

City of East Point, Georgia Contract Form

Solicitation Title	Solicitation Number	Contract Number
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1. This Contract is entered into between East Point, Georgia, and the Contractor named below:

City of East Point, Georgia

(hereafter referred to as "the City")

Contractor's Name

(hereafter referred to as "the Contractor")

2. Contract to Begin:	Date of Completion:	Renewals, if any:
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3. Performance Bond, if any:	Other Bonds, if any:
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4. Maximum Amount of this Contract:	Total Financial Obligation of East Point, Georgia for the Initial Contract Term:	Total Financial Obligation of East Point, Georgia for each Renewal Period if Renewable and Renewed:
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5. Authorized Person to Receive Contract Notices for East Point, Georgia:	Authorized Person to Receive Contract Notices for Contractor:
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6. The parties agree to comply with the terms and conditions of the following attachments which are by this reference made a part of the Contract:

Attachment 1: City of East Point Terms and Conditions
Attachment 2: Solicitation (referenced above)
Attachment 3: Contractor's Final Response
List other attachments, if any:

IN WITNESS WHEREOF, this Contract has been executed by the parties hereto.

7.

Contractor

Contractor's Name *(If other than an individual, state whether a corporation, partnership, etc.)*

By *(Authorized Signature)*

Date Signed

Printed Name and Title of Person Signing

Address

8.

City of East Point, Georgia

City of East Point, Georgia

By *(Authorized Signature)*

Date Signed

Printed Name and Title of Person Signing:

Deana Holiday Ingraham, Mayor

Address:

2757 East Point Street, East Point, Georgia, 30344

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

ARTICLE I THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

1.1.1 The Contract between the City and the Contractor, of which this Agreement is a part, consists of the Contract Documents and the listed associated documents. It shall be effective on the date this Agreement is executed by the last party to execute it.

1.2 The Contract Documents

1.2.1 The Contract Documents consist of this Agreement, the Specifications, the Drawings, all Change Orders, and Field Orders issued hereafter, any other amendments hereto executed by the parties hereafter, together with any and all of the following if prepared and issued by the City:

A. Advertisement for Competitive Sealed Bids; Formal Solicitation; Invitation To Bid; Request for Proposals; Request for Qualifications; Provider's Contact Sheet(s); Bid Price Sheet(s); Materials Listing(s); Request for "Best and Final" Offer; "Best and Final" Offer; Bid Tabulation Sheet(s); Evaluation Committee Score Tabulation; Cost Comparison; Cost Score Determination; E-Verify Affidavit(s); S.A.V.E. Affidavit; Contractor Qualifications and References Form; Bid Specifications; Special Provisions; Bid Drawing(s); Project Drawing(s); Bid Bond; Payment Bond; Performance Bond; Notice of Award; Notice to Proceed; Change Order(s); Change Notice(s); Certificate of Substantial Completion, and the following:

The above documents shall collectively and individually be known herein as **Exhibit A**.

B. Documents not enumerated in Paragraph 1.2, or added to the list herein, are not Contract Documents and do not form any part of this Contract.

1.3 Entire Agreement

1.3.1 This Contract, together with the Contractor's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreement between the City and the Contractor. Specifically, but without limitation, this Contract supersedes any bid documents and all prior written or oral communications, representations, and / or negotiations, if any, between the City and Contractor.

1.4 No Privity with Others

1.4.1 Nothing contained in this Contract shall create, or be interpreted to create, privity or any other contractual agreement between the City and any person or entity other than the Contractor.

1.5 Intent and Interpretation

1.5.1 The intent of this Contract is to require complete, correct and timely execution of the Work / Services requested and / or required. Any Work / Services that may be required, implied, or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended results shall be provided by the Contractor for the Contract Price stated.

1.5.2 This Contract is intended to be an integral whole and shall be interpreted as internally consistent. What is required by any one Contract Document shall be considered as required by the Contract.

1.5.3 When a word, term, or phrase is used in this Contract, it shall be interpreted or construed, first, as defined herein; second, if not defined herein, according to its generally accepted meaning in the industry / business specific to this Contract; and third, if there is no generally accepted meaning for the word, term, or phrase in the industry / business specific to this Contract, then according to the word's, term's, or phase's common and customary usage in the English language.

1.5.4 The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation".

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

1.5.5 The specification herein of any act, failure, refusal, omission, event, occurrence, or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence, or condition shall be deemed not to constitute a material breach of this Contract.

1.5.6 Words or terms used as nouns in this Contract shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

1.5.7 The Contractor shall have a continuing duty to read, carefully study, and compare each of the Contract Documents, the Shop Drawings, if any, and the Product Data, if any, the Scope of Work, the Scope of Service(s), the List of Deliverables, provided Data and / or Samples required, and shall give written notice to the City of any inconsistency, ambiguity, error, or omission the Contractor may discover with respect to these documents before proceeding with the affected Work / Service. The issuance, or the express or implied approval by the City or the City's assigned Project Manager, of the Contract Documents, Shop Drawings, or Product Data, or List of Deliverables, or Samples shall not relieve the Contractor of the continuing duties imposed hereby, nor shall any such approval be evidence of the Contractor's compliance with this Contract. The City has requested the Architect / Consultant / Engineer / Collaborator to only prepare documents for the Project, including the Drawings and Specifications for the Project, which are accurate, adequate, consistent, coordinated, and sufficient for presentation of the Project for solicitation, and / or has made a bone fide effort to prepare documents for the Service, including Scope of Service(s) and / or a List of Deliverables, which are accurate, adequate, consistent, coordinated and sufficient for providing the Service(s) and / or Deliverables stipulated in the solicitation. **HOWEVER, THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO THE CONTRACTOR CONCERNING THE THOROUGHNESS OF SUCH DOCUMENTS AND / OR THEIR RELIABILITY.** By the execution hereof, the Contractor acknowledges and represents that it has received, reviewed, and carefully examined such documents, has found them to be complete, accurate, adequate, consistent, coordinated, and sufficient for preceding with the Project and / or Service, and that the Contractor has not, does not, and shall not rely upon any representation or warranties by the City concerning such documents as no such representation or warranties have been or are hereby being made.

1.5.8 Neither the organization of any of the Contract Documents into divisions, sections, paragraphs, articles, (or other categories), nor the organization or arrangement of the Design and / or Deliverables, shall control the Contractor in dividing the Work / Service or in establishing the extent or Scope of the Work / Scope of the Service to be performed by Subcontractors.

1.6 Ownership of Contract Documents

1.6.1 All of the Contract Documents, and any documentation and / or data provided to the Contractor for the purpose of completing a Service required and / or a Deliverable designated in the Contract Documents, shall remain the property of the City. The Contractor shall have the right to keep one (1) record set of the Contract Documents upon completion of the Project; provided, however, that in no event shall Contractor use, or permit to be used, any or all of such Contract Documents on other projects without the City's prior written authorization. At the termination of the Contract, or upon a written request of the City, the Contractor must return any documentation and / or data provided which the City has designated as "Confidential" and / or "Proprietary" in nature.

1.7 Hierarchy of Contract Documents

1.7.1 In the event of any conflict, discrepancy, or inconsistency among any of the Contract Documents, the following hierarchy shall control: (a) as between figures given on drawings and the scaled measurements, the figures shall govern; (b) as between large scale drawings and small scale drawings, the large scale shall govern; (c) as between drawings and specifications, the requirements of the specifications shall govern; (d) as between this Contract and the specifications, the requirements of this Contract, if different, shall govern. As set forth hereinabove, any and all conflicts, discrepancies, or inconsistencies shall be immediately reported to the City's designated Project Manager or Contract Administrator in writing by the Contractor.

ARTICLE II **THE WORK / SERVICE**

2.1 The Contractor shall perform all of the Work / Service and shall provide all of the Deliverables required, implied, or reasonably inferable from, this Contract.

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

2.2 The terms "Work" and "Service" shall mean whatever is done by or required of the Contractor to perform and complete its duties under this Contract, including the following: construction of the whole or a designated part of the Project and / or the preparation and delivery of the items designated as Deliverables; furnishing of any required surety bonds and insurance; the provision or furnishing of labor, supervision, expertise, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor; and the provision of fuel, heat, light, cooling and all other utilities as may be required by this Contract. The Contractor is also required to ensure the complete and proper functioning of all items, equipment, and fixtures and / or the timely preparation and the anticipated applicability of any and all Deliverables provided.

ARTICLE III CONTRACT TIME

3.1 Time Regarding the Completion of Work

3.1.1 The Contractor shall commence the Work under this Agreement on the date established by a written Notice to Proceed given by the City to the Contractor fixing the date on which the Contract time shall commence to run. The Contractor shall achieve Substantial Completion of the Work within the time established by the written solicitation documents, the Notice of Award, and the Notice to Proceed. The number of calendar days from the date on which the Work is permitted to proceed, through the date set forth for Substantial Completion, shall constitute the "Contract Time."

3.2 Liquidated Damages

3.2.1 The Contractor shall pay the City the sum of _____ dollars and no cents (\$_____.00) per calendar day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable, not as a penalty, but as Liquidated Damages representing an estimate of delay damages likely to be sustained by the City, estimated at or before the time of executing this Contract. When the City reasonably believes that Substantial Completion shall be inexcusably delayed, the City shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the City to be adequate to recover Liquidated Damages applicable to such delays. If and when the Contractor overcomes the delay in achieving Substantial Completion, or any part thereof, for which the City has withheld payment, the City shall promptly release to the Contractor those funds withheld, but no longer applicable, as Liquidated Damages.

3.3 Substantial Completion of Work

3.3.1 "Substantial Completion" is herein set at _____ (_____) Work Days (Monday through Friday unless otherwise noted) / Calendar Days (strike out one not applicable), and means that stage in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the City can enjoy beneficial use and occupancy of the Work and can utilize the Work for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion.

3.4 Time Regarding the Completion of Services

3.4.1 The Contractor shall commence the provision of Service(s) under this Agreement on _____ day of _____, 20____, and Service(s) shall be completed and this Contract shall expire on _____ day of _____, 20____. The number of calendar days from the date on which Service(s) shall commence through the date set forth as the Agreement expiration date shall constitute the "Contract Time" for Service(s). If so agreed upon, this Agreement may be extended without interruption of Service(s) beyond the expiration date stipulated above upon the written consent of both parties. Such Agreement extension shall be governed by the terms and conditions of the City's Municipal Code, City policy and procedures, and the terms and conditions of the supporting documents (**Exhibit A**)

3.5 Time is of the Essence

3.5.1 All limitations of time set forth in the Contract Documents are the essence of this Contract.

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

ARTICLE IV **CONTRACT PRICE**

4.1 The Contract Price Agreed Upon

4.1.1 The City shall pay, and the Contractor shall accept, as full and complete payment for the Contractor's timely performance of its obligations hereunder, a sum or sums based upon the prices and amounts set forth in Paragraph 4.1.2 below. The prices and amounts set forth in Paragraph 4.1.2 shall not be modified except by Change Order / Change Notice as provided in this Agreement.

4.1.2 The amounts agreed to for prices are as follows:

REFERENCE ATTACHED EXHIBIT B

Exhibit B documents shall consist of **Bid Price Sheet(s)** and / or **Contractor's Cost Proposal** and / or **Contractor's Quotation**. The listed documents shall collectively and individually be known herein as **Exhibit B**. The documents listed herein may also be included as a part of **Exhibit A** and as such will not be excluded or eliminated as part of **Exhibit B**.

ARTICLE V **PAYMENT OF THE CONTRACT PRICE**

5.2 Payment Procedure

5.2.1 The City shall pay the Contract Price as stated in **Exhibit B** to the Contractor as provided below.

5.2.2 Once every calendar month, or before the _____ (_____) day of each month, after commencement of the Service(s), the Contractor shall submit a Request for Payment (Invoice) for the work and / or service period ending the last day of the previous month to the City in such form and manner, and with such supporting data and content as the City may require. Therein, the Contractor may request payment for Work and / or Service(s) and / or Deliverables provided under the Contract that are compliant with the specifications, terms and conditions of this Contract, as provided in **Exhibit A** and **Exhibit B**. Each such Request for Payment (Invoice) shall bear a unique invoice number, shall be signed by the Contractor and shall be submitted to the City in triplicate consisting of one (1) original and two (2) identical copies. The Request for Payment (Invoice) shall constitute the Contractor's representation and attestant that the Work and / or Service(s) and / or Deliverables for which payment is requested has been performed and / or provided in accordance with the specifications, terms and conditions of this Contract and **Exhibit A**, that any and all work associated with the Work and / or Service(s) and / or Deliverables has been properly performed in full accordance with this Contract and **Exhibit A**, and that the Contractor knows of no reason why payment should not be made by the City as requested. Thereafter, the City's appointed representative shall review the Request for Payment (Invoice) and the supporting data and may also review the Work and / or Service site(s) and / or the Deliverables to determine whether the quantity and quality of the Work and / or Service(s) and / or Deliverables is as represented in the Request for Payment (Invoice) and is as required by this Contract and **Exhibit A**. The City's appointed representative shall calculate, determine, and certify to the City the monies properly owing to the Contractor and shall affix their signature to the same. The City's Accounting Department shall make payment to the Contractor within _____ (_____) business / calendar (strike out one not applicable) days following the City's appointed representative's receipt of each monthly Request for Payment (Invoice). The amount of each payment shall be the amount certified for payment by the City's appointed representative less such amounts, if any, otherwise owed by the Contractor to the City or which the City shall have the right to withhold as authorized by this Contract or **Exhibit A**.

5.2.3 The Contractor warrants that title involved in the provision of the Work and / or Service(s) and / or Deliverables covered by a Request for Payment (Invoice) shall pass to the City no later than the time of payment. The Contractor further warrants that upon submittal of a Request for Payment (Invoice), all Work and / or Service(s) and / or Deliverables for which payments have been received from the City shall be free and clear of liens, claims, security interest, or other encumbrances in favor of the Contractor or any other person or entity whatsoever.

5.2.4 The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's Work and / or Service(s), the amount to which such Subcontractor is entitled. In the event the City becomes informed that the Contractor has not paid a Subcontractor as herein provided,

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

the City shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such Subcontractor as joint payees. Such joint check procedure, if employed by the City, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the City to repeat the procedure in the future.

5.2.6 No payment, nor any use of the Project or Deliverable(s) by the City, shall be interpreted to constitute an acceptance of any Work and / or Service(s) not in strict accordance with this Contract and / or **Exhibit A**.

5.3 Withheld Payment

5.3.1 The City may decline to make payment, may withhold funds, and, if necessary, may demand the return of some or all of the amounts previously paid to the Contractor, to protect the City from loss because of:

- (a) Defective and / or inadequate Work and / or Service(s), and / or Deliverables not remedied by the Contractor or, in the opinion of the City, not likely to be remedied by the Contractor;
- (b) Claims of third parties against the City or the City's property resulting from the action(s) and / or inaction(s) on the part of the Contractor;
- (c) Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) Evidence that the balance of the Work and / or Service(s), and / or Deliverables cannot and / or will not be completed in accordance with the Contract for any unpaid balance of the Contract Price;
- (e) Evidence that the Work and / or Service(s), and / or Deliverables shall not be completed in the time required by this Contract and **Exhibit A**;
- (f) Persistent failure to provide the Work and / or Service(s) and/or Deliverables in a timely manner and / or in accordance with this Contract and **Exhibit A**;
- (g) Damage to the City and / or a third party to whom the City is, or may be, liable, that is a direct and / or indirect result of the Contractor's action(s) and / or inaction(s).

In the event that the City makes written demand upon the Contractor for amounts previously paid by the City as contemplated in this Subparagraph 5.3.1, the Contractor shall promptly comply with such demand, and make payment in full to the City within no more than thirty (30) calendar days from such notification.

5.4 Unexcused Failure to Pay

5.4.1 If within sixty (60) calendar days after the date established herein for payment to the Contractor by the City, the City, without cause or basis hereunder, fails to pay the Contractor any amount then due and payable to the Contractor, then the Contractor may, after ten (10) additional business days' written notice to the City and the City's appointed representative, and without prejudice to any other available rights or remedies it may have, stop the provision of Work and / or Service(s), and / or Deliverables until payment of those amounts due from the City have been received. Any payment not made within a further sixty (60) calendar days after the date due shall bear an interest at the rate and /or non-payment penalty of no more than four percent (4%) per annum.

5.5 Final Payment for Service(s) Rendered

5.5.1 The Contractor shall not be entitled to final payment for Work and / or Service(s) and / or Deliverables provided unless and until the Contractor submits to the City's appointed representative and City all documents required by this Contract, including, but not limited to, an affidavit that all payrolls and invoices for goods, materials, supplies, equipment, fixtures, appliances, tools, parts, facilities, transportation, delivery, shipping, mailing, storage, and any other liabilities connected with the provision of the Work and / or Service(s) and / or Deliverables for which the City, or the City's property might be responsible, have been fully paid or otherwise satisfied; releases and waivers of lien from all Subcontractors of the Contractor and of any and all other parties required by the City's appointed representative or the City; consent of Surety, if any, to final payment. If any third party fails or refuses to provide a release of claim or waiver of lien as required by the

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

City, the Contractor shall furnish a bond satisfactory to the City to discharge any such lien or to fully indemnify the City from any and all liability.

5.5.2 Upon the Contractor's providing the above required documentation to the City, the City's appointed representative shall review the documentation and shall approve it. The City shall then make final payment of all sums due the Contractor no later than forty-five (45) calendar days after the City's appointed representative's acceptance of the required documentation.

5.5.3 Acceptance of final payment shall constitute a waiver of all claims against the City by the Contractor except for those claims previously made in writing against the City by the Contractor, pending at the time of final payment, and identified in writing by the Contractor as unsettled at the time of its request for final payment.

5.5.4 The City and Contractor expressly agree that the terms of payment, payment periods, and rates of interest herein shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. Section 3-11-1 et al., and the provisions of said Act are herein waived.

ARTICLE VI **THE CITY**

6.1 Information and Services Required from City

6.1.1 Excluding those items specifically stipulated in **Exhibit A**, and / or permits and fees normally the responsibility of the Contractor, the City shall obtain all approvals, easements, and the like, required for any installations and / or construction and / or modifications and shall pay for necessary assessments and charges required for construction, use and / or occupancy of permanent structures and / or for permanent changes in existing facilities if such are a requirement of the provision of Work and / or Service(s) and / or Deliverables.

6.1.2 If stipulated in **Exhibit A**, the City will provide to the Contractor access to City data, information, and / or records which may be necessary to assist the Contractor in the performance of the required Work and / or Service(s).

- (a) Any and all City data, information, or records provided to the Contractor shall be understood to be confidential in nature and must be handled by the Contractor as such. The confidentiality of information provided to the Contractor must not be compromised in any degree and / or in any manner. Disclosure of any information provided to the Contractor by the City shall not take place to any person or entity outside of the City without the expressed written consent of the City.
- (b) At the termination of the Contract or upon the written request of the City, any and all City data, information, or records conveyed to the Contractor must be removed from any and all electronic equipment owned by the Contractor (if electronic files and documents) or returned to the City (if hard copies) or securely shredded (if hard copies), as is deemed most appropriate by the City and as requested in writing by the City.
- (c) Under no circumstances shall the City's ownership of the data, information, and / or records conveyed to the Contractor for their use in fulfilling the expectations of the Contract be revoked, transferred, or seized by the Contractor or any other entity for any reasons whatsoever.

6.2 City's Right to Stop Work and / or Service(s)

6.2.1 If the Contractor persistently fails or refuses to provide the Work and / or Service(s) and / or Deliverables in accordance with this Contract and **Exhibit A**, the City may order the Contractor to stop providing the Work and / or Service(s), and / or Deliverables, or any described portion thereof, until the cause for stoppage has been corrected and / or remedied and / or no longer exists, and / or the City orders that the Work and / or Service(s) and / or Deliverables be resumed. In such event, the Contractor shall immediately obey such orders to cease or commence as directed in writing by the City.

6.3 City's Right to Perform Services or Obtain Substitute

6.3.1 If the Contractor's Work and / or Service(s) and / or Deliverables is stopped by the City under Paragraph 6.2, and the Contractor fails within seven (7) calendar days of such stoppage to provide adequate

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

assurance to the City that the cause for such stoppage shall be or has been corrected and / or remedied and / or eliminated, then the City may, without prejudice to any other rights or remedies the City may have against the Contractor, proceed to carry out the subject Work and / or Service(s) and / or to acquire an adequate substitute to provide the subject Work and / or Service(s), Deliverables. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting any deficiencies and / or in providing a substitute, plus compensation for the City's additional expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the City, the Contractor shall pay the difference to the City. The Contractor shall pay the City such sums within thirty (30) calendar days of receiving written demand for payment.

ARTICLE VII THE CONTRACTOR

7.1 E-Verify and S.A.V.E. Documentation Requirements

7.1.1 This Contract is subject to the **Georgia Security and Immigration Compliance Act**. Pursuant to the **Georgia Security and Immigration Compliance Act of 2006**, as amended by **2011 House Bill 67**, Contractors of goods and / or services for the City **in excess of \$2,500.00** are hereby notified that all services or Work performed that is to be physically performed within the State of Georgia must be accompanied by proof of the Contractor's registration with the E-Verify Program, as established by the United States Department of Homeland Security. Contractors must attest to compliance with the requirements of **O.C.G.A. §13-10-91** and the **Georgia Department of Labor Rule 300-10-01-.02** by executing the **E-Verify Contractor's Affidavit**. Under Georgia law, the City of East Point cannot provide any type of award consideration – Contract or Purchase Order – to a Contractor who cannot provide a completed affidavit to the City – NO EXCEPTIONS. Quotations / Prices that are received from Contractors who cannot provide such documentation shall be considered "non-compliant" and / or "non-conforming" and / or "non-responsive" and as such cannot be given Contract or Purchase Order award considered.

7.1.2 The City of East Point is required by the **S.A.V.E. (Systematic Alien Verification for Entitlements) Program** to verify the status of anyone who applies for a Public Benefit through the City. Public Benefits are defined by state statute, **O.C.G.A. § 50-36-1**, by Federal statute, **8 U.S.C. §1611** and **8 U.S.C. §1621**, and by the Office of the Attorney General. According to these sources, Purchase Orders and Contract awards issued by the City of East Point are considered "Public Benefits." Beginning on January 1st, 2012, any person awarded a Public Benefit must show a secure and verifiable document, and complete a **S.A.V.E. Affidavit**. The Selected Contractor / Vendor / Provider shall be required to execute the **S.A.V.E. Affidavit** verifying their status and show a secure and verifiable document ***prior*** to the final award of any Contract or Purchase Order by the City.

7.2 Strict Adherence To Contract Expected

7.2.1 The Contractor is again reminded of its continuing duty set forth in Subparagraph 1.5.7. The Contractor shall provide no Work and / or Service(s) and / or Deliverables at any time without the benefit of direct reference to Contract Documents, or the Scope of Work, or the Scope of Service(s), or the List of Deliverables, as may be appropriate and applicable, and to other such Data or Samples that are consistent with providing satisfactory Work and / or Service(s) to the City. If the Contractor provides any Work and / or Service(s) and / or Deliverables and has knowledge it involves a recognized error, inconsistency, or omission in the Contract Documents without such notice to the City's appointed representative, the Contractor shall bear the complete and full responsibility for such inconsistencies and inadequacies and shall bear the total cost of providing the correct Work and / or Service(s) and / or Deliverables or of correcting the inconsistency or inadequacy in a manner that is acceptable and satisfactory to the City.

7.3 Performance According To Contract Expected

7.3.1 The Contractor shall provide the Work and / or Service(s) and / or Deliverables strictly in accordance with this Contract.

7.4 Responsible and Knowledgeable Administration and Supervision Expected

7.4.1 The Contractor shall administer and / or supervise and /or direct the Work and / or Service(s) and / or Deliverables using the Contractor's best skill, knowledge, efforts, and attention to detail. The Contractor

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

shall be responsible to the City for any and all acts or omissions of the Contractor, its employees, subcontractors, sub-subcontractors, and others engaged in providing the Work and / or Service(s) and / or Deliverables on behalf of the Contractor.

7.5 Warranty

7.5.1 WARRANTY OF NEW GOODS AND MATERIALS: The Contractor warrants to the City that all goods, materials, supplies, equipment, fixtures, and appliances furnished under this Contract shall be new and unused unless otherwise specified by the Contractor in writing to the City, and the Contractor further warrants that all Work and / or Service(s) and / or Deliverables provided shall be of good quality and in conformance with the contract documents. The warranty set forth in this paragraph shall survive the City's final acceptance of any Work and / or Service(s) and / or Deliverables which may have to be performed in order to provide the Work and / or Service(s) and / or Deliverable specified in **Exhibit A**.

7.5.2 WARRANTIES IMPLIED BY LAW: The warranties contained in this agreement, as well as those warranties implied by law, shall be deemed cumulative and shall not be deemed alternative or exclusive in any manner. No one and / or more of the warranties contained herein shall be deemed to alter and / or limit any other.

7.6 Permits, Inspections, Licenses and Notices

7.6.1 The Contractor shall obtain and pay for any and / or all bonds, permits, inspections, licenses and / or notices necessary and ordinary to providing the Work and / or Service(s) and / or Deliverables. The Contractor shall comply with all lawful requirements applicable to providing the Work and / or Service(s) and / or Deliverables and shall obtain and maintain any and all public notices required by applicable law, ordinance, or regulation.

7.7 Supervision Specifics

7.7.1 The Contractor shall employ and assign to work on the City's contract only competent administrative and / or supervisory and / or service personnel. Absent written instruction from the Contractor to the contrary, the Service Representative and / or Account Representative assigned to the City shall be deemed the Contractor's authorized representative and shall be authorized to receive and accept any and all formal communications from the City or the City's appointed representative.

7.8 Schedules

7.8.1 The Contractor shall, within _____ (_____) business / calendar (cross out one not applicable) days from execution of this Contract, submit to the City and the City's appointed representative a proposed schedule(s) for providing the Work and / or Service(s) and / or Deliverables as required herein. Upon receipt, the City and the City's appointed representative shall review the Contractor's proposed schedule(s) and shall approve or disapprove it and notify the Contractor accordingly.

7.8.2 In the event the Contractor's proposed schedule is approved by the City, the Contractor may proceed as stated. In the event the Contractor's proposed schedule is not approved by the City, the Contractor, the City and the City's appointed representative shall meet and jointly prepare a schedule that is acceptable to all parties.

7.8.3 Each of the schedule(s) required herein shall be revised no less frequently than once every ninety (90) calendar days, or once every quarter (unless the parties otherwise agree in writing), and shall be revised to reflect conditions encountered from time-to-time and shall be related to the entire Contract. In the event it becomes necessary for the Contractor to revise an approved schedule or a schedule-in-process, notification of such revision shall be submitted in writing to the City and the City's appointed representative along with a proposed replacement schedule. Each such revision shall be subject to approval by the City and the City's representative as stipulated above.

7.8.4 The schedule(s), and all revisions, shall be in such a form, and shall contain such detail, as the City or the City's appointed representative may require and / or request.

Strict compliance with the requirements of this Paragraph is a condition precedent for payment to the Contractor, and failure by the Contractor to strictly comply with said requirements shall constitute a material

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

breach of this Contract.

7.9 Contractor Provided Data and Samples

7.9.1 Data and / or samples and / or other requested submittals from the Contractor received during the solicitation process do not constitute part of the Contract Documents. Their purpose is merely to demonstrate to the City the manner or format in which the Contractor intends to provide the Work and / or Service(s) and / or Deliverables in conformance with information received from the Contract Documents.

7.9.2 The Contractor shall not provide any Work and / or Service(s) and / or Deliverables requiring submittal, review, and approval of Data or Samples unless and until such submittal shall have been approved by the City's appointed representative. Approval by the City's appointed representative, however, shall not be evidence that the Work and / or Service(s) and / or Deliverables provided pursuant thereto conforms with the requirements of this Contract.

7.10 Care and Cleaning the Work / Service Site(s)

7.10.1 The Contractor shall keep the Work / Service site(s) reasonably neat and clean at all times and shall not contribute in any manner to the site's disorder, disrepair, or disuse. Removal of trash and debris associated with providing the Work and / or Service(s) and / or Deliverables shall be the sole responsibility of the Contractor and shall be taken care of in a time and manner that is satisfactory to the City. Upon termination of the Contract, the Contractor shall clean the Work / Service site(s) and remove any and all waste and / or debris, together with all of the Contractor's property and / or equipment and / or machinery there from. Unless specified otherwise and confirmed in writing, the Work / Service site(s) shall be returned to the condition in which it was found prior to the Contractor's use of the site(s) for Work / Service(s).

7.11 Access to Work / Service Site(s)

7.11.1 The City and the City's Assigned Representative(s) / Contract Administrator(s) shall have access to the entire Work / Service(s) site(s) at all times from commencement of the Work / Service(s) through final completion / contract termination. The Contractor shall take whatever steps are necessary to provide safe and timely access when requested and / or required. If it is necessary for the Contractor to store supplies, equipment, tools, materials, goods, etc. on the City's Work / Service(s) site(s), the Contractor shall retain full responsibility for the safe keeping of such items, and under no circumstances shall the City or the City's Assigned Representative(s) / Contract Administrator(s) or the City's other employees, agents, representative, officials assume any responsibility for loss of and / or damage to and / or misuse of the items.

7.12 Indemnity

7.12.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the City and its agents from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from provision of the Work and / or Service(s) and / or Deliverables, provided that such liability, claims, damage, loss or / and expense is attributable to bodily injury, sickness, disease or death, and / or to injury to and / or destruction of tangible property (other than the Work itself and / or Deliverables) including loss of use resulting there from, but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly and / or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such liability, claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

7.12.2 In claims against any person or entity indemnified under this Paragraph 7.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

7.13 Means, Methods, Techniques, Sequences, Procedures, and Safety

7.13.1 Unless otherwise specifically stipulated in **Exhibit A**, the Contractor is fully responsible for, and shall have complete control over, all means, methods, techniques, sequences, procedures and safety associated with providing the Work and / or Service(s) and/or Deliverables, and shall coordinate all portions of the Work and / or Service(s) required by the Contract Documents. Nothing contained herein, however, shall in any

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

manner whatsoever relieve, release, or discharge the City or the City's Assigned Representative(s) / Contract Administrator(s) from any of its duties, responsibilities, obligations, or liabilities as set forth in its contract, and / or as provided by law.

7.14 Separate Contracts

7.14.1 The City reserves the right to perform separate and / or similar Work and / or Service(s) in the vicinity of the Work / Service(s) provided by the Contractor and / or in the premises in use by and / or shared with the Contractor. It shall make no difference if the City uses its own work force(s) and / or service(s) personnel and / or those employed by other Contractors. In such event, the Contractor shall fully cooperate with the City and such other Contractors and shall coordinate, schedule, and manage its Work and / or Service(s) and / or Deliverables so as not to hinder, delay, or otherwise interfere with the separate Work / Service(s) of the City or other Contractors.

ARTICLE VIII CONTRACT ADMINISTRATION

8.1 The City's Assigned Representative(s) / Contract Administrator(s)

8.1.1 The City's Assigned Representative(s) / Contract Administrator(s) for this Contract is/are:

_____.
He / she / they may be reached via email at _____@eastpointcity.org,
or by telephone number _____.

In the event the City should find it necessary or convenient to replace the Assigned Representative(s) / Contract Administrator(s), the City shall retain a replacement Assigned Representative(s) / Contract Administrator(s) and the status of the replacement Assigned Representative(s) / Contract Administrator(s) shall be the same as that of the former Assigned Representative(s) / Contract Administrator(s).

8.2 Duties of Assigned Representative(s) / Contract Administrator(s)

8.2.1 The Assigned Representative(s), unless otherwise directed by the City in writing, shall perform those duties and discharge those responsibilities customarily and usually allocated to the Contract Administrator as set forth in this Contract. The Contract Administrator(s) shall be the City's Assigned Representative(s) from the effective date of this Contract until final payment has been made. The Assigned Representative(s) / Contract Administrator(s) shall be authorized to act on behalf of the City only to the extent provided in this Contract.

8.2.2 The City and the Contractor shall communicate with each other in the first instance through the Assigned Representative(s) / Contract Administrator(s), and then through the Requesting Department Director. Communication through the Director of Contracts and Procurement may take place if the Requesting Department Director is not available, unless otherwise stipulated in **Exhibit A**.

8.2.3 The Assigned Representative(s) / Contract Administrator(s) shall be the initial interpreter of the requirements of the solicitation requirements and / or specifications and the judge of the Contractor's performance. The Assigned Representative(s) / Contract Administrator(s) shall render written or graphic interpretations as are necessary for the proper execution of and / or progress of the Work and / or Service(s) and / or Deliverables with reasonable promptness upon request of the Contractor.

8.2.4 The Assigned Representative(s) / Contract Administrator(s) shall review the Contractor's Request(s) for Payment (Invoices) and shall, by the affixing of his / her signature to the Request(s) for Payment (Invoices), verify / certify to the City the payment(s) and / or amount(s) due to the Contractor for Work already performed and / or Service(s) already rendered and / or Deliverables already provided.

8.2.5 The Assigned Representative(s) / Contract Administrator(s) shall have authority to reject Work and / or Service(s) and/or Deliverables that is sub-standard, incomplete, defective, or does not conform in some manner to the requirements of this Contract. If the Assigned Representative(s) / Contract Administrator(s) deems it necessary or advisable, the Assigned Representative(s) / Contract Administrator(s) shall have the authority to require additional inspection and / or testing of the Work performed and / or the Service(s)

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

rendered and/or Deliverables provided for compliance with Contract requirements.

8.2.6 The Assigned Representative(s) / Contract Administrator(s) shall review and approve, or take other appropriate action as necessary, concerning the Contractor's submittals including Schedules, Data, and Samples. Such review, approval, or other action shall be for the sole purpose of determining the Contractor's conformance and / or compliance with the information given through the Contract Documents.

8.2.7 The Assigned Representative(s) / Contract Administrator(s) shall prepare Change Orders and may authorize minor changes in the Work and / or Service(s) and/or Deliverables as provided by Field Order elsewhere herein.

8.2.8 The Assigned Representative(s) / Contract Administrator(s) shall, upon written request from the Contractor, conduct inspections, shall receive and forward to the City for the City's review and records, written warranties and related documents required by this Contract and shall issue approval for payment(s) upon compliance with the requirements of this Contract.

8.2.9 The Assigned Representative(s) / Contract Administrator(s)'s decisions in matters relating to aesthetic effect(s) and / or other such minor matters shall be final if consistent with the intent of this Contract.

8.2.10 THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE CONTRACTOR UNDER THIS AGREEMENT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR RESPONSIBILITY OF THE ASSIGNED REPRESENTATIVE(S) / CONTRACT ADMINISTRATOR(S). THE CONTRACTOR SHALL NOT BE A THIRD-PARTY BENEFICIARY OF ANY AGREEMENT BY AND BETWEEN THE CITY AND THE ASSIGNED REPRESENTATIVE(S) / CONTRACT ADMINISTRATOR(S). IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE CONTRACTOR TO THE CITY ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE ASSIGNED REPRESENTATIVE(S) / CONTRACT ADMINISTRATOR(S) TO THE CITY.

8.3 Claims by the Contractor

8.3.1 All Contractor claims shall be initiated by written notice to the City and the Assigned Representative(s) / Contract Administrator(s). Such written notice of a claim must be furnished no later than seven (7) calendar days after occurrence, or seven (7) calendar days after the Contractor's first knowledge of the occurrence giving rise to the claim, whichever first occurs.

8.3.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the City shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this Section 8.3 shall be reflected by a Change Order executed by the City, the Assigned Representative(s) or the Contractor Administrator(s).

8.3.3 Claims for Concealed and / or Unknown Conditions -- Should concealed and / or unknown conditions be encountered in providing the Work and / or Service(s) and / or Deliverables associated with the Work and / or Service(s) and / or Deliverables that adversely affect and / or prevent the Contractor's ability to provide the Work and / or Service(s) and / or Deliverables associated with the provision of the Work and / or Service(s) and / or Deliverables, negotiations with the City and / or Assigned Representative(s) / Contract Administrator(s) shall immediately commence upon the submittal of a written notice and claim by the Contractor and / or City submitted no later than seven (7) calendar days after the first observance of the condition. Thereafter, upon agreement of all parties, the Contract Price shall be equitably adjusted by Change Order. As a condition precedent to the City having any liability to the Contractor for concealed or unknown conditions, the Contractor must first give the City and the Assigned Representative(s) / Contract Administrator(s) written notice of, and an opportunity to observe the condition prior to disturbing it and/or attempting to rectify it. The failure by the Contractor to provide the written notice and claim in the manner and within the timeframe as stipulated in this Subparagraph shall constitute a waiver in full by the Contractor of any claims and / or price adjustments arising out of or relating to such concealed and / or unknown conditions.

8.3.4 Requests / Claims for Additional Costs -- If the Contractor wishes to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, the Contractor shall give the Assigned Representative(s) / Contract Administrator(s) written notice of such claim no later than seven (7) calendar days after the occurrence of the event, or the first appearance of the condition, giving rise to such claim. Such notice shall be given by the Contractor before proceeding to execute any additional and / or

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

changed Work and / or Service(s) and / or Deliverables associated with the Contract. The failure by the Contractor to give such notice prior to executing any additional and / or changed Work and / or Service(s) and/or Deliverables associated with the Contract shall constitute a waiver in full of any claim for additional compensation on the part of the Contractor.

8.3.4.1 In connection with any claim by the Contractor against the City for completion of the Work and / or Services and / or Deliverables associated with the Contract in excess of the Contract Price, any liability of the City shall be strictly limited to direct costs incurred by the Contractor and shall in no event include indirect costs or consequential damages of the Contractor. The City shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been fully established therefore in a court of competent jurisdiction.

8.3.5 Requests / Claims for Additional Time -- If the Contractor is delayed in progressing any task which at the time of the delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the City and / or someone acting on the City's behalf, and / or by changes ordered by the City and / or Assigned Representative(s) / Contract Administrator(s) in the Work and / or Service(s) and / or Deliverables associated with the Contract, an unusual delay in transportation, fire or any causes beyond the Contractor's control, then the date for completing the Work and / or Service(s) and / or Deliverables associated with the Contract shall be extended upon the receipt of a written notice and claim from the Contractor to the City and the Assigned Representative(s) / Contract Administrator(s), for such reasonable time as the City and / or Assigned Representative(s) / Contract Administrator(s) may determine. Any notice and claim for an extension of time by the Contractor shall be made no later than seven (7) calendar days after the occurrence of the event or the first appearance of the condition giving rise to the claim and shall set forth in detail the Contractor's basis for requiring additional time in which to complete the Work and / or Service(s) and / or provide the Deliverables. In the event the delay to the Contractor is a continuing one, only one (1) notice and claim for additional time shall be necessary. If the Contractor fails to make such claim within the manner and /or timeframe stipulated in this Subparagraph, any claim for an extension of time shall be waived and shall not be provided.

ARTICLE IX SUBCONTRACTORS

9.1 Definition

9.1.1 A Subcontractor is an entity that has a direct contract with the Contractor to provide a portion of the Work and / or Service(s) and/or Deliverables that is directly associated with the Contractor's ability to provide the Work and / or Service(s) and / or Deliverables.

9.2 Award of Subcontracts

9.2.1 Upon execution of the Contract, the Contractor shall furnish the City, in writing, the names of person(s) or entities proposed by the Contractor to act as a Subcontractor on the Contract and stipulate the portion / percentage of Work and /or Services and /or Deliverables for which the Subcontractor shall be responsible. The City shall promptly reply to the Contractor, in writing, stating any objections the City may have to such proposed Subcontractor(s). The Contractor shall not enter into a Subcontract with a proposed Subcontractor with reference to whom the City has made a timely objection. The Contractor shall not be required to Subcontract with any party to whom the Contractor has an objection.

9.2.2 All subcontracts shall afford the Contractor rights against the Subcontractor which correspond to those rights afforded to the City against the Contractor herein, including those rights afforded to the City by Subparagraph 12.2.1 below.

ARTICLE X CHANGES IN THE WORK / SERVICE(S) / DELIVERABLES

10.1 Changes Permitted

10.1.1 Changes in the Work and / or Service(s) and /or Deliverables within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered, by Change Order and / or Change Notice, without invalidating this Contract.

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

10.1.2 Changes in the Work and / or Service(s) and / or Deliverables shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly to incorporate such changes within the Scope of Work and / or the Scope of Services to be performed.

10.2 Change Order / Change Notice Defined

10.2.1 Change Order / Change Notice shall mean a written order to the Contractor executed by the City and the Assigned Representative(s) / Contract Administrator(s), issued after execution of this Contract, authorizing and directing a change in the Work and / or Service(s) and / or Deliverables and / or an adjustment in the Contract Price and / or the Contract Time, or any combination thereof. The Contract Terms and Conditions and the Contract Price and the Contract Time may be changed only by Change Order / Change Notice. For the purpose of this Contract the terms Change Order and Change Notice shall be interchangeable and shall be understood to have the same meaning.

10.3 Changes in the Contract Price

10.3.1 Any change in the Contract Price resulting from a Change Order / Change Notice shall be determined as follows: (a) by mutual agreement between the City and the Contractor as evidenced by (1) the change in the Contract Price being set forth in the Change Order, (2) such change in the Contract Price, together with any conditions or requirements related thereto, being initialed by both parties and (3) the Contractor's execution of the Change Order, or (b) if no mutual agreement occurs between the City and the Contractor, then, as provided in Subparagraph 10.3.2 below.

10.3.2 If no mutual agreement occurs between the City and the Contractor as contemplated in Subparagraph 10.3.1 above, the change in the Contract Price, if any, shall then be determined by the Assigned Representative(s) / Contract Administrator(s) on the basis of the reasonable expenditures or savings of those performing, deleting, or revising the Work and / or Service(s) and / or Deliverables attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for Contractor overhead and profit. In such case, the Contractor shall present, in such form and with such content as the City and / or the Assigned Representative(s) / Contract Administrator(s) requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order / Change Notice. Reasonable expenditures or savings shall be limited to the following: reasonable costs of materials, supplies, or equipment including delivery costs; reasonable costs of labor, including social security, unemployment insurance, and fringe benefits as required by agreement and / or custom, and workers' compensation insurance; reasonable rental costs of machinery and equipment exclusive of hand tools whether rented from the Contractor or others; reasonable costs of premiums for all bonds and insurance, permit fees, and sales, use or other taxes related to the Work and / or Service(s) and / or Deliverables. In the event the Contractor provides the Work and / or Service(s) and / or Deliverables required by Change Order / Change Notice with its own forces, and not the forces of a subcontractor, the overhead and profit due the Contractor for such work / service(s) / deliverable(s) shall be no more than ten percent (10%). In the event the Change Order / Change Notice Work and / or Service(s) and / or Deliverables is provided by one or more Subcontractors, the Contractor's overhead and profit shall be five percent (5%). In no event shall any expenditure or savings associated with the Contractor's office(s) or other overhead expenses not directly and solely associated with the provision of the Work and / or Service(s) and / or Deliverables be included in any change in the Contract Price. Pending final determination of reasonable expenditures or savings to the City, requested payments shall be made to the Contractor upon the signature of the Assigned Representative(s) / Contract Administrator(s) on the submission of the Contractor's Request for Payment (Invoice).

10.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order / Change Notice that application of such unit prices to the quantities of the Work and / or Service(s) and / or Deliverables proposed shall cause substantial inequity to the City or to the Contractor, the applicable unit prices shall be equitably adjusted accordingly.

10.4 Effect of Executed Change Order / Change Notice

10.4.1 The execution of a Change Order / Change Notice by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work and / or Service(s) and / or Deliverables, this Contract as thus amended, the Contract Price and the Contract Time. The Contractor, by executing the Change Order / Change Notice, waives and forever releases any claim against the City for

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

additional time or compensation for matters relating to or arising out of and / or resulting from the Work and / or Service(s) and / or Deliverables included within or affected by the executed Change Order / Change Notice.

10.5 Notice to Surety; Surety's Consent

10.5.1 The Contractor shall notify and obtain the consent and approval of the Contractor's surety with reference to all Change Orders / Change Notices if such notice, consent or approval is required by the Contractor's surety or by law. The Contractor's execution of the Change Order / Change Notice shall constitute the Contractor's warranty to the City that the surety has been notified of and consents to, such Change Order / Change Notice and the surety shall be conclusively deemed to have been notified of such Change Order / Change Notice and to have expressly consented thereto.

ARTICLE XI

APPROVAL OF AND CORRECTING REJECTED WORK / SERVICE(S) / DELIVERABLES

11.1 Approval of Work / Service(s) / Deliverables(s)

11.1.1 If any Work and / or Service(s) and / or Deliverables are not requested and / or provided by the Contractor contrary to the request(s) of the Assigned Representative(s) / Contract Administrator(s), or contrary to any provision of this Contract, they shall be subject to the approval of and / or inspection by the Assigned Representative / Contract Administrator(s). If approval of the Assigned Representative(s) / Contract Administrator(s) is not / cannot be obtained, Request(s) for Payment (Invoices) for the Work and / or Service(s) and / or Deliverables that were provided without request and / or contrary to request shall not be submitted by the Contractor, nor shall the City remit payment for such Work and / or Service(s) and / or Deliverable(s).

11.2 Correcting Unapproved / Nonconforming Work / Service(s) / Deliverables

11.2.1 The Contractor shall immediately proceed to correct Work and / or Service(s) and / or Deliverable(s) rejected by the Assigned Representative(s) / Contract Administrator(s) as sub-standard, defective, incorrect, or failing to conform to this Contract. The Contractor shall pay any and all costs and expenses associated with correcting and re-performing such rejected Work and / or Service(s) and / or resubmitting such rejected Deliverable(s) and shall only receive payment for Work and / or Service(s) and / or Deliverable(s) that meet or exceed the standards / specifications established by the Contract.

11.2.2 If within one (1) calendar year after completion of the Work and / or Service(s) and / or Deliverable(s), if any of the Work and / or Service(s) and / or Deliverable(s) are found to be sub-standard, defective, incorrect, or not in accordance with this Contract, the Contractor shall correct the Work and / or Service(s) and / or Deliverable(s) promptly upon receipt of written notice from the City. This obligation shall survive final payment by the City and termination of this Contract.

11.2.3 Nothing contained in this Paragraph 11.2 shall establish any period of limitation with respect to other obligations which the Contractor has under this Contract or any other Contract. Establishment of the one (1) calendar year time period in Subparagraph 11.2.2 relates only to the duty of the Contractor to specifically correct Work and / or Service(s) and / or Deliverable(s) pertaining to this Contract as requested therein.

11.3 City May Accept Nonconforming Work / Service(s) / Deliverable(s)

11.3.1 After disclosure and / or discovery, if the City chooses to accept sub-standard, defective, incorrect, or nonconforming Work and / or Service(s) and / or Deliverable(s) from the Contractor, and not require correction and / or resubmission, the City may do so. In such an event, the Contractor may submit a Request for Payment (Invoice) at the usual and customary price for such Work and / or Service(s) and / or Deliverable(s), and the City shall honor it.

ARTICLE XII

CONTRACT TERMINATION

12.1 Termination of Work / Service(s) / Deliverables by the Contractor

12.1.1 If the Work and / or Service(s) and / or Deliverable(s) are stopped for a period of ninety (90) days, or more, by an order of any court or other public authority, or as a result of an act of the Government, through no fault of the Contractor or any person or entity working directly or indirectly for the Contractor, the Contractor

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

may, upon ten (10) business days' written notice to the City and the Assigned Representative(s) / Contract Administrator(s), terminate performance under this Contract and recover from the City payment for the actual reasonable expenditures of the Contractor (as limited in Subparagraph 10.3.2 above) for all Work and / or Service(s) and / or Deliverable(s) executed and for materials, equipment, tools, supplies, and machinery actually purchased and / or rented solely for the purpose of providing the Work and / or Service(s) and / or Deliverable(s), less any return to source and / or salvage and / or resale value of any such items.

12.1.2 If the City shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of twenty-one (21) business days after receiving written notice from the Contractor of its intent to terminate hereunder, the Contractor may terminate performance under this Contract by written notice to the Assigned Representative(s) / Contract Administrator(s) and the City. In such event, the Contractor shall be entitled to recover from the City as though the City had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 12.2.1 hereunder.

12.2 Termination of Work / Service(s) / Deliverables by the City

12.2.1 Termination For Convenience

12.2.1.1 The City may for any reason whatsoever terminate performance under this Contract by the Contractor for convenience. The City shall give written notice of such termination to the Contractor specifying specifically when termination shall become effective.

12.2.1.2 The Contractor shall incur no further obligations in connection with the Work and / or Service(s) and / or Deliverable(s) and the Contractor shall stop providing Work and / or Service(s) and / or Deliverable(s) when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts relating to, or supporting the Work and / or Service(s) and / or Deliverable(s). The Contractor shall promptly settle the liabilities and claims arising out of the termination of subcontracts and orders. The City may direct the Contractor to assign the Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee, if it is so desired.

12.2.1.3 The Contractor shall transfer the title of and deliver to the City such completed or partially completed Work and / or Service(s) and / or Deliverable(s) and any art work, camera-ready copy, materials, data, information, records, equipment, parts, fixtures, and /or other Contract rights transferrable to the City as stipulated in the Contract or **Exhibit A**.

12.2.1.4

(a) The Contractor shall submit a termination claim to the City and the Assigned Representative(s) / Contract Administrator(s) specifying the amounts due because of the termination for convenience together with costs, pricing, or other data required by the City. If the Contractor fails to file a termination claim within ninety (90) calendar days from the effective date of termination, the City shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.

(b) The City and the Contractor may agree to the compensation, if any, due to the Contractor hereunder.

(c) Absent agreement to the amount due to the Contractor, the City shall pay the Contractor the following amounts:

(i) Contract prices for Work and / or Service(s) and / or Deliverable(s) completed and accepted under this Contract;

(ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work and / or Service(s) and / or Deliverable(s), and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided however, that if it appears that the Contractor would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

anticipated rate of loss, if any;

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 12.2.1.2 of this Paragraph. These costs shall not include amounts paid in accordance with other provisions hereof.

The total sum to be paid the Contractor under this Subparagraph 12.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made for Work and / or Service(s) and / or Deliverable(s) provided, and shall, in no event, include duplication of any payments.

12.2.2 Termination For Cause

12.2.2.1 If the Contractor persistently or repeatedly refuses or fails to provide the Work and / or Service(s) and / or Deliverable(s) in a timely manner, supply enough properly skilled workers, supervisory personnel, or proper equipment or materials, or if it fails to make prompt payment to Subcontractors or for materials or labor, or persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise is guilty of a substantial violation of a material provision of this Contract, then the City may, by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the Contractor and may provide the Work and / or Service(s) and / or Deliverable(s) by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any payment from the City for incomplete and / or partially completed Work and / or Service(s) and / or Deliverable(s).

12.2.2.2 If the costs to the City to provide the Work and / or Service(s) and / or Deliverable(s) the Contractor refused or failed to provide, from whatever source the City deems appropriate, exceeds the unpaid balance of the anticipated Contract Price, the Contractor shall pay the difference between the unpaid balance and the actual costs to provide the Work and / or Service(s) and / or Deliverable(s) to the City. This obligation for payment shall survive the termination of the Contract.

12.2.2.3 In the event the employment of the Contractor is terminated by the City for cause pursuant to Subparagraph 12.2.2 and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 12.2.1 and the provisions of Subparagraph 12.2.1 shall apply.

ARTICLE XIII

CITY'S RIGHT TO SUSPEND CONTRACTOR'S PERFORMANCE

13.1 The City shall have the right at any time to direct the Contractor to suspend its performance, or any designated part thereof, for any reason whatsoever, with or without reason, for a cumulative period of up to sixty (60) calendar days. If any such suspension is directed by the City, the Contractor shall immediately comply with same.

ARTICLE XIV INSURANCE

14.1 Insurance Requirements.

14.1.1 The limits of liability for the insurance required by the General Conditions shall provide coverage for not less than the following amounts or greater where required by laws and regulations or **Exhibit A**:

Workers' Compensation	
State and Other	Statutory
Employer's Liability	
Each Accident	\$100,000
Disease Policy Limit	\$500,000
Disease - Each Employee	\$100,000
Commercial General Liability	
General Aggregate	
Each Occurrence	\$1,000,000
Annual Aggregate	\$1,000,000

CITY OF EAST POINT, GEORGIA, CONTRACT TERMS AND CONDITIONS

Products and Completed Operations	
Each Occurrence	\$1,000,000
Annual Aggregate	\$1,000,000
Personal Injury	
Annual Aggregate	\$1,000,000
Automobile Liability (any vehicle)	
Bodily Injury	
Each Person	\$1,000,000
Each Occurrence	\$1,000,000
Property Damage	
Each Occurrence	\$1,000,000
Property Insurance	
Fire and Extended Coverage including an "All-risk" Builder's risk form	Not Required

ARTICLE XV **MISCELLANEOUS**

15.1 Governing Law

15.1.1 The Contract shall be governed by the law of the State of Georgia.

15.2 Successors and Assigns

15.2.1 The City and Contractor bind themselves, their successors, assigns and legal representatives to the other party hereto and to successors, assigns and legal representatives of such other party in respect to covenants, agreements, and obligations contained in this Contract. The Contractor shall not assign this Contract without the expressed written consent of the City.

15.3 Surety Bonds

15.3.1 If so required by the City and stipulated in **Exhibit A**, the Contractor shall furnish separate non-revocable surety bonds, a bid bond and / or a performance bond and / or a payment bond and / or a maintenance bond to the City. Each bond shall set forth a penal sum of no less than the amount specified for such bonds in **Exhibit A**. Each bond furnished by the Contractor shall incorporate by reference the terms of this Contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order / Change Notice executed by the Contractor, the penal sums of the performance bond and the payment bond and the maintenance bond, if required to be provided, shall be deemed to increase by a like amount. The non-revocable surety bond, bid bond and / or performance bond and / or payment bond and / or maintenance bond furnished by the Contractor shall be in forms suitable to the City and shall be executed by a surety, or sureties, reasonably suitable to the City.

15.3.2 The City shall only accept surety bonds provided by a licensed surety with authority to conduct business in the State of Georgia. The City shall not accept cash or currency as surety. The City shall not accept cashier's check, personal checks, company checks or other forms of promissory notes or financial debt instruments as surety.