 is attached for your consideration. Anyone accessing this Request for Proposal from the Barrow County website www.barrowga.org is responsible to insure the latest documents are in their possession including any addenda. All addenda, questions and answers will be posted on this site. This site should be visited frequently to insure an awareness of any updates.

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

Thank you.
REQUEST FOR PROPOSALS
RFP2018-14

STORMWATER ON-CALL
MAINTENANCE & REPAIR SERVICES

BARROW COUNTY, GEORGIA
SEPTEMBER 13, 2017

DATE OF OPENING: OCTOBER 12, 2017

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

STORMWATER ON-CALL MAINTENANCE & REPAIR SERVICES
BARROW COUNTY BOARD OF COMMISSIONERS

Date: September 13, 2017

PURPOSE: The purpose of this request is to provide interested Contractors with sufficient information to enable them to submit a uniform proposal for the County’s review of Stormwater On-Call Maintenance & Repair Services (hereafter called “project”) as required by the Barrow County Board of Commissioners, and to set forth a systematic method that will be fair and impartial to all parties concerned in order to generate responses that can be equally evaluated by the County.

GENERAL: Barrow County is interested in entering into an agreement with a Contractor to provide Stormwater On-Call Maintenance & Repair Services per the attached scope of work and unit price schedule for the Barrow County Stormwater Department. You are invited to submit a response for this requirement.

OBJECTIVE: The Project objective is to select a qualified contractor for standby Stormwater system maintenance and rehabilitation projects.

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

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

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

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

**INQUIRIES:** Proposing Contractors, or their representatives or agents, shall not contact any members, or employees, of the Barrow County Board of Commissioners or any Barrow County Elected Official or employee of any Barrow County Elected Official regarding this RFP, proposal evaluation, or selection process from the time the RFP is issued until the time a notification of intent to award is announced. Questions relating to this RFP must be submitted in writing to: Cindy Clack, Senior Buyer (email: cclack@barrowga.org). Deadline for questions is October 4, 2017 at 12:00pm. All questions submitted by this date will be answered and posted as an addendum on the website www.barrowga.org.

**SECURITY:** The successful contractor will be required to submit to Barrow County a performance bond and payment bond in the amount equal to one hundred percent (100%) of the total contract amount. Surety companies executing Bonds must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in Georgia. Only Barrow County bond forms will be accepted. (Contractor will provide payment and performance bonds based on a not to exceed amount of $120,000.00 on an annual basis to the County).

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

1. Issue Request for Proposal ---------------------------September 13, 2017
2. Deadline for Questions -------------------------------October 4, 2017 (12:00 Noon)
3. Proposal Due Date ------------------------------------October 12, 2017 (12:00 Noon)
4. Proposal Opening -------------------------------------October 12, 2017 (2:00 PM)
5. Selection Recommendation to BOC ----------------TBD
6. Award of Agreement if Approved-------------------TBD

**SEALED PROPOSALS:** Each proposal must be submitted in a sealed envelope, addressed to the County. Each sealed envelope containing a proposal must be plainly marked on the outside with “RFP2018-14 Stormwater On-Call Maintenance & Repair Services. If a proposal is forwarded by mail, the sealed envelope containing the
Sealed proposals will be accepted in the Clerk’s Office, no later than **12:00 pm (Noon) Thursday, October 12, 2017.** Proposals will be opened in the Historic Courthouse Conference Room at the above address at 2:00 p.m. on October 12, 2017. All proposals will be evaluated and the project will be awarded, if it is awarded, within 60 days of the proposal opening.

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

**INSURANCE REQUIREMENTS:**

- All Contractors and subcontractors shall provide certificates of insurance to the County for the minimum amounts of insurance prescribed by the County’s Standard Construction Services Agreement and shall comply with all other insurance requirements contained therein.
- No contract will be awarded until the appropriate certificates of insurance are in the possession of the Purchasing Office.
- Indemnification. See Construction Services Agreement (see attached).

**PROPOSAL FORMAT:** Contractors should submit an original (unbound) and four (4) copies of the requested proposal in the below format. Additionally provide one (1) electronic copy in PDF of the proposal. **Please do not bind the original copy.** The proposal shall consist of the following in the order shown:

- Letter of Introduction
- Copy of business license and proof of being in business at least five (5) years. Provide copy of a **Georgia Utility Contractors License** with name and phone number.
number of registered agent or provide documentation of being registered with the Georgia Department of Transportation.

- Project Personnel: Provide information on personnel to be assigned to this project. Personnel should have experience from similar projects and in fields necessary to complete this proposed work.
  A: Qualifications, including experience in the proposed project methodology and public sector and/or municipal experience.
  B: Summary of experience, including the number of years of relevant experience, years with the firm and representative project experience with project name, client and date performed.
  C: Other supporting documentation which demonstrates the ability to successfully perform the work.

- Similar Experience: List and describe your firm’s projects worked on in the past five years that best match the scope and intent of the various projects. Identify unique constraints or challenges associated with those projects and how you addressed those in order to deliver a successful project.

- Verifiable references of similar projects, include a minimum of three (3) references (Use Barrow County references form).

- A list of any preferred subcontractors that might be necessary for any work not self-performed.

- Proposal Form with attached Unit Price Schedule

- Construction Agreement: All submitting contractors are required to execute the Construction Agreement included in this package to indicate the willingness to comply with all terms of the Construction Agreement and to submit the executed Construction Agreement with the bid. Upon award of the Project to the winning contractor, the County will execute the Construction Agreement. Please be advised that the contractor’s execution of the Construction Agreement prior to the award of the Project does not constitute the acceptance of an offer by the County or otherwise bind the County in any way until such time as the County executes the Construction Agreement. Exhibits E, G.1, & G.2 to the Construction Agreement must be executed and submitted with the Construction Services Agreement (please leave date and amount of agreement blank).

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

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

**Evaluation Criteria:** The County’s staff will review all proposals submitted. After reviewing the proposals, staff at its discretion, may award the Contract to the responsible and responsive proposer submitting the proposal which is deemed to be the most advantageous to the County, price and other factors being considered. The following are the evaluation criteria the County will consider in determining which proposal is most advantageous to the County:

1. **Unit Price Schedule:**
   Evaluation based on unit price schedule (Unit price schedule includes estimated quantities and will be used for evaluating purposes only). = 50%

2. **Experience on similar projects:**
   Contractor performed satisfactory work on similar projects over the past five years. The ideal contractor should have extensive experience with stormwater infrastructure including completing projects in a timely manner, meeting cost and providing good customer satisfaction. = 25%

3. **Project Personnel:**
   Contractor’s ability to effectively manage personnel, provide experienced and qualified personnel and respond rapidly to task orders. The ideal candidate will propose a project team, project manager with over five (5) years of experience in the construction field. The project manager and key personnel will be evaluated on knowledge, experience, prior collaboration and successful completion of similar projects as proposed in the scope of work. = 15%

4. **References and reference projects:**
   Customer satisfaction with the vendor on prior similar projects. The contractor should provide a minimum of three (3) references. References should include the name, contact names, phone numbers, dates of the project, status or outcome of the project, and brief description of the services performed. = 10%

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

- Memo (1 Page)
- Request For Proposal (7 Pages)
- Scope of Work (2 Pages)
- Proposal Form with Unit Price Schedule (4 Pages)
- References Form (2 Pages)
- Agreement (49 Pages)
- Barrow County Code of Ethics Ordinance (30 Pages)
RFP2018-14 Stormwater On-Call Maintenance & Repair Services

Scope of Work

Scope of Work:

The purpose of this Request for Proposal (RFP) is to select a single qualified contractor for on-call standby stormwater system maintenance and repair services. Individual project cost will be based on the submitted Unit Prices per the contractor selected. The term of contract shall be for a one (1) year period with two (2) optional annual renewals. This Agreement shall terminate absolutely and without further obligation on the part of the County on June 30 of each succeeding and renewed year, as required by O.C.G.A. §36-60-13, as amended, unless terminated earlier in accordance with the termination provisions of this Agreement.

This is an indefinite delivery indefinite quantity Contract for performing on-call construction, maintenance and repair of stormwater infrastructure. Typical projects may include but are not limited to the following: 1) repair storm drain pipes, 2) replacing sections of storm drain pipes, 3) slope stabilization, 4) rip-rap placement, 5) ditch/channel stabilization, 6) cleaning out of pipes and detention ponds, 7) repairing/cutting detention ponds, 8) landscaping including grassing & mulch, 9) grading, 10) tree/vegetation removal, and 11) traffic control. Much of the infrastructure maintenance and repairs will be involving tree/vegetation and debris removal, channel/ditch excavation, and pipe replacement/clean out. Contractors are to have the capability of providing coordination with affected utilities, erosion and sediment control, tree protection, and traffic control as needed. The selected contractor(s) may also be requested to provide shop drawings for certain repair items.

The work may take place within County rights-of-way, easements or within specific areas delineated by a right of entry.

All work will be performed and completed to the complete satisfaction and acceptance of the County. Contractor shall guarantee all work for a period of one (1) year from the date of acceptance against defective materials, design, workmanship and improper adjustment. If contractor is constructing a design completed by others (consultant), contractor must coordinate with the County and the County’s consultant for clarification of the plan, as needed. Contractor will abide by any and all applicable professional standards, local codes, manufacturers’ recommendations, and safe work practices and will secure any or all applicable permits or licenses to complete the described work.

Selected Contractor(s) understand that projects estimated to cost one hundred thousand dollars ($100,000.00) or more will not be a part of this agreement. Those projects will be completed through the County’s standard invitation to Bid process. The on-call contractors are not prohibited from bidding on those projects.
The Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the work specified herein. This includes but not limited to Georgia Department of Transportation’s Standard Specifications Construction of Transportation Systems, current edition, Georgia Department of Transportation’s Construction Standards and Details, current edition; the Manual on Uniform Traffic Control Devices for Street and Highways (MUTCD), current edition; the Georgia Stormwater Management Manual, current edition; American Society for Testing and Materials.

The Contractor shall obtain all locates, permits, licenses and certificates, or any such approvals of plans or specifications as may be required by Federal, State and local laws, ordinances, rules and regulations, for the proper execution of the work specified herein.

During the performance of this Contract, the Contractor shall keep current and, if requested by the County, provide copies of any and all licenses, registrations or permits required by applicable governing agencies. The Contractor shall keep a copy of any and all licenses, registrations and permits on the job site while performing the Contract work.

The Contractor shall furnish all labor, material, supplies, equipment, fuel and other appurtenances necessary to provide stormwater construction, maintenance and repair as described in the scope of work. The contractor is responsible for removal and appropriate legal disposal of all associated debris and waste materials.

The Contractor shall perform all of its obligations and functions under the Contract in accordance with the Contract specifications, industry standards and any manufacturers’ specifications. The Contractor shall adjust and coordinate its activities within five (5) days of the County issuing a task order. The Contractor shall meet the needs and requirements of the County and perform its activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the operations or activities of the County.

The Contractor shall provide Copy of business license and proof of being in business at least five (5) years. Provide copy of a Georgia Utility Contractors License with name and phone number of registered agent or provide documentation of being registered with the Georgia Department of Transportation.
PROPOSAL FORM

RFP2018-14 STORMWATER ON-CALL MAINTENANCE & REPAIR SERVICES

BIDS ARE DUE AT 12:00 (NOON). Eastern Time October 12, 2017, at Barrow County Board of Commissioners, County Clerk’s Office located at 30 North Broad Street Winder, Georgia 30680

Barrow County Board of Commissioners:

Having carefully examined the Request For Proposals and Related Documents for RFP2018-14, the undersigned proposes to furnish Stormwater On-Call Maintenance & Repair Services per the Scope of Work and the attached Unit Price Schedule:

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<th>Per Scope of Work</th>
<th>Fee Schedule</th>
<th>Comments (If Any)</th>
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<td>Stormwater On-Call Maintenance &amp; Repair Services</td>
<td>Attach Unit Price Schedule</td>
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ADDENDUM ACKNOWLEDGMENT

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<td>No. 3's and 4's Stone</td>
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REQUEST FOR PROPOSALS
RFP2018-14 STORMWATER ON-CALL MAINTENANCE & REPAIR SERVICES
BARROW COUNTY, GEORGIA
REFERENCES

Project: ________________________________ Value: ________________
Owner: ________________________________________________________
Address: ________________________________________________________

Contact Person: ________________________________________________________
Contact Title, Phone No., & Email Address: ________________________________

Project: ________________________________ Value: ________________
Owner: ________________________________________________________
Address: ________________________________________________________

Contact Person: ________________________________________________________
Contact Title, Phone No., & Email Address: ________________________________

Project: ________________________________ Value: ________________
Owner: ________________________________________________________
Address: ________________________________________________________

Contact Person: ________________________________________________________
Contact Title, Phone No., & Email Address: ________________________________
Project: __________________________ Value: ____________

Owner: ___________________________________________________

Address: ___________________________________________________

Contact Person: ___________________________________________

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

Project: __________________________ Value: ____________

Owner: ___________________________________________________

Address: ___________________________________________________

Contact Person: ___________________________________________

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

Project: __________________________ Value: ____________

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

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Owner: ___________________________________________________

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

Project: __________________________ Value: ____________

Owner: ___________________________________________________

Address: ___________________________________________________

Contact Person: ___________________________________________

Contact Title, Phone No., & Email Address: _______________________
CONSTRUCTION SERVICES AGREEMENT

STORMWATER ON-CALL MAINTENANCE AND REPAIR

This Construction Services Agreement (the “Agreement”) is made and entered into this ___ day of ___, 2017 (the “Effective Date”), by and between BARROW COUNTY, GEORGIA, a political subdivision of the State of Georgia, acting by and through its governing authority, the Barrow County Board of Commissioners (“County”) and ___________________________, a __________________________ (hereinafter referred to as the “Contractor”), collectively referred to herein as the "Parties”.

W I T N E S S E T H:

WHEREAS, the County desires to retain a contractor to perform on-call, task order-based services for the construction of one or more Projects, as defined below; and

WHEREAS, the County intends to select a single, qualified contractor for on-call standby stormwater system maintenance and repair services; and

WHEREAS, the County solicited proposals pursuant to the Request for Proposals, dated August 9, 2017, attached hereto as “Exhibit A” and incorporated herein by reference; and

WHEREAS, the Contractor submitted a complete and timely proposal, attached hereto as “Exhibit B” and incorporated herein by reference, and met all proposal requirements such that the County awarded Project Number RFP2018-14 (Stormwater On-Call Maintenance and Repair Services) to the Contractor; and

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

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

WHEREAS, based upon Contractor’s proposal, the County has selected Contractor as the successful proposer, and

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

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

WHEREAS, Contractor has familiarized itself with the nature and extent of the Contract Documents, the Project, and the Work, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that may in any manner affect cost, progress or performance of Work, and Contractor is aware that it must be licensed to do business in the State of Georgia.
NOW THEREFORE, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein and other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

Section 1. Contract Documents

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

A. Request for Proposals, attached hereto as “Exhibit A”;
B. Proposal Documents from Contractor, dated October 12, 2017, attached hereto as “Exhibit B”;
C. Scope of Work, attached hereto as “Exhibit C” (with Unit Price Schedule attached);
D. Any required Performance Bond and/or Payment Bond, attached hereto collectively as “Exhibits D.1 and D.2”;
E. Noncollusion Affidavit of Prime Proposer, attached hereto as “Exhibit E”;
F. Final Affidavit, attached hereto as “Exhibit F”;
G. Alien Employment affidavits, attached hereto as “Exhibits G.1 and G.2”;
H. Notice of Award, attached hereto as “Exhibit H”;
I. All issued Task Orders and any applicable plans, drawings, and/or specifications relevant or related thereto, attached at “Exhibit I”;
J. Barrow County Code of Ethics (codified in the official Code of Barrow County);
K. The following, which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Change Orders (defined in Section 6 below), other written amendments, and other documents amending, modifying, or supplementing the Contract Documents if properly adopted in writing and executed by the Parties.

Section 2. Project Description; Contract Administrator

A. Project. A general description of the “Project” is as follows: On-call (Task Order-based) construction, maintenance and repair of County stormwater infrastructure. Typical projects (i.e., tasks) may include but are not limited to the following: 1) repair storm drain pipes, 2) replacing sections of storm drain pipes, 3) slope
stabilization, 4) rip-rap placement, 5) ditch/channel stabilization, 6) cleaning out of pipes and detention ponds, 7) repairing/cutting detention ponds, 8) landscaping including grassing & mulch, 9) grading, 10) tree/vegetation removal, and 11) traffic control. Much of the infrastructure maintenance and repairs will be involving tree/vegetation and debris removal, channel/ditch excavation, and pipe replacement/clean out. Contractors are to have the capability of providing coordination with affected utilities, erosion and sediment control, tree protection, and traffic control as needed. The Contractor may also be requested to provide shop drawings for certain repair items.

B. **Contract Administrator.** The Contract Administrator for this Agreement shall be the County.

Section 3. **The Work**

A. **The Work.** The Work to be completed under this Agreement (the “Work”) includes, but shall not be limited to, the work described in Section 2A. above, and in the Scope of Work provided in “Exhibit C”, attached hereto and incorporated herein by reference. The Work includes all material, labor, insurance, tools, equipment, machinery, water, heat, utilities, transportation, facilities, services and any other miscellaneous items and work reasonably inferable from the Contract Documents. The term “reasonably inferable” takes into consideration the understanding of the Parties that some details necessary for proper execution and completion of the Work may not be shown on the drawings or included in the specifications or Scope of Work, but they are a requirement of the Work if they are a usual and customary component of the Work or are otherwise necessary for proper and complete installation and operation of the Work. Contractor shall complete the Work in strict accordance with the Contract Documents. In the event of any discrepancy among the terms of the various Contract Documents, the provision most beneficial to the County, as determined by the County in its sole discretion, shall govern.

B. **Task Orders.** The County may, but is not required to, issue one or more Task Orders which will provide the scope for a particular Project, the dates for beginning Work (“Commencement Date”) and the Expected Date of Final Completion (defined in Section 4(A) below). Unless otherwise approved, the Contractor shall perform its obligations under this Agreement as expeditiously as is consistent with reasonable skill and care and the orderly progress of the Work.

C. **Plans; Drawings and Specifications.** The plans, drawings and specifications provided with or prepared in conjunction with any issued Task Order shall be included herein at “Exhibit H”, without the necessity of any contract amendment.

D. **Shop Drawings, Product Data, and Samples.** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents, but must be in conformity therewith. The purpose of their submittal is to demonstrate, for those
portions of the Work for which submittals are required by the Contract Documents, the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

(i) “Shop Drawings” are drawings, diagrams, schedules and other data specifically prepared for the Work by the Contractor or a subcontractor, sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

(ii) “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

(iii) “Samples” are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

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

The Work shall be completed in accordance with approved submittals, provided that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Contract Administrator’s approval of Shop Drawings, Product Data, Samples or similar submittals, unless the Contractor has specifically informed the Contract Administrator in writing of such deviation at the time of submittal and (1) the Contract Administrator has given written approval to the specific deviation as a minor change in the Work, or (2) a written Change Order has been issued and approved to authorize the deviation. The Contract Administrator’s approval of the Shop Drawings, Product Data, Samples or similar submittals shall not relieve the Contractor of responsibility for errors or omissions therein.
The Contractor shall, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, direct the Contract Administrator’s attention to any additional revisions included other than those requested by the Contract Administrator on previous submittals. In the absence of such written notice drawing the Contract Administrator’s attention to such additional revisions, the Contract Administrator’s approval of a resubmission shall not apply to such additional revisions.

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

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

A. **Contract Term.** The term of this Agreement (“Term”) shall commence on the Effective Date and continue until **June 30, 2018 (FY18)**, whereupon this Agreement shall terminate absolutely and without further obligation on the part of the County, and further, that this Agreement shall automatically renew on July 1, 2018, for an additional one-year term absent the County’s provision of written notice of non-renewal to Contractor at least five (5) calendar days prior to June 30, 2018. The additional one-year term shall continue until **June 30, 2019 (FY19)**, whereupon this Agreement shall terminate absolutely and without further obligation on the part of the County, and further, that this Agreement shall automatically renew on July 1, 2019, for an additional (final) one-year term absent the County’s provision of written notice of non-renewal to Contractor at least five (5) calendar days prior to June 30, 2019. The additional (final) one-year term shall continue until **June 30, 2020 (FY20)**. Title to any supplies, materials, equipment, or other personal property shall remain in Contractor until fully paid for by the County.

B. **Time is of the Essence; Liquidated Damages.** Contractor specifically acknowledges that TIME IS OF THE ESSENCE of this Agreement and that County will suffer financial loss if the Work is not completed in accordance with the deadlines specified in Section 4(A) above and within the Contract Documents. The County and Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the County if the Work is not completed within the specified times. Accordingly, instead of requiring any such proof, the County and Contractor agree that, as liquidated damages for delay (but not as a penalty), the Contractor shall pay to the County **One Hundred and Fifty and 00/100 Dollars ($150.00)** for each and every calendar day that expires after a deadline provided in the Contract Documents.
C. **Expediting Completion.** The Contractor is accountable for completing the Work within the time period provided in the Contract Documents. If, in the judgment of the County, the Work is behind schedule and the rate of placement of work is inadequate to regain scheduled progress to ensure timely completion of the entire Work or a separable portion thereof, the Contractor, when so informed by the County, shall immediately take action to increase the rate of work placement by:

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

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

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

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

A. **Maximum Contract Price.** The County has allocated a total of $__________ to fund all costs associated with any Task Orders issued under this Agreement (the “Maximum Contract Price”), which will be increased as outlined in Section 6 below, in the County’s sole discretion. The compensation for Work performed shall be based upon the scope of any particular Task Order which shall be
completed in accordance with this Agreement, including the agreed Unit Price Schedule attached to and incorporated herein at “Exhibit C.”

B. **Material Deviations.** Any material deviations in tests or inspections performed, or times or locations required to complete such tests or inspections, and like deviations from the Work described in this Agreement shall be clearly communicated to the County before charges are incurred and shall be handled through written Change Orders, as described in Section 6 below. Whenever the Contract Administrator considers it necessary or advisable, it shall have authority to require inspection or testing of the Work. However, neither this authority of the Contract Administrator nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Contract Administrator to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

C. **Taxes.** The County is a governmental tax-exempt entity and shall not be responsible for paying any taxes on any materials or services provided for herein. At Contractor’s request, County shall provide evidence of its tax-exempt status. To the extent, if any, that the County furnishes tangible personal property to Contractor for incorporation into the Project, Contractor shall be responsible for paying the amount of tax owed for such tangible personal property.

**Section 6. Change Orders**

A. **Change Order Defined.** A “Change Order” means a written modification of the Contract Documents, signed by representatives of the County and the Contractor with appropriate authorization.

B. **Right to Order Changes.** The County reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written Change Orders and executed by the Contractor and the County. Such Change Orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by the County in its sole discretion, the County shall have the right to determine reasonable terms, and the Contractor shall proceed with the changed work.

C. **Change Order Requirement.** Any work added to the scope of this Agreement by a Change Order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized, unless contained in a written Change Order duly executed on behalf of the County and the Contractor.

D. **Authority to Execute Change Order.** The County Manager has authority to execute,
without further action of the Barrow County Board of Commissioners, any number of Change Orders so long as their total effect does not materially alter the terms of this Agreement or materially increase the Maximum Contract Price, as set forth in Section 5(A) above. Any such Change Orders materially altering the terms of this Agreement, or any Change Order increasing the price by more than twenty-five thousand dollars ($25,000.00), must be approved by resolution of the Barrow County Board of Commissioners.

E. Minor Changes in the Work. The Contract Administrator will have the authority to order minor changes in the Work not involving adjustment in the Maximum Contract Price or extension of the Term and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order signed by the Contract Administrator. The Contractor shall carry out such written orders promptly. If the minor changes subsequently may affect adjustments in the Maximum Contract Price or the Term, the changes shall then be converted to a written Change Order by the requesting Party.

Section 7. Covenants of Contractor

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

B. Meetings. The Contractor is required to meet with the County’s personnel, or designated representatives, to resolve technical or contractual problems that may occur during the Term of this Agreement at no additional cost to the County. Meetings will occur as problems arise and will be coordinated by the County or the Contract Administrator. The Contractor will be given a minimum of three (3) full business days’ notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor’s option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the contract for cause.
C. **Expertise of Contractor.** Contractor accepts the relationship of trust and confidence established between it and the County, recognizing that the County’s intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and professional skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Contractor under this Agreement. The Contractor agrees to use its best efforts, skill, judgment, and abilities to perform its obligations and to further the interests of County and the Project in accordance with County’s requirements and procedures, and Contractor shall employ only persons duly qualified in the appropriate area of expertise to perform the Work described in this Agreement.

D. **Proper Execution by Contractor.** Contractor agrees that it will perform its services in accordance with the usual and customary standards of the Contractor’s profession or business and in compliance with all federal, state, and local laws, regulations, codes, ordinances, or orders applicable to the Project, including, but not limited to, O.C.G.A. § 50-5-63, any applicable records retention requirements, and Georgia’s Open Records Act (O.C.G.A. § 50-18-70, et seq.). Any additional work or costs incurred as a result of error and/or omission by Contractor as a result of not complying with the Contract Documents or not meeting the applicable standard of care or quality, including but not limited to those of repeated procedures and compensation for the Contract Administrator’s services or expenses, will be provided at Contractor’s expense and at no additional cost to the County. This provision shall survive termination of this Agreement.

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

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

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

E. **Familiarity with the Work.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

M. **Contractor’s Representative.** ___________________________ shall be authorized to act on Contractor’s behalf with respect to the Work as Contractor’s designated representative.

N. **Independent Contractor.** Contractor hereby covenants and declares that it is engaged in an independent business and agrees to perform the Work as an independent contractor and not as the agent or employee of the County. Nothing contained in this Agreement shall be construed to make the Contractor or any of its employees, servants or subcontractors an employee, servant or agent of the County.
for any purpose. The Contractor agrees to be solely responsible for its own matters relating to the time and place the Work is performed and the method used to perform such Work; the instrumentalities, tools, supplies, and/or materials necessary to complete the Work; hiring of subcontractors, agents, or employees to complete the Work; and the payment of employees, including benefits and compliance with Social Security, withholding, and all other regulations governing such matters. The Contractor agrees to be solely responsible for its own acts and those of its subordinates, employees, and subcontractors during the life of this Agreement. There shall be no contractual relationship between any subcontractor or supplier and the County by virtue of this Agreement with the Contractor. Any provisions of this Agreement that may appear to give the County the right to direct Contractor as to the details of the services to be performed by Contractor or to exercise a measure of control over such services will be deemed to mean that Contractor shall follow the directions of the County with regard to the results of such services only. It is further understood that this Agreement is not exclusive, and the County may hire additional entities to perform Work related to this Agreement.

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

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

In any and all claims against an Indemnified Party, by any employee of the Contractor, its subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under workers’ or workmen’s compensation acts, disability benefit acts, or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

P. Insurance.

(1) **Requirements:** The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by the County as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the County Manager.

(2) **Minimum Limits of Insurance:** Contractor shall maintain the following insurance policies with coverage and limits no less than:

(a) **Commercial General Liability:** $1,000,000 (one million dollars) combined single limit per occurrence comprehensive/extended/enhanced Commercial General Liability policy with coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage to premises/operations, products/completed operations, independent consultants and contractual liability (specifically covering the indemnity), broad-from property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on “an occurrence” basis (“claims made” coverage is not acceptable). If a general aggregate limit applies, the general aggregate limit shall apply separately to this project/location, and the general aggregate limit shall be twice the required occurrence
(b) **Commercial Automobile Liability (owned, non-owned, hired):** $1,000,000 (one million dollars) combined single limit per occurrence $2,000,000 (two million dollars) aggregate for comprehensive Commercial Automobile liability coverage (owned, non-owned, hired) including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

(c) **Workers’ Compensation and Employers’ Liability:** Workers’ Compensation policy with limits as required by the State of Georgia and Employers’ Liability limits of $1,000,000 (one million dollars) per occurrence or disease. (If Contractor is a sole proprietor, who is otherwise not entitled to coverage under Georgia’s Workers’ Compensation Act, Contractor must secure Workers’ Compensation coverage approved by both the State Board of Workers’ Compensation and the Commissioner of Insurance. The amount of such coverage shall be the same as what is otherwise required of employers entitled to coverage under the Georgia Workers’ Compensation Act. Further, the Contractor shall provide a certificate of insurance indicating that such coverage has been secured and that no individual has been excluded from coverage.)

(d) **Commercial Umbrella Liability Coverage:** $1,000,000 (one million dollars) per occurrence shall be provided and will apply over all liability policies, without exception, including but not limited to Commercial General Liability and Commercial Automobile Liability.

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

(3) **Deductibles and Self-Insured Retentions:** Any deductibles or self-insured retentions must be declared to and approved by the County in writing so that the County may ensure the financial solvency of the Contractor; self-insured retentions should be included on the certificate of insurance.

(4) **Other Insurance Provisions:** Each policy shall contain, or be endorsed to contain, the following provisions respectively:

(a) **General Liability, Automobile Liability and Umbrella Liability Coverage.**
(i) **Additional Insured Requirement.** The County and County’s elected and appointed officials, officers, boards, commissioners, employees, representatives, consultants, servants, agents and volunteers (individually “Insured Party” and collectively “Insured Parties”) shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, leased, or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Contractor to provide liability insurance coverage to any Insured Party for claims asserted against such Insured Party for its sole negligence.

(ii) **Primary Insurance Requirement.** The Contractor’s insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Contractor’s insurance and shall not contribute with it.

(iii) **Reporting Requirement.** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.

(iv) **Separate Coverage.** Coverage shall state that the Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to limits of insurance provided.

(v) **Defense Costs/Cross Liability.** Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

(vi) **Subrogation.** The insurer shall agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Contractor for the County.

(b) **Workers’ Compensation Coverage:** The insurer providing Workers’ Compensation Coverage will agree to waive all rights of
subrogation against the Insured Parties for losses arising from Work performed by the Contractor for the County.

(c) **All Coverages:**

(i) **Notice Requirement.** Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be reduced, suspended, voided, or canceled except after thirty (30) calendar days prior written notice (or 10 calendar days if due to non-payment) has been given to the County. In addition, Contractor shall provide written notice to County at least thirty (30) days prior to any reduction, suspension, voiding, or cancellation of coverage. The County reserves the right to accept alternate notice terms and provisions, provided they meet the minimum requirements under Georgia law.

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

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

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

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

(7) **Subcontractors:** Contractor shall either (1) ensure that its insurance policies (as described herein) cover all subcontractors and the Work performed by such subcontractors or (2) ensure that any subcontractor secures separate policies covering that subcontractor and its Work. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the Insured Parties as additional insureds.

(8) **Claims-Made Policies:** Contractor shall extend any claims-made insurance policy for at least six (6) years after termination or final payment under the Agreement, whichever is later, and have an effective date which is on or prior to the Effective Date.

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

Q. **Bonds.** The Contractor shall provide Performance and Payment bonds, each in the penal sum equal to or exceeding the Maximum Contract Price stated herein, on the forms attached hereto as “Exhibits D.1 and D.2” and with a surety licensed to do business in Georgia and listed on the Treasury Department’s most current list (Circular 570 as amended). Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under this Agreement, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

R. **Assignment of Agreement.** The Contractor covenants and agrees not to assign or transfer any interest in, or delegate any duties of this Agreement, without the prior express written consent of the County. As to any approved subcontractors, the Contractor shall be solely responsible for reimbursing them, and the County shall have no obligation to them.

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

(1) the Contractor shall provide evidence on County-provided forms, attached hereto as “Exhibits G.1 and G.2” (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and its subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and
deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, or

(2) the Contractor provides evidence that it is not required to provide an affidavit because it is an individual licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

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

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

Where Contractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall be authorized to conduct an inspection of the Contractor’s and Contractor’s subcontractors’ verification process at any time to determine that the verification was correct and complete. The Contractor and Contractor’s subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract. Further, where Contractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the County Manager or his/her designee shall further be authorized to conduct periodic inspections to ensure that no County Contractor or Contractor’s subcontractors employ unauthorized aliens on County contracts. By entering into a contract with the County, the Contractor and Contractor’s subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where a Contractor or Contractor’s subcontractors are found to have employed an unauthorized alien, the County Manager or his/her designee may report same to the Department of Homeland Security. The Contractor’s failure to cooperate with the investigation may be sanctioned by termination of the contract.
and the Contractor shall be liable for all damages and delays occasioned by the County thereby.

Contractor agrees that the employee-number category designated below is applicable to the Contractor.

___ 500 or more employees.
___ 100 or more employees.
___ Fewer than 100 employees.

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

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

T. Records, Reports and Audits.

(1) Records:

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

(b) All costs claimed or anticipated to be incurred in the performance of this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

(2) Reports and Information: Upon request, the Contractor shall furnish to the County any and all Records in the form requested by the County. All
Records stored on a computer database must be of a format compatible with the County’s computer systems and software.

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

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

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

V. Licenses, Certifications and Permits. The Contractor covenants and declares that it has obtained all diplomas, certificates, licenses, permits, or the like required of the Contractor by any and all national, state, regional, county or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement; provided that some permits or licenses related to the Project may be obtained as part of the Work and shall be obtained as required. The Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for
proper execution and completion of the Work, which are customarily secured after execution of the Agreement and which are legally required. Contractor shall furnish copies of such permits, licenses, etc. to the County within ten (10) days after issuance.

W. Authority to Contract. The Contractor covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners, or similar authorities to simultaneously execute and bind Contractor to the terms of this Agreement, if applicable.

Y. Ownership of Work. All reports, designs, drawings, plans, specifications, schedules, work product, and other materials, including those in electronic form, prepared or in the process of being prepared for the Work to be performed by the Contractor (“Materials”) shall be the property of the County, and the County shall be entitled to full access and copies of all Materials in the form prescribed by the County. Any Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the Work shall be delivered immediately to the County whether or not the Project or Work is commenced or completed, provided, however, that Contractor may retain a copy of any deliverables for its records. The Contractor assumes all risk of loss, damage or destruction of or to Materials. If any Materials are lost, damaged, or destroyed before final delivery to the County, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to the County, and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

Z. Nondiscrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Contractor agrees that, during performance of this Agreement, Contractor, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, Contractor agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under this Agreement.

Section 8. Covenants of the County

A. Right of Entry. County shall provide for right of entry for Contractor and Contractor’s equipment as required for Contractor to complete the Work; provided that Contractor shall not unreasonably encumber the Project site(s) with materials or equipment.
B. **County’s Representative.** **MATT TREETER, County Storm Water Department Manager,** shall be authorized to act on County’s behalf with respect to the Work as the County’s designated representative on this Project; provided that any changes to the Work or the terms of this Agreement must be approved as provided in Section 6 above. See **Exhibit I** for County’s Representative contact information.

County’s Representative, or his/her designee, is authorized to prepare and issue one or more Task Orders in accordance with this Agreement in an amount less than one hundred thousand dollars ($100,000.00) per project or task. No project or task may be artificially divided to circumvent the provision herein that any project or task estimated at one hundred thousand dollars ($100,000.00) or more is outside the scope of this Agreement and will be subject to an independent, competitive procurement process conducted by the County. Contractor will not be foreclosed from submitting a proposal or bid in response thereto.

**Section 9. Final Project Documents: Warranty**

A. **Final Project Documents.** Prior to final payment, Contractor shall deliver to County a written assignment of all warranties, guaranties, certificates, permits, and other documents, including without limitation, all contractors’ and manufacturers’ warranties. At such time, Contractor shall also deliver to the County copies of all as-built drawings, operations, and maintenance manuals, and any other pertinent documents relating to the construction and operation of the Work that is not otherwise in the possession of the County.

B. **Warranty.** The Contractor warrants to the County and the Contract Administrator that materials and equipment furnished under the Agreement will be of good quality and new, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, is considered defective. This warranty excludes remedy for damage or defect caused by abuse by the County or modifications to the Work not executed by the Contractor or an employee/subcontractor/sub-subcontractor thereof.

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

Section 10. Termination

A. For Convenience. The County may terminate this Agreement for convenience at any time upon providing written notice thereof to Contractor at least seven (7) calendar days in advance of the termination date.

B. For Cause. The Contractor shall have no right to terminate this Agreement prior to completion of the Work, except in the event of County’s failure to pay the Contractor within thirty (30) calendar days of Contractor providing the County with notice of a delinquent payment and an opportunity to cure. The County may terminate this Agreement for cause as provided in Section 11 of this Agreement. The County shall give Contractor at least seven (7) calendar days’ written notice of its intent to terminate the Agreement for cause and the reasons therefor, and if Contractor, or its Surety, fails to cure the default within that period, the termination shall take place without further notice. The County shall then make alternative arrangements for completion of the Project.

C. Statutory Termination. In compliance with O.C.G.A. § 36-60-13, this Agreement shall be deemed terminated as provided in Section 4(A) of this Agreement. Further, this Agreement shall terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of the County.

D. Payment. Provided that no damages are due to the County for Contractor’s failure to perform in accordance with this Agreement, and except as otherwise provided herein, the County shall, upon termination for convenience or statutory termination, pay Contractor for Work performed prior to the date of termination in accordance with Section 5 herein. The County shall have no further liability to Contractor for such termination. At its sole discretion, the County may pay Contractor for additional value received as a result of Contractor’s efforts, but in no case shall said payment exceed any remaining unpaid portion of the Maximum Contract Price.

If this Agreement is terminated for cause, the County will make no further payment to the Contractor or its Surety until the Project is completed and all costs of completing the Project are paid. If the unpaid balance of the amount due the Contractor, according to this Agreement, exceeds the cost of finishing the Project,
The County shall provide payment to the Contractor (or its Surety) for services rendered and expenses incurred prior to the termination date, provided that such payment shall not exceed the unpaid balance of the amount otherwise payable under this Agreement minus the cost of completing the Project. If the costs of completing the Project exceed the unpaid balance, the Contractor or its Surety shall pay the difference to the County.

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

F. Conversion to Termination for Convenience. If the County terminates this Agreement for cause and it is later determined that the County did not have grounds to do so, the termination will be converted to and treated as a termination for convenience under the terms of Section 10(A) above.

G. Requirements Upon Termination. Upon termination, the Contractor shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible if requested to do so by the County, and not incur any new obligations, unless the County directs otherwise; and (2) promptly deliver to the County all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the County.

H. Reservation of Rights and Remedies. The rights and remedies of the County and the Contractor provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

Section 11. County’s Rights; Contractor Default

A. County Rights Related to the Work.

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

(ii) County’s Right to Carry Out the Work. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a
seven (7) calendar day period after receipt of a Task Order from the County to commence and/or continue correction of such default or neglect with diligence and promptness, the County may, without prejudice to other remedies the County may have, correct such deficiencies. In such case, an amended or revised Task Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including County's expenses and compensation for additional services (if any) rendered necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the County.

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

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

Section 12. **Reserved**

Section 13. **Miscellaneous**

A. **Complete Agreement.** This Agreement, including all of the Contract Documents, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement, or promise relating to the subject matter of this Agreement not contained in this Agreement or
the Contract Documents shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both Parties with appropriate authorization.

B. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia without regard to choice of law principles. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Barrow County, Georgia or the U.S. District Court for the Northern District of Georgia – Gainesville Division, and Contractor submits to the jurisdiction and venue of such court.

C. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

D. Invalidity of Provisions; Severability. Should any article(s) or section(s) of this Agreement, or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the Parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions that may for any reason be hereafter declared invalid.

E. Business License. Prior to commencement of the Work to be provided hereunder, Contractor shall apply to the County for a business license, pay the applicable business license fee, and maintain said business license during the Term of this Agreement, unless Contractor provides evidence that no such license is required.

F. Notices.

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

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

(2) Official Notices.

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

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

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

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

____________________
____________________
____________________

G. **Waiver of Agreement.** No failure by the County to enforce any right or power granted under this Agreement, or to insist upon strict compliance by Contractor with this Agreement, and no custom or practice of the County at variance with the terms and conditions of this Agreement shall constitute a general waiver of any future breach or default or affect the County’s right to demand exact and strict compliance by Contractor with the terms and conditions of this Agreement. Further, no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

H. **Survival.** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations, warranties, and insurance maintenance requirements.

I. **Sovereign Immunity.** Nothing contained in this Agreement shall be construed to be a waiver of the County’s sovereign immunity or any individual’s qualified good faith or official immunities.

J. **No Personal Liability.** Nothing herein shall be construed as creating any individual or personal liability on the part of any of County’s elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys or volunteers. No such individual shall be personally liable to the Contractor or any successor in interest in the event of any default or breach by the County or for any amount which may become due to the Contractor or successor or on any obligation under the terms of this Agreement. Likewise, Contractor’s performance of services under this Agreement shall not subject Contractor’s individual employees, officers, or directors to any personal liability, except where Contractor is a sole proprietor. The Parties agree that their sole and exclusive
remedy, claim, demand, or suit shall be directed and/or asserted only against Contractor or the County, respectively, and not against any elected or appointed official, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys and volunteers.

K. **Force Majeure.** Neither the County nor Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond their respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion, or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of Contractor; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection, or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

L. **Headings.** All headings herein are intended for convenience and ease of reference purposes only and in no way define, limit, or describe the scope or intent thereof, or of this Agreement, or in any way affect this Agreement.

M. **No Third Party Rights.** This Agreement shall be exclusively for the benefit of the Parties and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other right.

N. **Successors and Assigns.** Subject to the provision of this Agreement regarding assignment, each Party binds itself, its partners, successors, assigns, and legal representatives to the other Party hereto, its partners, successors, assigns, and legal representatives with respect to all covenants, agreements, and obligations contained in the Contract Documents.

O. **Agreement Construction and Interpretation.** Contractor represents that it has reviewed and become familiar with this Agreement. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement. In the interest of brevity, the Contract Documents may omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

P. **Material Condition.** Each term of this Agreement is material, and Contractor’s breach of any term of this Agreement shall be considered a material breach of the entire Agreement and shall be grounds for termination or exercise of any other
remedies available to the County at law or in equity.

Q. **Use of Singular and Plural.** Words or terms used as nouns in the Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires contrary meaning.

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

**CONTRACTOR:**

By: ________________________________

Print Name: ________________________________

Its: ________________________________________

[CORPORATE SEAL]
(required if corporation)

**Attest/Witness:**

By: ________________________________

Print Name: ________________________________

Its: ________________________________________

**BARROW COUNTY, GEORGIA**

By: ________________________________

______________________________, Chairman

[COUNTY SEAL]

**Attest:**

______________________________

Print Name: ________________________________

Its: County Clerk
“EXHIBIT B”

CONTRACTOR PROPOSAL DOCUMENTS
“EXHIBIT C”

SCOPE OF WORK

Contractor warrants and represents that it will perform the Work in a prompt and timely manner, which shall not impose delays on the progress of the Work. The Contractor shall commence Work pursuant to this Agreement within five (5) business days of the Commencement Date as provided in an issued Task Order and all Work shall be completed in accordance with the terms provided therein.

The Work will occur in areas such as: within County rights-of-way, easements or within specific areas delineated by a right of entry.

All Work will be performed and completed to the complete satisfaction and acceptance of the County. Contractor shall guarantee all work for a period of one (1) year from the date of acceptance against defective materials, design, workmanship and improper adjustment. If Contractor is constructing a design completed by others (consultant), Contractor must coordinate with the County and the County’s consultant for clarification of the plan, as needed. Contractor will abide by any and all applicable professional standards, local codes, manufacturers’ recommendations, and safe work practices and will secure any or all applicable permits or licenses to complete the described work.

Contractor understands that Task Orders will be issued for projects estimated to cost less than one hundred thousand dollars ($100,000.00). Projects that are estimated to cost one hundred thousand dollars ($100,000.00) or more will not be a part of this agreement. Those projects will be completed through an independent competitive procurement process. Contractor will not be prohibited from bidding on those projects.

Contractor shall comply with all applicable federal, state and local laws, ordinances, rules and regulations pertaining to the performance of the Work specified herein. This includes but is not limited to the current editions of the Georgia Department of Transportation’s Standard Specifications Construction of Transportation Systems; the Georgia Department of Transportation’s Construction Standards and Details; the Manual on Uniform Traffic Control Devices for Street and Highways (MUTCD); the Georgia Stormwater Management Manual; and any applicable American Society for Testing and Materials (ASTM) standards and publications.

The Contractor shall obtain all locates, permits, licenses and certificates, or any such approvals of plans or specifications as may be required by Federal, State and local laws, ordinances, rules and regulations, for the proper execution of the Work specified herein.

During the performance of this Contract, the Contractor shall keep current and, if requested by the County, provide copies of any and all licenses, registrations or permits required by applicable governing agencies. The Contractor shall keep a copy of any and all licenses, registrations and permits on the job site while performing the Work.

Contractor shall furnish all labor, material, supplies, equipment, fuel and other appurtenances necessary to provide stormwater construction, maintenance and repair as described in the scope of
work and any issued Task Order. Contractor is responsible for removal and appropriate legal 
disposal of all associated debris and waste materials.

Contractor shall perform all of its obligations and functions under the Contract in accordance with 
the Contract specifications, industry standards and any manufacturers’ specifications. The 
Contractor shall adjust and coordinate its activities within five (5) days of the County issuing a 
Task Order. Contractor shall meet the needs and requirements of the County and perform its 
activities so as not to annoy, disturb, endanger, unreasonably interfere with or delay the operations 
or activities of the County.

The Work required for all issued Task Orders will be completed in accordance with the Unit 
Price Schedule attached hereto and by this reference incorporated herein.
(insert Unit Price Schedule here)
“EXHIBIT D.1”

PERFORMANCE BOND

BARROW COUNTY

KNOW ALL MEN BY THESE PRESENTS THAT

___________________________ (as CONTRACTOR, hereinafter referred to as the “Principal”), and ________________________ (as SURETY COMPANY, hereinafter referred to as the “CONTRACTOR’S SURETY”), are held and firmly bound unto Barrow County, Georgia (as OWNER, hereinafter referred to as the “County”), for the use and benefit of the County, in the sum of ________________________ Dollars ($_______.__), lawful money of the United States of America, for the payment of which the Principal and the Contractor’s Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement with the County for the construction of a project known as RFP 2018-4 (Stormwater On-Call Maintenance and Repair Services Agreement) (hereinafter referred to as “the PROJECT”), which agreement is incorporated herein by reference in its entirety (hereinafter referred to as the “CONTRACT”).

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

1. That if the Principal shall fully and completely perform each and all of the terms, provisions and requirements of the Contract, including and during the period of any warranties or guarantees required thereunder, and all modifications, amendments, changes, deletions, additions, and alterations thereto that may hereafter be made, and if the Principal and the Contractor’s Surety shall indemnify and hold harmless the County from any and all losses,
liability and damages, claims, judgments, liens, costs and fees of every description, including but not limited to, any damages for delay, which the County may incur, sustain or suffer by reason of the failure or default on the part of the Principal in the performance of any and all of the terms, provisions, and requirements of the Contract, including all modifications, amendments, changes, deletions, additions, and alterations thereto, and any warranties or guarantees required thereunder, then this obligation shall be void; otherwise to remain in full force and effect;

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

The Contractor’s Surety hereby waives notice of any and all modifications, omissions, additions, changes, and advance payments or deferred payments in or about the Contract, and agrees that the obligations undertaken by this Bond shall not be impaired in any manner by reason of any such modifications, omissions, additions, changes, and advance payments or deferred payments. The Parties further expressly agree that any action on this Bond may be brought within the time allowed by Georgia law for suit on contracts under seal.
IN WITNESS WHEREOF, the Principal and Contractor’s Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers or attorneys-in-fact, as set forth below.

CONTRACTOR (“Principal”):

___________________________

By: __________________________ (signature)

__________________________ (print)

Title: ___________________________ (SEAL)

Attest:      Date:  ___________________________

_____________________ (signature)

_____________________ (print)

Title: ______________  

Date:_________________

CONTRACTOR’S SURETY:

_________________________

By: __________________________ (signature)

__________________________ (print)

Title: __________________________ (SEAL)

Attest:      Date:   __________________________

_____________________  (signature)

_____________________ (print)

Title: ______________

Date:_________________

(ATTACH SURETY’S POWER OF ATTORNEY)


“EXHIBIT D.2”

PAYMENT BOND

BARROW COUNTY

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

WHEREAS, the Principal has entered, or is about to enter, into a certain written agreement
with the County for the construction of a project known as RFP 2018-4 (Stormwater On-Call
Maintenance and Repair Services Agreement) (hereinafter referred to as “the PROJECT”),
which agreement is incorporated herein by reference in its entirety (hereinafter referred to as the
“CONTRACT”).

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

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

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

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

**IN WITNESS WHEREOF,** the Principal and Contractor’s Surety have hereunto affixed their corporate seals and caused this obligation to be signed by their duly authorized officers, as set forth below.

[SIGNATURES ON FOLLOWING PAGE]
CONTRACTOR:

______________________________
By: __________________________ (signature)
______________________________ (printed)
Title: __________________________ (SEAL)
Date: __________________________

Attest:
______________________________ (signature)
______________________________ (printed)
Title: __________________________
Date: __________________________

CONTRACTOR’S SURETY:

______________________________
By: ____________________________ (signature)
______________________________ (printed)
Title: __________________________ (SEAL)
Date: __________________________

Attest:
______________________________ (signature)
______________________________ (printed)
Title: __________________________
Date: __________________________

(ATTACH SURETY’S POWER OF ATTORNEY)
“EXHIBIT E”

NONCOLLUSION AFFIDAVIT OF PRIME PROPOSER

STATE OF _________________
COUNTY OF _______________

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

(1) He/She is __________________________ (Owner, Partner, Officer, Representative, or Agent)
of ____________________________ (the “Proposer”) that has submitted the attached Proposal;

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

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

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

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

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

_______________________________________
Signature of Authorized Officer or Agent

_______________________________________
Printed Name and Title of Authorized Officer or Agent

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

_____________________________
Notary Public

[NOTARY SEAL]

My Commission Expires:  __________________________
STATE OF __________________
COUNTY OF ________________

TO BARROW COUNTY, GEORGIA

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

________________________________________
Signature

________________________________________
Title

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

________________________________________
Notary Public

[NOTARY SEAL]

My Commission Expires

________________________________________
STATE OF __________________
COUNTY OF __________________

CONTRACTOR AFFIDAVIT AND AGREEMENT

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

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

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

____________________________
Federal Work Authorization User Identification Number

____________________________
Date of Authorization

____________________________
Name of Contractor

RFP 2018-4 (Stormwater On-Call Maintenance and Repair Services Agreement)

____________________________
Name of Project

Barrow County, Georgia

____________________________
Name of Public Employer

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

Executed on ________ , 20___ in __________ (city), __________ (state).

____________________________
Signature of Authorized Officer or Agent

____________________________
Printed Name and Title of Authorized Officer or Agent

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

____________________________
Notary Public

[NOTARY SEAL]

My Commission Expires:
“EXHIBIT G.2”

SUBCONTRACTOR AFFIDAVIT

STATE OF _______________
COUNTY OF _______________

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

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

_________________________________
Federal Work Authorization User Identification Number

_________________________________
Date of Authorization

_________________________________
Name of Subcontractor

_________________________________
RFP 2018-4 (Stormwater On-Call Maintenance and Repair Services Agreement)
Name of Project

Barrow County, Georgia
Name of Public Employer

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

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

_________________________________
Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

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

_______________________________
NOTARY PUBLIC

[NOTARY SEAL]

My Commission Expires:
“EXHIBIT H”

NOTICE OF AWARD
“EXHIBIT I”

TASK ORDERS

Upon issuance, each Task Order and all applicable plans, drawings, and/or specifications attached thereto becomes a part of this Agreement.

Task Order Procedures

1: Task Order Overview

- Work under this Agreement shall only be performed under the basis of a Task Order that has been executed by both parties.
- The County will request Work from the Contractor by the means of a task order.
- The Task Order will include a general scope of work and location.
- The Contractor shall proceed on a given Task Order within five (5) working days of the notification by the County to do so.

2: New Items

If there is a need for a new item not listed in the contract Unit Price Schedule (attached to Agreement at Exhibit C), the Contractor and the County shall mutually agree on the specifications and costs of that item.

3: Communication

The Primary points of contact for this Contract shall be:

                         Email: mtreeter@barrowga.org

Contractor’s Designated Representative:

                                        Office:                     Cell: 

                                        Email: ______________________

The Designated Representative will be the only point of contact between the Contactor and the County and must have sufficient availability to meet onsite and correspond as necessary for the duration of this Contract. The Designated Representative will submit all invoices and supporting documentation. They will also be responsible for resolving all conflicts and answering any questions the County may have. If the Designated Representative changes, the County must be notified in writing.

Secondary Contacts shall be:

                          Email: cdwhite@barrowga.org
4: Payment Procedures

- The County shall pay the Contractor, subject to any authorized deductions, the applicable prices set forth for each service authorized by the County, and actually delivered or performed, as the case may be, by the Contractor to the satisfaction and acceptance, as appropriate, of the County.

- The Contractor shall invoice the County after each Task Order is completed. The invoice shall include supporting documentation and other backup material as the County may reasonably require.

- The County shall pay the Contractor the set price within thirty (30) days after the County’s receipt of the invoice.

- The Contractor shall submit all invoices to: Barrow County, GA Accounts Payable, 30 North Broad Street Winder, GA 30680 or payables@barrowga.org
COUNTY OF BARROW
STATE OF GEORGIA

BARROW COUNTY ETHICS ORDINANCE

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

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

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

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

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

1
WHEREAS, the attainment of one or more of these ends is impaired whenever there exists a conflict between the private interests of an elected official or a governmental employee and his duties as such;

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

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

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

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

WHEREAS, it is a further policy of the Board of Commissioners that the proper administration of Barrow County's government and the promotion and enforcement of standards of ethical conduct for Barrow County's officers and employees would be best served by the creation of a Barrow County Board of Ethics for the investigation of complaints related to ethical standards;
NOW, THEREFORE, BE IT ORDAINED AND RESOLVED BY THE BOARD OF

COMMISSIONERS OF BARROW COUNTY, GEORGIA AS FOLLOWS:

ARTICLE ONE: GENERAL PROVISIONS

Section One. Short Title.

This Ordinance shall be known as "The Barrow County Ethics Ordinance," and may be

Cited and referred to as such.

Section Two. Definitions.

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

(A) "Board" means the Barrow County Board of Commissioners.

(B) "Board of Ethics" means the Barrow County Board of Ethics as formed and
described herein.

(C) "Business Entity" means any business of whatever nature regardless of how
designated or formed, whether a sole proprietorship, partnership, joint venture,
association, trust, corporation, limited liability company, or any other type of
business enterprise and whether a person acting on behalf of, or as a
representative or agent of, the business entity.

(D) "Confidential Information" means any information that, by law or practice, is not
reasonably available to the public.

(E) "County Official" means the Barrow County Board of Commissioners, any
member

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

(F) "Employee" means all those persons employed on a regular or part-time basis by The County, as well as those persons whose services are retained under the terms of a contract with the County, including those employees who are exempt from the Barrow County Civil Service System, except to the extent prohibited by law.

(G) "Family" means the spouse, parents, children, brothers and sisters, related by blood or marriage of a county official or employee.

(H) "Interest" means direct or indirect pecuniary or material benefit accruing to a County Official or Employee as a result of a contract or transaction which is or may be the subject of an official act or action by or with the County, except for such contracts or transactions which, by their terms and by the substance of their provisions, confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated. The term "interest" shall not include any remote interest. For purposes of this Ordinance, a County Official or Employee shall be deemed to have an interest in the affairs of:

1. His or her family;
2. Any business entity in which the county official or employee is a member, officer, director, employee or prospective employee;
3. Any business entity as to which the stock, legal ownership, or beneficial ownership of a county official or employee is in excess of five percent (5%) of the total stock or total legal and beneficial ownership, or which is
controlled or owned directly or indirectly by the county official or employee.

(I) "Official Act" or "Official Duties" means any legislative, administrative, appointive or discretionary act of any County Official or Employee of the County or any agency, board, authority or commission thereof.

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

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

Any person in County service shall;

**Section One.**

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

**Section Two.**

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

**Section Three.**

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

**Section Four.**

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

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

Section Six

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

Section Seven.

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

Section Eight.

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

Section Nine.

Expose corruption wherever discovered.

Section Ten.

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

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

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

All County Officials and Department Directors shall:
Section One.

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

Section Two.

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

Section Three.

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

Section Four.

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

Section Five.

Expose corruption wherever discovered.

Section Six.

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

Section Seven.

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

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

Section Nine.

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

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

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

Section One. Compliance with Applicable Law.

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

Section Two. Conflict of Interest Transactions.

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

to influence, except consistent with the disclosure and abstention provisions set
forth herein.

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

(1) The designation of a bank or trust company as a depository for county
funds;

(2) The borrowing of funds from any bank or lending institution which offers
competitive rates for such loans;

(3) Contracts entered into with a business which employs a consultant,
provided that the consultant's employment with the business is not
incompatible with this Ordinance;

(4) Contracts for services entered into with a business which is the only
available source for such goods or services; and

(5) Contracts entered into under circumstances that constitute and emergency
situation, provided that a record explaining the emergency is prepared by
the Board and submitted to the Chief of Operations (or his/her equivalent)
to be kept on file.
Section Three. Financial Disclosures.

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

Section Four. Zoning Application Disclosures.

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

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

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

Section Six. Withholding of Information.

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

Section Seven. Incompatible Service.

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

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

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

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

(A) No County Official or Employee, whether elected or appointed, shall either cause the dismissal or threaten the dismissal from any county position as a reward or punishment for any political activity. No County Official or Employee shall direct any person employed by the County to undertake political activity on behalf of such County Official or Employee, any other County Official or Employee, or any other individual, political party, group or business organization, during such time that the Employee is required to conduct county business. This section does not prohibit incidental telephone calls made for the purpose of scheduling a County Official's daily county business.

(B) Employees of the county are encouraged to exercise their right to vote, but no employee shall make use of government time or equipment to aid a political candidate, party or cause; or use a government position to influence, coerce, or intimidate any person in the interest of a political candidate, party or cause. No employee shall be hired, promoted, favored or discriminated against with respect to employments because of his or her political opinions or affiliations.

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

(2) Political campaign involvement. A government employee may not be involved in any political activity which would constitute a conflict of interest; including participation in any aspect of any political campaign for any office in Barrow County Government.

(3) Solicitation of contributions. A government employee may not knowingly solicit, accept or receive political contributions from any person, to be used in support of or opposition to any candidate for office in the county.

Section Ten. Appearance Before County Entities.

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

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

Section Twelve. Solicitation or Acceptance of Gifts.

(A) County Officials and employees shall not accept gifts, gratuities or loans from organizations, business concerns, or individuals with whom he or she has official relationships on business of the county government. These limitations are not intended to prohibit the acceptance of articles of negligible value which are distributed generally, nor to prohibit employees from accepting social courtesies which promote good public relations, or to prohibit employees from obtaining loans from regular lending institutions. It is particularly important that inspectors, contracting officers and enforcement officers guard against relationships which might be construed as evidence of favoritism, coercion, unfair advantage or collusion.

(B) Consistent with the provisions set forth in Articles Two and Three and Section 12(A) above, there shall be no violation of this Ordinance in the following circumstances:

(1) Meals and beverages given in the usual course of entertaining associated with normal and customary business or social functions.

(2) An occasional gift from a single source of $101.00 or less in any calendar year.

(3) Ceremonial gifts or awards.
(4) Gifts of advertising value only or promotional items generally distributed to public officials.

(5) Awards presented in recognition of public service.

(6) Reasonable expenses of food, travel, lodging and scheduled entertainment for a meeting that is given in return for participation in a panel or speaking engagement at the meeting.

(7) Courtesy tickets or free admission extended for an event as a courtesy or for ceremonial purposes, given on an occasional basis and not to include season tickets of any nature.

(8) Gifts from relatives or members of the County Official or Employee’s household.

(9) Honorariums or awards for professional achievement.

(10) Courtesy tickets or free admission to educational seminars, educational or information conventions or other similar events.

Section Thirteen. Disclosure of Interest.

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

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

(A) Except as otherwise provided by law, no County Official or Employee shall participate in the discussion, debate, deliberation, vote or otherwise take part in the decision-making process on any item before him in which the County Official or Employee has a conflict of interest as set forth above.

(B) To avoid the appearance of impropriety, if any County Official or Employee has a conflict of interest or has an interest that he or she has reason to believe either violates this Ordinance or may affect his or her official acts or actions in any matter, the County Official or Employee shall immediately leave the meeting room, except that if the matter is being considered at a public meeting, the County Official or Employee may remain in the meeting room.

(C) In the event of a conflict of interest, the County Official or Employee shall announce his or her intent to abstain prior to the beginning of the discussion, debate, deliberation or vote on the item, shall not participate in any way, and shall abstain from casting a vote.

ARTICLE FIVE: THE BOARD OF ETHICS

Section One. Creation and Composition of Board of Ethics.

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

(A) One appointee by the Board of Directors of the Barrow County Chamber of Commerce.

(B) One appointee selected by a majority of the voting County elected officials (not including the members of the Board of Commissioners) who shall each have one vote for such appointee:
(C) One appointee selected by a majority of the voting employees of Barrow County (not including the County elected officials or the members of the Board of Commissioners) who are in the employ of Barrow County on a full-time basis on The effective date of the vote, which vote shall be conducted by the Director of Human Resources or his/her designee;

(D) One appointee of the Barrow County Personnel Review Board; and

(E) One appointee of the Barrow County Board of Commissioners, which appointee Shall be selected by a majority vote of the Board of Commissioners.

Section Two. Appointment Procedures.

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

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

Section Three. Qualifications of Members of Board of Ethics.

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

(A) Resides in the County and is a registered voter;

(B) Is not an Employee or County Official and has not been an Employee or County Official during the three (3) months immediately preceding his or her appointment Or be the spouse, parent, child or sibling of an Employee or County Official;

(C) Is not an officer or employee of any political party;

(D) Does not hold any elected or appointed office and is not a candidate for office of the United States, this State or the County and has not held any elected or appointed office during the three (3) months immediately preceding his or her appointment.

Section Four. Terms; Vacancies.

Members of the Board of Ethics shall each serve a two (2) year term without compensation, and shall continue to serve until their successors are appointed and qualified. The Board positions appointed pursuant to sub-sections (A), (B), and (C) of Section One of this
Article shall serve an initial full two-year term and shall thereafter serve two-year terms upon appointment. The Board positions appointed pursuant to sub-sections (D) and (E) of Section One of this Article shall serve an initial one-year term and shall thereafter serve two-year terms upon appointment. If any vacancy occurs during a term, the remaining members shall at that time choose an alternate member mutually agreed upon to temporarily serve until the position is filled by appointment as provided in Section One and Section Two to fulfill the remainder of the then existing term.

Section Five. **Removal of Member.**

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

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

(A) Members of the Board of Ethics shall not be compensated.

(B) The Board of Ethics shall elect one of its members to act as Chairperson for a term of one year or until a successor is duly elected. The Board of Ethics shall also elect one of its members to act as Vice-Chairperson for the same term and to act for the Chairperson in his or her absence, because of disqualification or vacancy.

(C) There shall be no regularly scheduled monthly or bimonthly meetings of the
Board of Ethics, however, the Board of Ethics shall meet at least once annually in January of each year for purposes of election of officers and such other business as the Board of Ethics deems proper and in accordance with this Ordinance. Meetings shall be called by majority vote or by call of the chairperson. Meetings of the Board of Ethics shall be conducted in the public hearing room utilized by the Board of Commissioners, shall be duly publicized, and shall be otherwise conducted in accordance with the open meetings requirements under state law.

(D) Three members of the Board of Ethics shall constitute a quorum for the transaction of business. The Chairperson shall be entitled to the same voting rights as the other members of the Board of Ethics.

(E) No official action concerning complaints shall be taken by the Board of Ethics, except by the affirmative vote of at least four (4) members of the Board of Ethics.

Section Seven. Duties and Powers.

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

(A) To establish any procedures, rules and regulations governing its internal organization and conduct of its affairs, provided that such procedures, rules and regulations do not conflict with any provision contained herein.

(B) To receive and hear complaints of violations of standards required by this Ordinance.

(C) To make investigations as it deems necessary to determine whether any person has violated this Ordinance, but only after a least four (4) members of the Board of Ethics have voted affirmatively to conduct the investigation.

(D) To take such action as provided in this Ordinance as deemed appropriate because of any violation of this Ordinance.
(E) To perform any other function authorized by this Ordinance.

(F) To issue advisory opinions as provided in this Ordinance.

Section Eight. Staffing and Expenses.

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

Section Nine. Counsel.

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

Section Ten. Adherence to the Ethics Ordinance.

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

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

(1) "Member of the Board of Ethics" means an individual who occupies the position of a member of the Board of Ethics or a prospective member of the Board of Ethics.

(2) "Political Party" means a national political party, a state political party, a political action committee, and/or any affiliated organization.

(3) "Election" includes a primary, special and general election.

(4) "Nonpartisan Election" means:

(a) An election at which none of the candidates is to be nominated or elected as representing a political party, any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected; and

(b) An election involving a question or issue which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a governmental ordinance, or any question or issue of similar character

(5) "Partisan" when used as an adjective, refers to a political party.

(6) "Political Fund" means any fund, organization, political action committee or other entity that, for purposes of influencing in any way the outcome of any partisan election, receives or expends money or
anything of value or transfers money or anything of value to any other
fund, political party, candidate, organization, political action committee
or other entity.

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

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

(1) Register and vote in any election;

(2) Participate in the nonpartisan activities of a civic, community, social,
labor, or professional organization or of a similar organization;

(3) Be a member of a political party or other political organization and
participate in its activities to the extent consistent with law;

(4) Attend a political convention, rally, fundraising function, or other
political gathering;

(5) Sign a political petition as an individual;

(6) Make a financial contribution to a political party or organization;

(7) Take an active part, as a candidate or in support of a candidate, in a
nonpartisan election;

(8) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a governmental ordinance or any other question or issue of a similar character;

(9) Serve as an election judge or clerk or in a similar position to perform nonpartisan duties as prescribed by state or local law; and

(10) Otherwise participate fully in public affairs in a manner which does not materially compromise his or her efficiency or integrity as a member of the Board of Ethics or the neutrality, efficiency or integrity of the Board of Ethics.

(C) Prohibited Activities.

(1) A member of the Board of Ethics may not take an active part in political management or in a political campaign, except as permitted by subsection of this section.

(2) A member of the Board of Ethics shall not take part in or be permitted to do any of the following activities:

(a) Serve as an officer of a political party, a member of a national, state or local committee of a political party, an officer or member of a committee of a partisan political club, or be a candidate for any of these positions;

(b) Organize or reorganize a political party organization or political club;

(c) Directly or indirectly solicit, receive, collect, handle, disburse, or
account for assessments, contributions or other funds for a partisan political purpose;

(d) Organize, sell tickets to, promote or actively participate in a fundraising activity of a candidate in a partisan election or of a political party or political club;

(e) Take an active part in managing the political campaign of a Candidate for public office in a partisan election or a candidate for political party office;

(f) Become a candidate for, or campaign for, an elective public office in a partisan election;

(g) Solicit votes in support of or in opposition to a candidate for Public office in a partisan election;

(h) Act as recorder, watcher, challenger or similar officer at the polls on behalf of a political party or a candidate in a partisan election;

(i) Drive voters to the polls on behalf of a political party or a candidate in a partisan election;

(j) Endorse or oppose a candidate for public office in a partisan election or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material;

(k) Serve as a delegate, alternate or proxy to a political party convention;

(l) Address a convention, caucus, rally or similar gathering of a political party in support of or in opposition to a partisan
candidate for public office or political party office;

(m) Initiate or circulate a partisan nominating position.

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

Section Twelve. Limitation of Liability.

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

Section Thirteen. Advisory Opinion.

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

Section Fourteen. Complaints.

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

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

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

(C) Within sixty (60) days of receipt of a complaint, the Board of Ethics shall conduct an investigatory review to determine whether specific substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this Ordinance. If after reviewing the complaint the Board of Ethics by vote determines that no specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this Ordinance or determines that no violation occurred, it may dismiss the complaint without further proceedings. In the event a complaint is dismissed based upon the merits of the complaint, the complaint may not be re-filed.

(D) If the Board of Ethics determines that specific, substantiated evidence from a credible source(s) exists to support a reasonable belief that there has been a violation of this Ordinance, certified written notice of a hearing, containing the time, date and place of such hearing, shall be given to each party by the Board of Ethics and a formal public hearing shall be conducted and both parties afforded an opportunity to be heard. Any formal public hearing shall be conducted in accordance with the requirements of due process. The Board of Ethics is authorized to swear witnesses.

(E) Any final determination resulting from the hearing shall include written findings of fact and conclusions of law. The Board of Ethics shall determine if clear and convincing evidence shows any violation of this Ordinance.

(F) Nothing in this section shall be considered to limit or encumber the right of the Board of Ethics to initiate an investigation on its own cognizance as it deems
Necessary to fulfill its obligations under this Ordinance.

Section Fifteen. Disciplinary Action.

(A) Upon a determination that an employee has violated this Ordinance, the Board of Ethics may recommend the following penalties and actions:

(1) Written warning or reprimand;
(2) Suspension without pay;
(3) Termination of employment; and
(4) Repayment to the County of any unjust enrichment.

(B) Upon a determination that a County Official has violated this Ordinance, the Board of Ethics may recommend the following penalties and actions:

(1) Written warning, censure or reprimand;
(2) Removal from office to the extent provided by Georgia law; and
(3) Repayment to the County of any unjust enrichment.

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

(D) In addition to any other remedy provided herein, upon determination of a Violation of this Ordinance, the Board of Ethics may recommend to the Board of Commissioners in writing that any contract, bid or change order that was the Subject of the violation should be cancelled or rescinded. The Board of Commissioners, however, shall retain the discretion to determine whether such a Cancellation or rescission would be in the best interest of the County and shall not be bound in any way by a recommendation of the Board of Ethics.

(E) The Ethics Board may also forward its findings of fact and conclusions of law to the Barrow County District Attorney’s Office and/or the Office of the Governor for appropriate action.

Section Sixteen. Judicial review.

(A) Any party against whom a decision of the Board of Ethics is rendered may obtain judicial review of the decision by writ of certiorari to the superior court of the County. The application for the writ must be filed within thirty (30) days from the date of the written decision. Judicial review shall be based upon the record. No party shall be entitled to a de novo appeal.

(B) Upon failure to timely request judicial review of the decision by writ of certiorari as provided in this section, the decision shall be binding and final upon all parties.

(C) The appellate rights afforded hereunder shall be in lieu of any right to appeal an adverse employment action under the Barrow County Civil Service
System, to the extent the County Official or employee may be subject to the
Civil Service System.

ARTICLE SIX: MISCELLANEOUS

Section One. Severability.

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

Section Two. Repealer

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

Section Three. Effective Date.

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

AMENDED:

Article Five, Section 1, Subparagraph (A) January 25, 2005
Article Five, Section 6, Subparagraph (C) January 8, 2008