



Cherokee County  
Board of Commissioners

**Capital Projects Office**  
1130 Bluffs Parkway  
Canton, Georgia 30114

**GENERAL CONDITIONS**  
**OF THE CONTRACT**  
**FOR CONSTRUCTION**

**INDEX TO**  
**GENERAL CONDITIONS**  
**OF THE CONTRACT FOR CONSTRUCTION**

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**GENERAL CONDITIONS**  
**OF THE CONTRACT FOR CONSTRUCTION**

**SECTION 01**  
**DEFINITIONS OF TERMS**

Wherever used in the Contract Documents, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

“Addenda” shall mean written or graphic instruments issued to Bidders prior to the receipt of Bids by the County and the execution of this Construction Agreement which modify or interpret the Contract Documents by additions, deletions, clarifications, or corrections.

“Architect” “Engineer” or Engineer/Engineer” shall mean an individual, partnership, or corporation performing professional Architectural and/or Engineering services for and contracted to the County as an independent contractor or consultant.

"Balanced Bid" shall mean a Bid in which each of the unit prices and total amount bid for each of the listed items reasonably reflects the value of that item with regard to the entire job considering the prevailing cost of labor, material and equipment in the relevant market. An “Unbalanced Bid” is when, in the opinion of the County, any unit prices or total amounts bid on any of the listed items do not reasonably reflect such values. A Bid determined by the County to an unbalanced bid may determine the Bid to non-responsive and cause for rejection of the Bid in whole.

“Bid” shall mean the offer or Proposal of the Bidder submitted on the prescribed form setting forth the price(s) for the Work to be performed.

“Bidder” shall mean any person, firm, or corporation submitting a Bid for the Work.

“Bonds” shall mean Bid, Performance, and Labor & Material Payment Bonds and other instruments of security, furnished by the Contractor and his surety in accordance with the Contract Documents.

“Capital Projects Office Program Manager” shall mean Cherokee County’s Capital Projects Office, Cherokee County Board of Commissioners’ authorized representative. The term “Capital Projects Office Program Manager” means the Program Manager or the Program Manager’s authorized representative.

“Change Order” shall mean a written order to the Contractor authorizing an addition, deletion, or revision in the Work within the general scope of the Contract Documents, or authorizing an adjustment in the Contract Scope of Work, Contract Price or Contract Time, as approved by the Board of Commissioners of Cherokee County, or exempted from Board approval for Contract Price changes up to the amount of Twenty-Five Thousand Dollars (\$25,000.00.)

“Contract Documents” shall consist of all Sections of Division 00 of the Bidding Requirements and Conditions of the Contract, including, but not limited to the following: Advertisement and Invitation for Bids, Instructions to Bidders, Bid Proposal, Bid Bond, Non-Influence and Non-Collusion Affidavit, Certificate of Bidder, Construction Agreement, Performance Bond and Labor & Material Payment Bonds, Certificates of Insurance, Notice to all Bidders, General Conditions of the Contract for Construction, Supplementary Conditions; all Sections of Division 01 of the General Requirements

of the Contract; All Divisions and Sections of the Technical Specifications; all Drawings; all Addenda, if any, issued prior to the receipt of Bids, all post-bid and additional information, if any, requested and accepted by the County and submitted by the Contractor in support of the County's determination for acceptance of the Contractor's Bid for award of the Contract; the letter of Notice of Award, the letter of Notice to Proceed. The intent of these documents being to define, to determine and to include all materials, appliances, tools, labor, plant & equipment, project and construction management and supervision and all other needed services of every kind necessary for the proper execution by the Contractor of the Work, and the terms and conditions of payment therefore. The Contract Documents shall be considered as one, and whatever is called for by any one of them shall be as binding as if called for by all.

"Contract" or "Construction Agreement" shall mean this Construction Agreement and all its requirements and attachments and exhibits and references regarding the terms and conditions for the performance of the Work by the Parties to the Construction Agreement.

"Contract Price" or "Contract Sum" shall mean the total monies payable to the Contractor under the terms and conditions of the Contract Documents.

"Contract Time" or "Construction Time" shall mean the number of calendar days stated in the Contract Documents for the completion of the Work.

"Contractor" or "General Contractor" shall mean the individual, firm, or corporation undertaking the execution of the Work as an independent contractor under the terms of the Contract and acting through his or its agents or employees.

"County" shall mean Cherokee County, a political subdivision of the State of Georgia, acting by and through its governing authority, the Cherokee County Board of Commissioners; or its Capital Projects Office responsible for the administration of this Contract on behalf of the County.

"Day" shall mean a calendar day.

"Drawings" shall mean the part of the Contract Documents which show largely through graphical presentation the characteristics and scope of the Work to be performed and which have been prepared or approved by the Architect or Engineer.

"Field Order" shall mean a written order effecting a minor change, modification or clarification in the Work not involving an adjustment in the Contract Price or an extension of the Contract Time, issued by the Architect or Engineer to the Contractor during construction.

"Notice of Award" shall mean the written notice of the acceptance of the Bid from the County to the successful Bidder as evidenced by return receipts of registered or certified letters.

"Notice to Proceed" shall mean written communication issued by the County to the Contractor authorizing him to proceed with the Work and establishing the dates of commencement and substantial and final of the Work as evidenced by official receipt or acknowledgment of personal delivery by the Contractor.

"Owner" shall mean the County, as described and defined above herein.

"Parties" or "Parties to the Contract" shall mean the County, the first Party to the Contract, and the

Contractor, the second party to the Contract, each as described and defined herein.

“Project” shall mean the undertaking of the Work to be performed as provided in the Contract Documents.

“Shall” or “Will” is mandatory; and “May” is permissive on the part of the Parties to the Contract.

“Shop Drawings” or “Submittals” shall mean all drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Contractor, a Subcontractor, Manufacturer, Vendor, Supplier, or Distributor, which illustrate how specific portions of the Work shall be fabricated or installed.

“Site” or “Site of the Work” or “Site of the Project” shall mean the physical location where the Project is to be constructed by the Contractor, and may be additionally defined by the limits of construction on the Site where the Contractor is performing all the Work of the Project.

“Specifications” shall mean a part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards, and workmanship specified for this Project.

“Subcontractor”, “Sub-Subcontractor”, “Manufacturer”, “Vendor”, “Supplier”, or “Distributor” shall mean an individual, firm, or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the site.

“Substantial Completion” shall mean that date determined by the Owner when the construction of the Project or an expressly stipulated part thereof is sufficiently completed, in accordance with the Contract Documents, so that the Project or the expressly stipulated part can be fully utilized for the purposes for which it is intended.

“Supplementary Conditions” shall mean a part of the Contract Documents consisting of modifications to the General Conditions.

“Superintendent” shall mean the Contractor’s authorized on-job representative designated in writing by the Contractor prior to commencement of any work.

“Suppliers”, “Manufacturer”, “Vendor”, “Supplier”, or “Distributor” shall mean any person or organization who only furnishes or supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the site.

“Contract Time” or “Time of Performance” shall be the period of time by which the Contractor is required to perform all the Work of the Project for completion by the dates for Substantial and Final Completion.

“Work” or “work” of the Contractor or Subcontractor or Sub-Subcontractor or Manufacturer or Vendor or Supplier, or Distributor, shall include all labor, material, equipment, transportation, skill, tools, machinery and other equipment, and things useful or necessary in order to complete the Contract.

**SECTION 02**  
**APPLICABLE REQUIREMENTS**

The work shall comply with the Contract Documents and with all applicable codes, laws, and regulations of the County, State, or Federal agencies which may have cognizance of any part of the Work. In the event of any conflict between the terms of this Contract and such codes, laws, and regulations, the codes, laws, and/or regulations shall prevail. If the Contractor performs any work knowing it to be contrary to such codes, laws, or regulations, and without such notice to the County, he shall assume full responsibility therefore and shall bear any and all costs necessary to correct the Work.

**SECTION 03**  
**CONTRACT SECURITY AND BONDING**

The Contractor shall furnish a Contract Performance Bond and a Labor & Material Payment Bond, each equal to one hundred percent (100%) of the Contract Price. Bonds given shall meet the requirements of the law of the State of Georgia. The surety on each Bond shall be a surety company satisfactory to the County and listed in the Federal Register and licensed to write surety insurance in the State of Georgia. The required Performance and Labor & Material Payment Bonds shall be issued by a Surety Company licensed to do business in the State of Georgia and listed in the Department of the Treasury Circular 570, latest edition. The Surety Company shall have an A.M. Best Company minimum rating of "A" with a financial size of VII "7" or better.

The Performance and Labor & Materials Payment Bonds shall be provided only on the forms required herein of these Bidding Documents, as set forth by the Construction Agreement. No other forms shall be acceptable by Cherokee County. Failure of the Contractor to provide the required bonds in the manner and form prescribed, and within the time required, may form the basis for Cherokee County to determine that the Contractor has failed to comply with contracting conditions and to determine the Bid Proposal offer from the Contractor to be non-responsive and void, therein allowing Cherokee County to select another Contractor.

**SECTION 04**  
**NOTICE AND SERVICE THEREOF**

Any notice to the Contractor from the County or the Architect or Engineer relative to any part of this Contract shall be in writing and considered delivered and the service thereof completed, when said notice is posted by mail, to the said Contractor at his last given address or delivered in person to said Contractor or his authorized representative on the work site.

**SECTION 05**  
**SPECIFICATIONS**

The Specifications, the Drawings accompanying them and the other Contract Documents shall be supplementary to each other, and any material, workmanship, and/or service which may be in one, but not called for in the others, shall be as binding as if indicated, called for, or implied by all.

The Contractor will be held responsible to furnish all labor and materials and the management thereof necessary for the Contractor to complete the Work as indicated by the Contract Documents.

Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools,

equipment, light, power, transportation, and other facilities, and project and construction management and supervision, necessary for the execution and completion of the Work. He shall be responsible for entire Work and every part thereof.

Each Division, Section or type of work is described separately in the Technical Specifications; however, should any item of material, equipment, work, or combinations of such be required in one section, and not be described in that section and a similar item described in another section, that description shall apply regardless of the section under which it is described, and shall be as binding as if indicated, called for, or implied by all.

Upon award of the Contract by the County, the Contractor will supply the Owner, free of charge, up to Five (5) complete printed sets of the Contract Drawings and Specifications, including all issued Addenda and post-bid information or data, if any. All additional sets of Drawings and Specifications, and issued Addenda and post-bid information or data, in excess of these sets shall be furnished at cost by the County's reproduction service of choice, at the Contractor's expense, paid directly to the reproduction service firm.

### **SECTION 06** **DRAWINGS AND SPECIFICATIONS**

It is the intent of the Drawings and Specifications that the Contractor shall furnish all labor, materials, tools, equipment, and transportation, and project and construction management and supervision, necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy, or operation by the County.

In case of conflict between the Drawings and Specifications, the Specifications shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and detailed drawings shall govern over general drawings, and larger scaled drawings or details shall govern over the smaller scaled drawings or details.

If existing utilities or structures are indicated by the Contract Documents, no warranty is made by the County as to the accuracy or completeness of such indication or indications.

Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported to the Architect or Engineer, in writing, who shall promptly endeavor to correct such inconsistencies or ambiguities in writing to the Contractor. Work done by the Contractor after his discovery of such discrepancies, inconsistencies, or ambiguities shall be done solely at the Contractor's risk.

The Architect or Engineer may (without changing the scope of the Work) furnish the Contractor additional instructions and/or detail drawings, as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions, unless written exception is taken or additional information or exploration of the previously unknown or differing information becomes known to the Contractor.

Abridging: Attention is directed to the fact that the detailed Specifications and separate sections may be written in short or abridged form. In regard to every Division or Section of the Specifications and all parts thereof, mentioned therein, or indicated on the Drawings of articles, materials,



operations, or methods requires that the Contractor:

- A. Provide each item mentioned and indicated, of quality or subject to qualifications noted,
- B. Perform according to conditions stated, each operation prescribed, and/or
- C. Provide therefore all necessary labor, equipment, and incidentals.

Wording: Whenever in the Specifications or on the Drawings the words “directed,” “required,” “permitted,” “ordered,” “instructed” or words of like import are used, it shall be understood that the direction, requirement, permission, instructions or order of the County is intended, and similar words, “approved,” “acceptable,” “satisfactory,” or words of like import shall mean approved by, acceptable to, or satisfactory to the County.

Specification Divisions and Sections: For convenience of reference and to facilitate the letting of contracts and subcontracts, these Specifications are separated into titled divisions and sections. Such separation shall not and do not operate to make the County an arbiter to establish limits to the contracts between the Contractor and Subcontractors, nor shall such separation be interpreted as superseding normal union jurisdictions.

Language: Notwithstanding the appearance of such language in the various divisions and sections of the Specifications as, “The Paving Contractor,” “The Grading Contractor,” etc., the Contractor is the Party to the Construction Agreement responsible to the County for the entire Work of the Contract and Project, and the execution of all work referred to in the Contract Documents.

#### **SECTION 07** **PRESENT DOCUMENTS GOVERN**

The Contractor shall in no case claim a waiver of any requirements of the Drawings or Specifications on the basis of previous prior approval of material or workmanship on other jobs of the County, or any other owner or project, of like nature or on the basis of what might be considered “standard” for material or workmanship in any particular location, or by the Architect or Engineer or the County. The Contract Documents for this Project shall govern the Work of this Project.

#### **SECTION 08** **CONTRACTOR’S SHOP DRAWINGS AND SUBMITTALS**

The approved Drawings will be supplemented by the preparation and submittal by the Contractor to the Architect or Engineer of such Shop Drawings and other Submittals as are defined or required by the approved Drawings or needed by the Contractor to adequately control, manage or install the Work. It is mutually agreed that all authorized alterations affecting the requirements and information given on or by the approved Drawings and Specifications shall be in writing.

Shop Drawings and Submittals to be furnished by the Contractor for any structure shall consist of such detailed drawings and other supporting submittals as may be required as necessary for the prosecution of the Work.

Shop Drawings and Submittals shall be approved by the Architect or Engineer before the work in question indicated by or in the Shop Drawing or Submittal is performed. Drawings for false work, centering, and form work may also be required, and in such cases shall be likewise subjected to submittal and approval unless approval is waived by the Contractor and Architect and Engineer, upon consultation with the County. It is expressly understood, however, that approval by the Architect or

Engineer or the County, of the Contractor's Shop Drawings and Submittals does not relieve the Contractor of any responsibility for accuracy of dimensions and details. It is mutually agreed that the Contractor shall be responsible for agreement and conformity of his Shop Drawings and Submittals with the approved Drawings and Specifications, and the Shop Drawings and Submittals of the various other Subcontractors, Sub-Subcontractors, Manufacturers, Vendors, Suppliers, and Distributors contracted to and by, and under the control and management of the Contractor.

It is the responsibility of the Contractor to check, and he shall check, all Shop Drawings and Submittals before same are submitted to the Architect or Engineer for approval. Shop Drawings and Submittal which have not been checked and approved by the Contractor shall not be submitted, and will not be approved by the Architect or Engineer, and at the discretion of the Architect or Engineer may be returned to the Contractor with no action taken.

Shop Drawings and Submittals shall be submitted to the Architect or Engineer only by the Contractor who shall indicate by a signed stamp on the Shop Drawings and Submittals that the Contractor has checked the Shop Drawings and Submittals, and that the work shown on the Shop Drawings and Submittals are in accordance with the requirements of the Contract Documents, and have been checked for dimensions and relationship with work of all other trades involved. Under no conditions shall Shop Drawings and Submittals be accepted by the Architect or Engineer from anyone other than the Contractor.

The Contractor shall furnish the Architect or Engineer with at sufficient copies of all Shop Drawings and Submittals for review and approval, as mutually determined by the Contractor, Architect and Engineer and the County. The number of finally approved copies to be returned to the Contractor for his use shall also be mutually determined by the Contractor, Architect and Engineer and the County.

The Contract Price shall include the cost of furnishing all Shop Drawings and Submittals, and the Contractor will be allowed no extra compensation for such Shop Drawings and Submittals.

The approval of such Shop Drawings and Submittal by the Architect and Engineer, or the County, shall not relieve the Contractor from responsibility for deviations from the Drawings and Specifications unless the Contractor has in writing called attention to such deviations, and the Architect or Engineer, and the County, have approved the changes or deviations in writing at the time of submission, nor shall it relieve the Contractor from the responsibility for errors of any kind in Shop Drawings and Submittals.

When the Contractor does call such deviations to the attention of the Architect or Engineer, the Contractor shall state and affirm in his letter of transmittal of such Shop Drawings and Submittals whether or not such proposed or requested deviations involve any extra cost. If this is not so stated or affirmed by the Contractor in writing, at time of submittal, it shall be a confirmation by the Contractor that no extra cost or time are involved for making the deviation or change, or the approval of the deviation by the Architect or Engineer, or the County.

#### **SECTION 09** **INSTRUCTIONS, CHANGES, ETC.**

All changes, alterations, or instructions in regard to any feature of the Work that differ from the Drawings and Specifications must be approved in writing by Change Order in all cases, and no verbal orders will be regarded as a basis for claims for extra work.

If the Contractor claims that any instructions by the Drawings or Specifications, or by any part of the Contract Documents, involve extra cost or an extension of the contract time, the Contractor shall notify the Architect or Engineer in writing within ten (10) days after the receipt or knowledge of such instructions and in any event before proceeding to execute the Work. Thereafter, the procedure shall be the same as that described for Changes in the Work. No such claim shall be valid unless made in accordance with the terms of this section.

No claims for extra cost will be considered based on an escalation of material prices throughout the period of the Contract.

No extra work is to be performed or any changes made that involve any extra cost or extension of time unless approved by the Architect or Engineer and authorized by an agreed upon and executed Change Order to the Construction Agreement.

**SECTION 10**  
**EXAMINATION OF WORK BY CONTRACTOR**

It is understood and agreed that the Contractor has, by visiting the Site, and by careful examination, satisfied himself as to the nature and location of the Work, the conformation of the ground, the character, quality, and quantity of the facilities needed preliminary to and during the prosecution of the construction of the Work, the general and local conditions, and all other matters which can in any way affect the Work or the cost or time for construction thereof under this Contract. No verbal agreement or conversation with any officer, agent, or employee of the County or the Architect or Engineer, either before or after the execution of the Contract, shall affect or modify any of the terms or obligations herein contained.

**SECTION 11**  
**MATERIALS, SERVICES, AND FACILITIES**  
**OF AND BY THE CONTRACTOR**

The Contractor shall at all times employ sufficient labor and plant and equipment, and project and construction management and supervision services for prosecuting the Work for full completion in the manner and time specified. Failure by the Contractor to provide such adequate, needed and necessary labor and plant and equipment, and project and construction management and supervision services throughout the full and entire terms and time of the Contract may result in default of the Contract. The labor and plant and equipment, and project and construction management and supervision services to be determined to be needed and necessary to be used in the prosecution of the Work by the Contractor shall be sufficient to meet the requirements of the Work and shall be such as to produce a satisfactory quality of work, in accordance with accepted industry practices within the time and Contract Sum specified in the Contract.

Materials and equipment shall be so stored and handled as to ensure the preservation of their quality and fitness for the Work. All stored materials and equipment to be incorporated in the Work shall be located so as to facilitate prompt inspection by the Architect or Engineer. No product which has in any way become unfit for the intended purpose, as determined by the Architect or Engineer, in consultation with the County, shall be incorporated into the Work.

Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, cleaned, and conditioned as directed or instructed by the manufacturer.

Materials, supplies, and equipment to be incorporated into the Work shall be new and unused unless otherwise specifically stated in the Contract Documents. The source of supply for all such products shall be submitted to the Architect or Engineer, together with detailed descriptions thereof in the form of samples, Shop Drawings and Submittals, tests, mock-ups at the site, or other means necessary to adequately describe the items proposed. If, after trial, review or inspection by the Architect or Engineer, or the County, it is determined by the Architect or Engineer, or the County, that the sources of supply, even though previously approved or accepted by the Architect or Engineer, have not furnished products meeting the intent of the Contract Documents, the Contractor shall thereafter promptly furnish products from other approved or acceptable sources, and the Contractor shall thereafter promptly remove all or any completed Work incorporating products which have not, or do not meet the Contract requirements.

## **SECTION 12** **REQUESTS FOR SUBSTITUTIONS**

All Contractor requests for substitutions of proprietary products or of a particular manufacturer or vendor that have been indicated on the Drawings or specified or required by the Specifications to be provided or installed by the Contractor in the Work must be accompanied by written documentary proof of equality, and difference in price and deliveries, if any, in the form of certified and attested quotations from the Supplier or Suppliers of both the specified and proposed system, product, equipment or item of the Work.

The item proposed for substitution shall be equal to or superior to the specified item or items, in construction, efficiency, and utility in the opinion of the Architect or Engineer, with consultation with the County. The opinion of the Architect or Engineer, with consultation with the County, shall be final and no substitute material or article shall be purchased or installed without such written approval. The Architect or Engineer, or the County, are under no obligation to accept for review any request for any substitution by the Contractor, and any such request or requests may at the discretion of the Architect or Engineer, or the County, be denied without explanation or consideration for review or evaluation.

In case of a difference in price, the County shall receive all benefits of the difference in cost involved in any substitution, when lower, and the Contract altered by Change Order to credit the County with any savings to be obtained. However, the County shall not be charged for any additional cost in case of a price difference.

## **SECTION 13** **INSPECTION AND TESTING OF MATERIALS**

Unless otherwise specifically provided for, the inspection and testing of materials and finished articles to be incorporated in the Work at the site shall be made by bureaus, laboratories, or agencies approved by the Architect or Engineer. The Contractor shall furnish evidence satisfactory to the Architect or Engineer that the material and finished articles have passed the required tests prior to the incorporation of such materials and finished articles in the Work.

The cost of such inspection and testing shall be paid by the Owner. Reporting of all materials testing, as required for the Work, shall be in accordance with the Drawings and Specifications, including reporting of all such materials testing.

At any time during the Contractor's performance of the Work, without explanation or cause, the

Architect or Engineer, or the County, may order special or additional testing for any portion of the Work being constructed or to be constructed. Should such additional or special testing fail, the Contractor shall remove or repair such portions of the Work affected by the failed tests without additional compensation or extension in contract time, and shall compensate the County for all costs associated with the failed testing, including additional time and expenses of the Architect or Engineer, or the County, or other involved consultants. If such additional or special testing pass, the County shall bear the costs of the additional or special testing, but shall not be obligated to compensate the Contractor in any way for the conducting of the additional or special testing.

#### **SECTION 14** **INSPECTION OF WORK**

The Contractor shall, at all times, permit and facilitate inspection or review or testing of the Work by authorized representatives of the Architect or Engineer, the County and public authorities having jurisdiction in connection with the Work of this Contract. The presence or observations of the Architect or Engineer or its representative at the site of the Work shall not be construed to, in any manner, relieve the Contractor of the Contractor's responsibility for strict compliance with the provisions of the Contract Documents.

If the specifications, County's instructions, laws, ordinances, or a public authority require any work to be specially tested or approved, the Contractor shall give the Architect or Engineer timely notice of its readiness for observation or inspection. If the inspection is by another authority, then the Architect or Engineer shall be advised of the date fixed for such inspection. Required certificates of inspection shall be secured by the Contractor. Contractor having secured all certificates of inspection will deliver same to the Architect or Engineer upon completion. If any work should be covered up without approval or consent of the Architect or Engineer, it shall, if required by the Architect or Engineer, be uncovered for examination at the Contractor's expense.

Should any disagreement or difference arise as to the estimate, quantities, or classifications or as to the meaning of the Drawings or Specifications, or any point concerning the character, acceptability, and nature of the several kinds of work, any materials and construction thereof, the decisions of the Architect or Engineer shall be final and conclusive and binding upon the Contractor

The Contractor may at his option conduct additional or other special testing to confirm his findings or determination, but only at his cost and expense, without additional time being granted by the County for the performance of the Work to be constructed by the Contractor. If such additional or special testing by the Contractor allow or provide for the Architect or Engineer to revise or amend a previous decision or determination, the County will review and may provide compensation to the Contractor for such additional or special testing in whole or in part, or none at all, without further discussion or review by the County.

#### **SECTION 15** **AUTHORITY OF THE ARCHITECT OR ENGINEER**

The Contractor shall perform all of the Work herein in strict accordance with the Contract Documents, and to the entire satisfaction, approval, and acceptance of the Architect or Engineer, and the County. The Architect or Engineer shall decide all written questions relating to measurements of quantities, the character of the Work performed, and as to whether the rate of progress is such that the Work will be completed within the time limit of the Contract. All questions as to the meaning of the Drawings and Specifications shall be submitted in writing to the Architect or Engineer by the

Contractor, and will be finally decided by the Architect or Engineer in a prompt and timely manner.

The review or approval by the Architect or Engineer of any materials, plants, equipment, Drawings, Specification, or of any other items executed, or proposed by the Contractor, shall be construed only to constitute a review and approval for conformance with the general design and requirements of the Contract Documents. Such review or approval shall not relieve the Contractor from the performance of the Work in accordance with the Contract Documents, or from any duty, obligations, performance guarantee, or other liability imposed upon him by the provisions of the Contract.

#### **SECTION 16** **PROHIBITED INTERESTS**

No official of the County who is authorized in such capacity and on behalf of the County to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction, or material supply contract, or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof. No officer, employee, Architect or Engineer, attorney, engineer, or inspector of or for the County who is authorized in such capacity and on behalf of the County to exercise any legislative, executive, supervisory, or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

#### **SECTION 17** **REJECTION OF WORK AND MATERIALS**

All materials and equipment furnished and all work done by the Contractor that is not in accordance with the Drawings or Specifications, or the Contract Document, or that is defective will be rejected by the Architect or Engineer, or the County. All rejected materials, equipment, or work shall be removed immediately. If rejected materials, equipment, or work is not removed within forty-eight (48) hours from the date of letter of notification by and from the Architect or Engineer, or the County, the County, or the Architect or Engineer, upon consultation with the County, shall have the right and authority to stop the Work of Contractor immediately, and/or shall have the right to arrange for the removal of said rejected materials, equipment, or work at the cost and expense of the Contractor. All rejected materials, equipment, or work shall be replaced with other material, equipment, or work which conforms with the Drawings and Specifications at no additional cost to the County.

Review, observation or inspection of the Work at any time during the contract time by the Architect or Engineer, or the County, or any authorized agency or authority, shall not relieve the Contractor of any of his obligations to fulfill his Contract and defective work shall be made good regardless of whether such work, material, or equipment has been previously reviewed, observed inspected by the Architect or Engineer and accepted or estimated for payment. The failure of the Architect or Engineer or any or authority or agency to condemn improper materials or workmanship shall not be considered as a waiver of any defect which may be discovered later, or for work actually defective. All work, material, and/or equipment shall be guaranteed against defects for a period of one year from date of Project acceptance as established by the County.

**SECTION 18**  
**WEATHER CONDITIONS**

The Contractor will be required to protect all work and materials against damage or injury from the weather. If, in the opinion of the Architect or Engineer, any work or materials shall have been damaged or injured by reason of failure to protect such, all such materials or work shall be removed and replaced at the expense of the Contractor.

In visiting the Site where the Work is to be constructed, the Contractor shall have familiarized himself with the local conditions that may or could be affected by weather normal to the site of the Work. Such weather conditions that are determined by the Architect or Engineer, or the County, or local or area climatological data or information or authorities, shall not relieve the Contractor of his duty to protect the Work and to perform the Work in a timely and proper manner, as required by the Contract Documents, and shall not form the basis of any request for adjustment in contract price or contract time.

**SECTION 19**  
**ROYALTIES AND PATENTS**

The Contractor shall hold and save the County and its officers, agents, servants, and employees, harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the County, unless otherwise specifically stipulated in the Contract Documents.

**SECTION 20**  
**CONTRACTOR'S PERSONNEL**

The Contractor will supervise and direct all aspects of the Work. He will be solely responsible for the means, methods, techniques, sequences, and procedures of construction. An experienced Superintendent and necessary assistants competent to supervise the particular types and parts of the Work involved shall be assigned to the Project and at the necessary time at the Project Site by the Contractor, and such Superintendent and necessary competent assistants shall be available at all times when work is in progress. The name of the Superintendent shall be submitted by the Contractor as a Key Personnel with qualifications of same prior to start of the Work and shall be subject to the approved of the Architect or Engineer, with consultation with the County, prior to start of the Work in whole or in part.

The Superintendent so named by the Contractor as that Key Personnel shall be employed by the Contractor and shall have served in a supervisory capacity on at least one Project of similar or like description and size performed by the Contractor during the previous twelve (12) calendar months, or by another Contractor during the previous twenty-four (24) calendar months. Under no circumstances shall an employee of any Subcontractor serve as the Contractor's Key Personnel Superintendent. The Contractor's Superintendent shall represent the Contractor, and all directions given to the Superintendent shall be as binding as if given to the Contractor.

Only persons skilled in the type of work which they are to perform shall be employed. The Contractor shall, at all times, maintain discipline and good order among his employees, and shall not employ on the Work any unfit person or persons or anyone unskilled in the work assigned him. If any person employed or working at the site is determined by the Contractor, or the Architect or Engineer, or the

County, or a governing agency or authority, to be disruption to the performance of any part of the Project, or determined not to be skilled in the type of work which they are to perform shall be employed, they shall be immediately removed by the Contractor, without any adjustment in the contract time or Contract Sum.

**SECTION 21**  
**LINES, GRADES, AND MEASUREMENTS**

Such stakes and markings as the Architect or Engineer may set or may have previously set for the benefit of the Project or for the sole benefit of the Architect or Engineer for either its or the Contractor's guidance shall be preserved by the Contractor. Failure to protect such stakes or markings, or gross negligence on the Contractor's part resulting in loss of same, may result in the Contractor being charged by the County for their replacement as compensation to the affected entity.

The Contractor shall at all time during the performance of the Work in its entirety, exercise proper care and caution to verify the grades and figures given to the Contractor before proceeding with the Work, and the Contractor shall be solely responsible for any damage or defective work caused by his failure of such care and caution. The Contractor shall provide prompt written notification to the Architect or Engineer of any errors or discrepancies discovered, and shall offer or suggest corrective action, in order that the proper corrections may be made in a prompt and timely manner.

**SECTION 22**  
**PERMITS AND INSPECTION FEES**

Permits shall be secured by the Contractor and inspections will be required by the governing authority for jurisdiction where the Work is located. If the project is in Cherokee County and under the jurisdiction of Cherokee County, or the County has been granted delegated authority by the governing jurisdiction, the County will not charge the Contractor for such permits and inspections obtained from Cherokee County, and the Contractor is advised he need not include such permits fees in his Bid or Contract Sum.

The Contractor shall include in his Bid and Contract Sum, and shall secure and pay for any permits, printing costs and inspection fees required by any other governmental entity or agency, including but not limited to any City within Cherokee County, or the Cherokee County Water and Sewerage Authority, unless otherwise stated, set forth or required by the Bid Documents or Contract Documents.

**SECTION 23**  
**LAWS AND REGULATIONS**

The Contractor's attention is directed to the fact that all applicable Federal, State, and County laws, municipal ordinances, applicable building codes, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout, and they will be deemed to be included in the Contract Documents the same as though herein written out in full.

The Contractor shall keep himself fully informed of all laws, ordinances, codes, and regulations of the Federal, State, and County in any manner affecting those engaged or employed in the Work or the materials used in the Work or in any way affecting the conduct of the Work and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over same. If any discrepancy or



inconsistency should be discovered by the Contractor at any time in the performance of the Work of this Contract, or in the Drawings or Specifications, or the Contract Documents herein referred to, in relation to any such law, regulation, code, ordinance, order, or decree, the Contractor shall promptly report the same, in writing, to the Architect or Engineer.

The Contractor shall at all times observe and comply with all such laws, ordinances, codes, and regulations, and shall protect and indemnify the County and its agents against any such law, ordinance, regulation, order, or decree, whether by himself or by his employees.

#### **SECTION 24** **CONTRACTOR'S OBLIGATIONS**

The Contractor shall, in a good workmanlike manner, do and perform, all work and furnish all supplies and materials, machinery, equipment, facilities, and means, project and construction management and supervision, necessary, or proper to perform and complete all the Work required by this Contract, within the time herein specified, in accordance with the provisions of this Contract and said Specifications and in accordance with the Drawings of the Work covered by this Contract and any and all supplemental drawings of the Work covered by this Contract, unless and except as herein otherwise expressly specified.

The Contractor shall furnish, erect, maintain, and remove such construction, plants, materials, and other such temporary works as may be required for the construction of the Work of the Project. The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his plants, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

The Contractor shall observe, comply with, and be subject to all terms, conditions, requirements and limitations of the Contract and Specifications, local ordinances, codes, and State and Federal laws; and shall do, carry on, and complete the entire Work.

#### **SECTION 25** **SUBCONTRACTING**

The Contractor understands and agrees that it shall be a breach of this Contract to subcontract any portion of the Work on this Project unless the Work and the Subcontractor and/or others proposed to perform it have been declared by the Contractor at the time of commencement of the Work; or the Contractor shall have obtained written approval from the County.

**THE CONTRACTOR FURTHER UNDERSTANDS AND AGREES THAT ANY WORK ON THIS PROJECT WHICH THE CONTRACTOR SECURES IN VIOLATION OF THIS PROVISION SHALL BE DEEMED A GRATUITY FROM THE CONTRACTOR FOR WHICH CHEROKEE COUNTY SHALL NOT BE OBLIGATED TO PAY.**

Nothing contained in this Contract shall create any contractual relation between any of the Contractor's named or not named Subcontractor, Sub-Subcontractor, Vendor, Suppliers or Manufacturer, and the County.

**SECTION 26**  
**ASSIGNMENTS**

The Contractor shall not assign the whole or any part of this Contract or any monies due or to become due hereunder without the prior written consent of the County, as may be set forth by a written and properly executed Change Order.

**SECTION 27**  
**CONTRACTOR'S HOLD HARMLESS AGREEMENT**

Contractor's hold harmless and indemnification of Cherokee County shall be as set forth in the Construction Agreement.

**SECTION 28**  
**INSURANCE REQUIREMENTS**

Contractor's insurance requirements for the project and Cherokee County shall be as set forth in the Construction Agreement.

**SECTION 29**  
**LAND AND RIGHTS-OF-WAY**

Prior to entering on any land or right-of-way, the Contractor shall ascertain the requirements of applicable permits or easements obtained by the County, and shall conduct his work in accordance with requirements thereof including the giving of notice. The Contractor shall be fully responsible for performing work to the requirements of any permit or easement granting entity even though such requirements may exceed or be more stringent than that otherwise required by the Contract Documents, and shall compensate the County fully for any loss or expense arising from failure of the Contractor to perform as required by such entity.

The Contractor shall provide at his own expense and without liability to the County any additional land and access thereto that the Contractor may desire for temporary construction facilities, or for storage of materials.

**SECTION 30**  
**PROTECTION OF WORK,**  
**PROPERTY AND PERSONS**

The Contractor will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the Work and other persons who may be affected thereby, all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, lakes, drainage ways, walks, pavements, roadways, structures, and utilities not designated for removal, relocation or replacement in the course of construction.

The Contractor will comply with all applicable laws, ordinances, rules, regulations, codes, and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the Work, all necessary warning safeguards for devices and safety and protection of the Work, the public, and adjoining property. He will notify owners of adjacent utilities when

prosecution of the Work may affect them. The Contractor will remedy all damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by the Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

The Contractor shall, prior to commencing other on-site work or off-site work, accurately locate above and below ground utilities and structures which may be affected by the Work, using whatever means may be appropriate. The Contractor shall accurately mark, or cause to have accurately marked, the location of existing utilities and structures, not otherwise readily visible, with flagging, stakes, barricades, or other suitable means, and shall preserve and protect all utilities and structures not designated for removal, relocation, or replacement in the course of construction. He shall notify the Architect or Engineer promptly on discovery of any conflict between the Contract Documents and any existing facility.

In emergencies affecting the safety of persons or the Work or property at the site or adjacent thereto, or unanticipated conditions where delay would substantially impact the time or cost of work, the Contractor shall endeavor to immediately provide notification to the Architect or Engineer, or the County, but in any event the Contractor shall immediately take action and act to prevent threatened damage, injury, or loss.

Any claim for compensation or extension of time by the Contractor due to such extra work shall be submitted to the Architect or Engineer within ten (10) days of the date of commencing to perform such emergency or protective action or work or deviations in the manner prescribed by the Contract Documents for review to determine the basis for additional compensation or an extension in the Contract Time, both or either to be written and confirmed by a properly executed Change Order.

All existing utilities, both public and private, including water, gravity or force main or pressure sewer or sewerage, natural gas, electrical, cable, and telephone services, etc., shall be protected and their operation shall be maintained through the course of the Work. Any temporary shutdown of an existing service shall be arranged directly between the Contractor and the responsible agency or utility owner. The Contractor shall assume full responsibility and hold the County harmless from the result of any damage that may occur as a result of the Contractor's activities.

**SECTION 31**  
**PRIOR USE BY COUNTY**

Prior to substantial and final completion of the Work or any portion or part therein for either a building or structure or the site or grounds of the Work, the County may take over operation and/or use of the in completed Project or portions thereof. Such prior use of facilities by the County shall not be deemed as acceptance of any work or relieve the Contractor from any of the requirements of the Contract Documents for the completion and full performance of the requirements of the Work of the Project.

**SECTION 32**  
**CLEANING UP**

The Contractor shall at all times keep the premises of the entire Site of the Work free from and clean of any accumulation of waste materials or rubbish caused by Contractor's employees or work, including mud, dirt or debris on private or public streets, roadways and drives. Upon completion of the Work, the Contractor shall remove all his plants, tools, materials, and other articles from the

property of the County.

**SECTION 33**  
**BARRICADES**

The Contractor shall provide continuously burning lanterns at all barricades and at protective barriers around excavations so that the public is adequately warned of such hazards. Lanterns shall remain lighted from sundown to sunrise and at all other times when the labor forces are not on the job site.

Access to Site for workers and other parties and for the delivery of construction materials and equipment shall be only from locations approved by the County.

**SECTION 34**  
**CHANGES IN THE WORK**

The County may at any time, and without prior notification to the Contractor, order changes within the scope and terms and conditions, and time and price of the Work without invalidating the Construction Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the Contract Time required for performance of the Work by the Contractor, an adjustment may be authorized by a written and properly executed Change Order.

The Architect or Engineer, also, may at any time, by issuing a Field Order make minor changes in the details of the Work, not affecting or involving the Contract Sum or Contract Time. The Contractor shall proceed with the performance of any changes in the Work so ordered by the Architect or Engineer unless the Contractor believes that such Field Order entitles or requires a change in Contract Price or Time, or both, in which event the Contractor shall give the Architect or Engineer written notice thereof within ten (10) days after the receipt of the written Field Order or other written ordered change, and the Contractor shall not execute or implement or effect such changes until or upon the receipt of an executed Change Order or further written instruction or instructions by and from the County.

The Contract Price may be changed only by a Change Order. The value of any work covered by a Change Order or of any claim for increase or decrease in the Contract Price shall be determined by one or more of the following methods in the order of precedence listed below:

- A. Unit prices previously approved, or
- B. An agreed lump sum, or
- C. Force Account, based upon the Contractor's written and fully documented and witnessed actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the Work.

For any Change Order based upon any of the above described methods of determining costs or value, the Contractor may add for the cost of the Contractor's general overhead and profit an amount agreed upon, but in no instance shall the amount exceed ten percent (10%) of the actual cost of such work to cover.

For any Subcontractor or Sub-Subcontractor, vendor or supplier contracted directly to the Contractor, the cost of that party's general overhead and profit shall not exceed fifteen percent (15%) of the actual cost of such work to cover.

For any work performed directly by the Contractor or his own permanently directly employed forces, the Contractor's general overhead and profit shall not exceed fifteen percent (15%) of the actual cost of such work to cover.

Note: In any Change Order, the Contractor's general overhead and profit amount shall include, but not be limited to, all project management, supervision, executive, clerical, administration and/or other similar costs associated with implementing the approved change, without exceeding the percentages listed above.

### **SECTION 35** **TIME FOR COMPLETION**

It is hereby understood and mutually agreed, by and between the Contractor and the County, that the date of beginning, the rate of progress, and the time for substantial and final completion of all the Work are essential conditions of this Contract; and it is further mutually understood and agreed between and by the Parties to the Construction Agreement that the Work embraced in this Contract shall be commenced on the date to be specified in the Notice to Proceed issued by the County.

The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the County, that the time for the substantial and final completion of all the Work described herein by the Contract Documents is a reasonable time for the completion of the same, taking into consideration the average climate range and usual conditions prevailing in the locality of the location of the Project.

It is further agreed that time is of the essence of each and every portion of this Contract and of the Drawings and Specifications and the Contract Documents, wherein a definite portion and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract an additional time maybe allowed for the completion of any portion of the Work, the new time limit fixed by such extension shall become the essence of the Contract. Provided, that the Contractor shall not be charged with any excess cost when the delay in completion of the Work maybe due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, the County or the Architect or Engineer, including, but not restricted to, acts of God, or to the public enemy, acts of the County, acts of another contractor in the performance of the contract with the County, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually most severe weather exceeding the average climatological conditions in the area of the Work, as may be described and outlined by the Contract Documents for the information and understanding of the Contractor in bidding and performing the Work to be constructed.

Provided further, that the Contractor shall within ten (10) days from the beginning of each such specific weather related delay, notify the County, in writing, of the causes of the weather related delay, and the Architect or Engineer and the County shall ascertain the facts and extent of the weather related delay and provide written notification to the Contractor within a reasonable time of its decision in the matter.

Where the County has established occupancy of a facility, building, structure of site, or a usable portion thereof prior to the specific date for substantial or final completion of the specified Contract Time period or date, and where contract work items remain outstanding to be completed by the Contractor, the County, at its option, may charge the Contractor for actual cost of administering the Contract for the period subsequent to expiration of the Contract completion date.

**SECTION 36**  
**PAYMENTS TO CONTRACTOR**

The Contractor shall prepare and submit to the County, through the Architect and Engineer a detailed cost breakdown of the project Contract Price within five (5) calendar days from the date of receipt of the Notice to Proceed. This detailed cost breakdown shall be based on values of parts of the Work as maybe divided according to project and construction management and supervision, overhead and profit, bonds and insurance, Work of the project as maybe self-performed by the Contractor, and the awards of subcontracts and purchase orders for the various Divisions and Sections of the Specifications, and shall be further subdivided into labor and materials.

All equipment, materials, and work covered by progress payments that shall become a permanent part or fixture of the Work shall, upon payment thereof, become the sole property of the County, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of equipment, materials, and work upon which payments have been made, or the restoration of any damaged work, and is not intended to mean or include temporary or rental structures, equipment, materials and work needed to effect the construction of the Project.

The Contract Sum for the work to be performed by the Contractor for the work shall be established in the Construction Agreement. The final Contract Sum, including authorized adjustments thereto by Change Order as provided in the Contract Documents, is the total amount due and payable to the Contractor for the performance of the Work under the Contract Documents for the work. Cherokee County shall withhold as a retainage from each monthly partial application for payment from the Contractor an amount equal to ten percent (10%) of the sum requested by the Contractor for that application for payment. No reduction or release of retainage shall be made or come due the Contractor until and unless the Work of the Project has been completed and accepted by Cherokee County as set forth by the Contract Documents.

Before the first Application for Payment, the Contractor shall submit a Schedule of Values allocated to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Cherokee County may require. This schedule shall be used as the basis for the Contractor's Applications for Payment to Cherokee County.

Contractor's Schedule of Values shall contain a line item for warranty at the greater of one-half percent (0.5%) the total contract value or twenty-five thousand dollars (\$25,000) which will be held through the duration of the warranty period. The entirety of this amount will be held through the full duration of the warranty period and until all warranty items that arise during the warranty period are corrected to the satisfaction of the architect and owner. If Contractor fails to resolve a warranty issue in a timely manner as determined by the opinion of the owner, the owner may provide a pre-approved county vendor on Contractor's behalf and deduct the cost from the contract.

After the Contractor has issued a Certificate, the County shall, subject to the provisions of the Construction Agreement, pay the Contractor the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work, suitably stored at the site or at some other location suitably insured agreed upon in writing by the parties as of the date the Application for Payment is submitted to Cherokee County, less retainage and the aggregate of previous payments in each case.

No certification of an Application for Payment, any payment, or any partial or entire use or occupancy

of the Project by Cherokee County, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

Cherokee County shall have any obligation to pay or to see to the payment of any monies to any subcontractor or subconsultant except as may otherwise be required by law.

The Contractor shall promptly pay each party to which it owes money for performance for the Project upon receipt of payment from Cherokee County, out of the amount paid to the Contractor on account of such Contractor's Work, the amount to which said parties are entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Contractor's Work. The Contractor shall, by an appropriate agreement with each party to which it is contracted for the Project, require each and all other parties to make prompt and accurate payments to their subcontractors in a similar manner.

Applications for Payment shall be submitted by the Contractor to Cherokee County, through the Project Consultant, no more frequently than monthly. Each Application for Payment shall be supported by such data substantiating the right to payment as the Cherokee County may require, and reflecting retainage, if any, as provided for in the Contract Documents. The Project Consultant will review the Application for Payment submitted by the Contractor to determine the amount to be recommended for payment by the County, and shall certify its recommendation and forward a Certificate for Payment to Cherokee County for review and processing.

The Contractor warrants to Cherokee County that title to all Work, materials and equipment covered by an Application for Payment will pass to Cherokee County either by incorporation in the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in the Contract as "liens"; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor on such other person.

Unless otherwise provided in the Contract Documents, no payments will be made on account of materials or equipment not incorporated in the Work. Any payments for materials or equipment stored on the Project site shall be conditioned upon submission by the Contractor of bills of sale or other such procedures satisfactory to Cherokee County to establish Cherokee County's title to such materials or equipment or otherwise protect Cherokee County's interest, including applicable insurance.

The Project Consultant will with reasonable promptness upon receipt of the Contractor's Application for Payment, review the Application for Payment and either issue a Certificate for Payment to Cherokee County with a copy for distribution to the Contractor for such amounts as the Project Consultant determines are properly due, or shall notify the Contractor in writing of the reasons for withholding a Certificate for Payment.

By issuing a Certificate for Payment, it shall not thereby be deemed to be represented that the Project Consultant or Cherokee County have made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, have reviewed the construction means, methods, techniques, sequences or procedures, or has made any examination to ascertain how or for what purpose the Contractor has used any monies previously paid on account of the Contract Sum.

Cherokee County may decline to certify payment, and may withhold a certification for payment in whole or in part to the extent necessary to reasonably protect Cherokee County, if in Cherokee County's opinion, Cherokee County and the Project Consultant are unable to make representations as to the accuracy of the Application for Payment to reflect the current status of the Work. If the Contractor, Project Consultant and Cherokee County cannot agree on a revised amount, Cherokee County may issue a Certificate for Payment for only the amount for which Cherokee County is able to make such representations. Cherokee County may also decline to certify payment or, because of subsequently discovered evidence or subsequent observations, Cherokee County may also nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary, in Cherokee County's opinion, to protect Cherokee County from loss for several reasons including, but not limited to:

- defective Work not remedied.
- third party claims filed or reasonable evidence indicating probable filing of such claims;
- failure of the Contractor to make payments properly to subcontractors or sub-consultants, or for labor, materials or equipment;
- reasonable belief that the Work cannot be completed for the unpaid balance of the Contract Sum for the line items under discussion;
- damage to Cherokee County or another contractor, or to existing site or other conditions;
- reasonable evidence that the Work will not be completed within the Contract Time; or
- persistent or repeated failure by the Contractor to carry out the Work in accordance with the Contract Documents or written direction provided by the Project Consultant or Cherokee County.

When the grounds above are removed, payment may be made by Cherokee County in a forthcoming monthly application for payment for amounts withheld.

When the Contractor considers that the Work, or a designated portion thereof which is acceptable to Cherokee County, is substantially complete, the Contractor and Project Consultant shall prepare for Cherokee County a list of items to be completed or corrected. The Contractor shall promptly proceed to complete and correct all items on the list. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

Upon receipt of the list of items to be completed or corrected, Cherokee County shall make an inspection to determine that the Work or designated portion thereof is substantially complete. On the basis of inspection and in consultation with the Project Consultant determines that the Work or designated portion thereof is substantially complete, the Project Consultant will then prepare a Certificate of Substantial Completion of the Work, on the latest version of AIA Document G704, Certificate of Substantial Completion, which shall establish the Date of Substantial Completion of the Work, shall state the responsibilities of Cherokee County and the Contractor for security, maintenance, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall complete the items listed therein as incomplete or requiring correction. The Certificate of Substantial Completion shall be submitted to Cherokee County, and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

Prior to and as a condition of the Certificate of Substantial Completion being issued, all Project Closeout Documents including, but not limited to project record documents (as-builts), operation and



maintenance manuals, warranties and other documents, shall have been submitted to Cherokee County ten (10) prior to the indicated date for review and approval by the Project Consultant for transmittal to Cherokee County.

Warranties required by the Contract Documents shall commence on the Date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion of the Work or designated portion thereof. Warranties for Work that is not accepted by the County shall commence on a date when the Work is finally accepted by Cherokee County.

Following issuance of the approved Certificate of Substantial Completion of the Work or designated portion thereof, and the Contractor's final completion of the Work, the Contractor shall forward to the Project Consultant a written notice that the Work is ready for final inspection and acceptance, and shall also forward to Cherokee County a final Application for Payment, along with a final accounting of the Cost of the Work. The Project Consultant and Cherokee County shall make such inspections and if finds the Work acceptable and fully performed, the Project Consultant shall certify the final Application for Payment, subject to review of the final accounting of the Cost of the Work, which will approve the final payment due the Contractor. This approval shall constitute a representation that, to the best of the Project Consultant's knowledge, information and belief, and on the basis of observations and inspections, the Work has been completed in accordance with the Terms and Conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said certified final Application for Payment, is due and payable.

Final payment, including all remaining retainage, shall not become due until the Contractor has submitted to the Project Consultant, and the Project Consultant has submitted to Cherokee County notarized affidavits (AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims, latest version) that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Cherokee County or Cherokee County's property might in any way be responsible, have been paid or otherwise satisfied, and a Consent of Surety to Final Payment (AIA Document G707, latest version), has also been provided, and other data to be submitted as determined by Cherokee County establishing payment or satisfaction of all such obligations, including receipts, releases and waivers of liens arising out of the Contract, to the extent and in such form as may be designated by Cherokee County, including, but not limited to, AIA Document G706A, Contractor's Affidavit of Release of Liens, latest version.

If any Contractor refuses to furnish a release or waiver required by Cherokee County, the Contractor may furnish, at the Contractor's full expense and cost, a bond satisfactory to Cherokee County to indemnify Cherokee County against any such lien. If any such lien remains unsatisfied after all payments are made, the Contractor shall immediately refund to Cherokee County all monies that the latter may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

The making of final payment by Cherokee County to any Contractor shall, after the Date of Substantial Completion, constitute a full, final and absolute waiver of all claims by the Contractor against Cherokee County, except those arising from:

- unsettled liens;
- faulty or defective Work appearing after Substantial Completion of the Work;
- failure of the Work to comply with the requirements of the Contract Documents; and

- terms of any special warranties required by the Contract Documents.

The acceptance of final payment by the Contractor shall, after the Date of Substantial Completion of the Work, constitute a waiver by the Contractor of all claims against Cherokee County, except those previously made in writing and identified by the Contractor as unsettled at the time of the final Application for Payment.

In the event Cherokee County timely disputes the amount of final payment due a Contractor, the amount due shall be deemed by Cherokee County to be an unliquidated sum, and no interest shall accrue or be payable on the sum finally determined to be due for any period prior to final determination of such sum, whether such determination be by agreement or by final judgment of the proper court in the event of litigation between the parties. The Contractor specifically waives and renounces any and all rights it may have and agrees that in the event suit is brought against Cherokee County for any sum claimed by the Contractor under the Contract or for any extra or additional Work, no interest shall be awarded on any sum found to be due from Cherokee County in the final judgment entered in such suit. All final judgments shall draw interest at the legal rate, as specified by law.

All provisions of the Construction Agreement, including without limitation those establishing obligations and procedures, shall remain in full force and effect notwithstanding the making or acceptance of final payment prior to the Date of Substantial Completion of the Work.

**SECTION 37**  
**SCHEDULES, REPORTS,**  
**AND RECORDS**

The Contractor shall submit to the Architect or Engineer such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records, and other data as the Architect or Engineer may request concerning work performed or to be performed.

Prior to submittal of the first partial application and certificate for payment, the Contractor shall submit to the Architect or Engineer a detailed project construction schedule showing the order in which the Contractor proposes to carry on the Work, including milestone and interim dates at which the Contractor will start the various parts of the Work, including the estimated dates of completion of each part; and, as applicable, the dates at which special detail drawings will be required and prepared, and respective dates for submission by the Contractor of Shop Drawings and Submittals, and the beginning and completion dates for the manufacture, the testing and the installation of materials, supplies and equipment of the many parts and portions of the total Project.

The Contractor shall also submit a schedule of payments that he anticipates he will earn during the course of the Work.

At a time and date mutually acceptable to the Contractor, the Architect or Engineer and the County, the Parties shall meet at the Project site to review the Contractor's preliminary, draft application and certificate for payment for the period covering the preceding thirty (30) calendar days. Based upon the review and determination of monies to be owed and payable to the Contractor by the County set forth by the preliminary, draft application and certificate for payment, the Contractor shall promptly prepare and submit the formal application and certificate for payment to the Architect or Engineer for his signature and recommendation and transmittal to the County for payment. It is agreed by all the Parties that this proposed early review of the preliminary, draft application and certificate for payment in advance of its due date is intended to speed the review, submittal, approval and payment

process for the Contractor for the Work performed and due for payment by the County.

All lien waivers and other documents required for acceptance for payment by the County need only be submitted with the submittal of the formal application and certificate for payment, but it is understood by the Contractor that the advance review does not delete or modify the requirements for the submission of such necessary waivers and other documentation for payment by the County.

**SECTION 38**  
**COUNTY'S RIGHT TO SUSPEND**  
**OR TERMINATE WORK**

If the Contractor is adjudged bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Contractor or for any of his property, or if he files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workers or suitable materials or equipment, payments to Subcontractors or others, or for labor, materials or equipment, or if he disregards laws, ordinances, rules, codes, regulations or orders of any public body having jurisdiction of the Work, or if he otherwise violates any provision of the Contract Documents, then the County may, without prejudice to any other right or remedy and after giving the Contractor and his surety a maximum of seven (7) calendar days from delivery of a written notice by the County to the Contractor, declare the Contract in default, take possession of the Project and the site, and of all materials, equipment, tools, construction equipment and machinery thereon owned or rented or leased by the Contractor, and call upon the surety of and for the Performance and Labor & Material Payment Bonds to finish the Work of the Contract Documents by whatever method deemed expedient by the surety, upon consultation with the County.

Where the Contractor's services have been so terminated by the County, the termination shall not affect any rights or remedies of the County against the Contractor then existing or which may therefore accrue. Any retention or payment of monies due the Contractor by the County will not release Contractor from liability. If the Contractor can establish or it is otherwise determined that the Contractor was not in default or that the failure to perform is excusable, any issued termination for default will be considered to have been a termination for the convenience by the County and the rights and obligations of the parties governed accordingly.

Upon seven (7) calendar days' written notice to the Contractor by the County, the County may for its own convenience and at its sole option, without cause and without prejudice to any other right or remedy available to or for the County, elect to terminate the Contract. In such case, Contractor shall be paid, without duplication of any items:

- A. For completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work;
- B. For expenses sustained in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with Uncompleted Work;
- C. For amounts paid in settlement of terminated contracts with Subcontractors and Suppliers;
- D. Reasonable expenses directly attributable to termination including, but not limited to, fees and charges of engineers, Architect or Engineers, attorneys and other professionals, and court costs;
- E. Contractor shall not be paid on account of anticipatory profits or overhead or consequential damages; and

- F. Any payments made by the County to the Contractor in prior progress payments of the Project or to its surety as outlined or set forth above, shall not exceed the total contracted Contract Sum.

**SECTION 39**  
**ACCEPTANCE OF WORK**  
**AND FINAL PAYMENT**

Before final acceptance of the Work and final payment to the Contractor by the County of the withheld percentage retained by the County, the following requirements shall be complied with:

- A. Final Inspection: Upon notice from the Contractor that the Work of the Project is completed, the Architect or Engineer shall make a final inspection of the Work, and shall notify the Contractor of all instances where the Work fails to comply with the Drawings and Specifications, as well as any defects the Architect or Engineer may discover. The Contractor shall immediately make such alterations as are necessary to make the Work comply with the Drawings and Specifications.
- B. Contractor Inspection: Prior to calling for the inspection of the Work of the Project by the Architect or Engineer, the Contractor shall have performed a detailed inspection of the Work of the Project, and shall have made a determination of the Works' readiness for inspection by the Architect or Engineer, and the County.
- C. Final Payment: When the Work under this Contract is completed, a final payment request shall be submitted representing the original Contract Price and Change Orders to the Contract. The final payment shall not be due until the Contractor shall have completed all work necessary and reasonably incidental to the Contract, including final clean-up.

Acceptance of the Work by the Architect and Engineer, and the County, and the making of final payment by the County shall not constitute a waiver of any claims by the County. At any time during and throughout the time for construction, and any time beyond the schedule dates for completion by the Contractor, payments otherwise due the Contractor may be withheld by the County because of defective work not remedied and unadjusted damage to others by the Contractor or Subcontractors, vendors, or laborers.

All claims for final payment must be submitted within thirty (30) calendar days after the Work has been finally completed and accepted by the County. Failure by the Contractor to present in writing said claims within that period shall constitute a waiver of the claim by the Contractor. All claims are subject to final approval and a separate audit by the Board of Commissioners of Cherokee County by an independent auditor.

**SECTION 40**  
**GUARANTEE AND CORRECTION**  
**OF WORK**

The Contractor shall guarantee all Work to have been accomplished in conformance with the Contract Documents. Neither the final certificate of payment nor any provision of the Contract Documents, nor partial or entire occupancy or use of the Work by the County, shall constitute an acceptance of any part of the Work not done in accordance with the Contract Documents, or relieve the Contractor of liability for incomplete or faulty materials or workmanship.

The Contractor shall promptly remedy any omission or defect in the Work and pay for any damage to other improvements or facilities resulting from such omission or defect which shall appear within

a period of one (1) year from the date of final acceptance, unless a longer period is elsewhere specified. In the event that the Contractor should fail to make repairs, adjustments, or other remedy that may be made necessary by such defects, the County may do so and charge the Contractor the cost thereby incurred. The Performance and Labor & Material Payment Bonds shall remain in full force and effect through the guarantee period.

It is agreed to by the Contractor and the Architect and Engineer, and the County, that eleven (11) months from the date of substantial completion, or when the warranty period has agreed to have commenced for the Work of the Project, the and the Architect and Engineer, and the County shall walk the project to make a determination of items requiring correction under the warranty requirements of the Project.

**SECTION 41**  
**VENUE**

The law of the State of Georgia shall govern the construction of this Contract. The courts of Cherokee County, Georgia, shall have exclusive jurisdiction to try disputes arising under or by virtue of this Contract.

**END OF GENERAL CONDITIONS**  
**OF THE CONTRACT FOR CONSTRUCTION**