



## ***SAMPLE SERVICE AGREEMENT***

### **STANDARD SERVICES AGREEMENT [NOT FOR USE FOR CONSTRUCTION]**

**PURCHASE ORDER NO.** \_\_\_\_\_

**THIS AGREEMENT** is by and between **FORSYTH COUNTY**, a political subdivision of the State of Georgia, acting by and through its governing authority, the Forsyth County Board of Commissioners ("County"), and \_\_\_\_\_ [insert full legal name of Contractor], a \_\_\_\_\_ [insert State where Contractor entity was formed (e.g., Georgia) and type of entity (e.g., corporation, limited liability company, partnership, etc.)], ("Contractor"), collectively referred to as the "Parties."

#### **WITNESSETH THAT:**

**WHEREAS**, the County desires to retain Contractor to provide certain services generally described as \_\_\_\_\_ [insert general description of services]; and

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

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

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

**NOW, THEREFORE**, for and in consideration of the mutual promises, the public purposes, and the acknowledgements and agreements contained herein, together with other good and adequate consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

#### **I. SCOPE OF SERVICES AND TERMINATION DATE**

**A. Agreement.** The Agreement shall consist of the this Standard Services Agreement and each of the Exhibits hereto, including:

- Exhibit A – County Solicitation Documents
- Exhibit B – Contractor Response
- Exhibit C – Contractor Affidavit
- Exhibit D – Subcontractor Affidavit
- Exhibit E – Key Personnel

**B. Project Description.** The Project is described in Exhibits A and B, attached hereto and incorporated herein by reference.

C. **The Work.** The Work to be completed under this Agreement (the “Work”) consists of the services described in Exhibits A and B, attached hereto and incorporated herein by reference.

D. **Term of Agreement.**

- (1) Contractor warrants and represents that it will perform its services in a prompt and timely manner, which shall not impose delays on the progress of the Work. The Work shall begin \_\_\_\_\_ [insert date to begin Work], and the Work shall be completed on or before \_\_\_\_\_ [insert date Work must be completed or will end] (“Initial Term”). As required by O.C.G.A. § 36-60-13, this Agreement shall terminate absolutely and without further obligation on the part of the County on December 31 each calendar year of the Initial Term and any Renewal Term (defined below), and further, that this Agreement shall automatically renew on January 1 of each subsequent calendar year during such term absent the County’s provision of written notice of non-renewal to Contractor at least five (5) days prior to the end of the then current calendar year. Further, this Agreement shall terminate immediately and absolutely at any such time as there is no appropriate and otherwise unobligated funds available to satisfy the County’s obligations under this Agreement. Title to any supplies, materials, equipment, or other personal property shall remain in Contractor until fully paid for by the County.
- (2) The pricing provided in this Agreement must remain firm for the Initial Term. This Agreement may be renewed for additional one (1) year period(s) (each a “Renewal Term”), as specified and authorized in Exhibit A (attached hereto and incorporated herein by reference); provided that fees must remain firm (or be subject to a pre-approved increase not to exceed the annual cost price index (CPI-U)), service is satisfactory, both Parties are willing to renew, and renewal is approved by the Forsyth County Board of Commissioners. Prior to each Renewal Term, any increases in renewal rates will be evaluated and compared to the actual rate of inflation experienced, and will thereby remain subject to negotiation.

## II. WORK CHANGES

The County reserves the right to order changes in the Work to be performed under this Agreement by altering, adding to, or deducting from the Work. All such changes shall be incorporated in written change orders executed by the County authorizing and directing a change in services. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time and shall be delivered to Contractor. Contractor must submit any claim regarding such adjustment in price or completion time in writing within thirty (30) days of receiving notice of the change order. If the Parties cannot reach an agreement on the terms for performing the changed work within a reasonable time to avoid delay or other unfavorable impacts as determined by the County in its sole discretion, the County shall have the right to determine reasonable terms, and the Contractor shall proceed with the changed work. No claim for additional compensation or extension of time shall be recognized, unless contained in a written change order duly executed on behalf of the County.

## III. COMPENSATION AND METHOD OF PAYMENT

**A.** County agrees to pay the Contractor for the Work performed and costs incurred by Contractor upon certification by the County that the Work was actually performed and costs actually incurred in accordance with the Agreement. Compensation for Work performed (and reimbursement for costs incurred, where such reimbursement is specifically authorized in Exhibits A and B) shall be paid to the Contractor upon receipt and approval of the County of invoices, setting forth in detail the services performed and costs incurred, along with all supporting documents requested by the County to process the invoice. Invoices must include the Purchase Order Number provided above and an itemized statement of the Work completed (including a breakdown of labor hours and material used, as applicable). (**NOTE:** The County is exempt from Federal Excise Tax and Georgia Sales and Use Tax.) No payment will be made for Work performed until the Contractor furnishes the County with an invoice meeting these requirements.

Invoices shall be submitted on a monthly basis, and such invoices shall reflect costs incurred versus costs budgeted. Any material deviations from the Work described in this Agreement shall be clearly communicated to the County *before charges are incurred* and shall be handled through change orders as described in Section II above. The County shall pay the Contractor within thirty (30) days after approval of the invoice by County staff.

**B.** The total amount paid under this Agreement as compensation for Work performed and reimbursement for costs incurred shall not, in any case, exceed \_\_\_\_\_ **[insert maximum costs for Work]**, except as outlined in Section II above, and the Contractor represents that this amount is sufficient to perform all of the Work set forth in and contemplated by this Agreement. The compensation for Work performed (and reimbursement for costs incurred, if specifically authorized) shall be as specified in Exhibits A and B, attached hereto and incorporated herein by reference.

**C.** The compensation, as set forth in Exhibits A and B, shall be received by Contractor as payment in full for Work done. All labor, materials, and equipment will be paid as bid. There will be no percentage mark-up other than as stated in the Bid Pricing Schedule, and only for goods/services applicable to the Work.

#### **IV. COVENANTS OF CONTRACTOR**

**A. Expertise of Contractor; Licenses, Certification and Permits.** Contractor accepts the relationship of trust and confidence established between it and the County, recognizing that the County's intention and purpose in entering into this Agreement is to engage an entity with the requisite capacity, experience, and skill and judgment to provide the Work in pursuit of the timely and competent completion of the Work undertaken by Contractor under this Agreement. The Contractor shall employ only persons duly qualified in the appropriate area of expertise (as applicable) to perform the Work described in this Agreement.

The Contractor covenants and declares that it is properly equipped, organized and financed to perform the Work and that it has obtained all diplomas, certificates, licenses, permits or the like (if any) required of the Contractor by any and all national, state, regional, county, or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the Work contracted for under this Agreement. All Work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of care and quality ordinarily expected of an entity performing the type of Work contemplated herein. Any additional work or costs incurred as a result of error and/or omission by Contractor as a result of not meeting any applicable standard of care or quality (if any) will be provided by Contractor at no additional cost to the County. This

provision shall survive termination of this Agreement.

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

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

**D. Responsibility of Contractor and Indemnification of County.** The Contractor covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. The Contractor shall bear all losses and damages directly or indirectly resulting to it and/or the County on account of the performance or character of the Work rendered pursuant to this Agreement. Contractor shall defend, indemnify and hold harmless the County and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents and volunteers (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, costs, expenses and liability of any kind whatsoever, including but not limited to attorney's fees and costs of defense ("Liabilities"), which may arise from or be the result of alleged willful, negligent or tortious conduct arising out of the Work, performance of contracted services, or operations by the Contractor, any subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor or anyone for whose acts the Contractor or subcontractor may be liable, regardless of whether or not the act or omission is caused in part by a party indemnified hereunder. This indemnity obligation does not include Liabilities caused by or resulting from the sole negligence of an Indemnified Party. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this provision. In any and all claims against an Indemnified Party, by any employee of the Contractor, its subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor or anyone for whose acts the Contractor or subcontractor may be liable, the indemnification obligation set forth in this provision shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend, and hold harmless the Indemnified Party(ies) shall survive expiration or termination of this Agreement, provided that the claims are based upon or arise out of actions or omissions that occurred during the performance of this Agreement.

**E. Independent Contractor.** Contractor hereby covenants and declares that it is

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

**F. Insurance.** The Contractor shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Contractor, its agents, representatives, employees or subcontractors, including but not limited to commercial general liability coverage and workers' compensation coverage. Contractor shall maintain insurance policies with coverage and limits no less than that specified in Exhibits A and B, attached hereto and incorporated herein by reference. All policies shall be subject to approval by the County to form and content.

The County shall be named as an additional insured and loss payee on all policies required by this Agreement, except the County need not be named as an additional insured and loss payee on any Professional Liability policy or Workers' Compensation policy. Any liability insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to the County. The insurer providing Workers' Compensation Coverage will agree to waive all rights of subrogation against the Insured Parties for losses arising from Work performed by the Contractor for the County. Further, each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be canceled or materially reduced in coverage except after thirty (30) days prior written notice has been given to the County. The County reserves the right to accept alternate notice terms and provisions, provided they meet the minimum requirements under Georgia law.

Contractor shall furnish the County with certificates of insurance and endorsements to the policies evidencing all coverage required by this Agreement. The certificates of insurance and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf, unless alternate sufficient evidence of their validity and incorporation into the policy is provided. The certificates of insurance and required endorsements shall be furnished on a form utilized by Contractor's insurer in its normal course of business. The County reserves the right to require complete, certified copies of all required insurance policies at any time. The Contractor shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

**G. Employment of Unauthorized Aliens Prohibited – E-Verify Affidavit.**

Pursuant to O.C.G.A. § 13-10-91, the County shall not enter into a contract for the physical performance of services unless:

- (1) the Contractor shall provide evidence on County-provided forms, attached hereto as Exhibits "C" and "D" (affidavits regarding compliance with the E-Verify program to be sworn under oath under criminal penalty of false swearing pursuant to O.C.G.A. § 16-10-71), that it and Contractor's subcontractors have registered with, are authorized to use and use the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91, and that they will continue to use the federal work authorization program throughout the contract period, **or**
- (2) the Contractor provides evidence that it is not required to provide an affidavit because it is an *individual* (not a company) licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing.

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

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

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

Contractor agrees that the employee-number category designated below is applicable to the Contractor. [Information only required if a contractor affidavit is required pursuant to O.C.G.A. § 13-10-91.]

- \_\_\_ 500 or more employees.
- \_\_\_ 100 or more employees.
- \_\_\_ Fewer than 100 employees.

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

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

**H. Records, Reports and Audits**

(1) Records:

- (a) Books, records, documents, account ledgers, data bases, and similar materials relating to the Work performed for the County under this Agreement ("Records") shall be established and maintained by the Contractor in accordance with requirements prescribed by the County and applicable law with respect to all matters covered by this Agreement. Except as otherwise authorized or required, such Records shall be maintained for at least three (3) years from the date that final payment is made to Contractor by County under this Agreement. Furthermore, Records that are the subject of audit findings shall be retained for three (3) years or until such audit findings have been resolved, whichever is later.
- (b) All costs claimed or anticipated to be incurred in the performance of this Agreement shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

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

(3) Audits and Inspections: At any time during normal business hours and as often as the County may deem necessary, Contractor shall make available to the County or County's representative(s) for examination all Records with respect to all matters covered by this Agreement. The Contractor will permit the County or County's representative(s) to audit, examine, and make excerpts or transcripts from such Records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and/or

data relating to all matters covered by this Agreement.

**I. Conflicts of Interest.** Contractor agrees that it shall not engage in any activity or conduct that would result in a violation of the Forsyth County Code of Ethics.

**J. Information Received from County; Confidentiality.** Contractor shall be required to provide immediate written notice to the County if Contractor knows or reasonably should know that any information provided by the County is erroneous, inconsistent, or otherwise problematic. Contractor acknowledges that it may learn or receive confidential information of the County and that it will protect the confidentiality of any such confidential information and will require any of its subcontractors, consultants, and/or staff to likewise protect such confidential information. Contractor personnel shall be instructed that they shall not remove any County documents or materials and that they shall not disclose any confidential information to any persons other than County personnel, unless County provides written authorization. The Contractor agrees that confidential information it learns or receives or such reports, information, opinions or conclusions that Contractor creates under this Agreement shall not be made available to, or discussed with, any individual or organization, including the news media, without prior written approval of the County. The Contractor shall exercise reasonable precautions to prevent the unauthorized disclosure and use of County information whether specifically deemed confidential or not.

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

**K. Key Personnel.** All of the individuals identified in Exhibit "E" are necessary for the successful completion of the Work due to their unique expertise and depth and breadth of experience. There shall be no change in Contractor's Project Manager or members of the project team, as listed in Exhibit "E", without written approval of the County. Contractor recognizes that the composition of this team was instrumental in the County's decision to award the Work to Contractor and that compelling reasons for substituting these individuals must be demonstrated for the County's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Contractor's obligations under this Agreement and shall be grounds for termination. Contractor shall not subcontract with any third party for the performance of any portion of the Work without the prior written consent of the County. Contractor shall be solely responsible for any such subcontractors in terms of performance and compensation.

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

**M. Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the Work to be performed by the Contractor ("Materials") shall be the property of the County, and the County shall be entitled to full access and copies of all such Materials. The



County shall have the unrestricted authorization to publicize, disclose, distribute, and otherwise use, in whole or in part, any Materials prepared under this Agreement without according credit of authorship. Any such Materials remaining in the hands of the Contractor or subcontractor upon completion or termination of the Work shall be delivered immediately to the County; provided that Contractor may retain a copy of any deliverables for its records. The Contractor assumes all risk of loss, damage or destruction of or to such Materials. If any Materials are lost, damaged or destroyed before final delivery to the County, the Contractor shall replace them at its own expense. Any and all copyrightable subject matter in all Materials is hereby assigned to the County, and the Contractor agrees to execute any additional documents that may be necessary to evidence such assignment.

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

## **V. PERFORMANCE STANDARDS; TERMINATION**

**A.** The County may evaluate Contractor's performance on a monthly basis. If requirements are not being met, Forsyth County Procurement Department will notify the Contractor, in writing, identifying deficiencies (including but not limited to improper substitutions, inadequate delivery schedule, or poor workmanship). Contractor must promptly provide a written response to the County detailing how the identified deficiencies will be remedied, and such deficiencies must be remedied within thirty (30) days of County's notice of deficiencies, unless such cure period is extended in writing by the County. If the deficiencies are not remedied within the thirty (30) day cure period, the County may immediately terminate this Agreement with no further obligation or liability to the Contractor.

**B.** If the County determines, under any circumstance, that Contractor has acted in a grossly negligent manner in the performance of its obligations hereunder, said determination being at the sole discretion of the County, then, and in that event, the County may immediately terminate this Agreement with no further obligation or liability to the Contractor.

**C.** The County shall have the right to terminate this Agreement for convenience by providing written notice thereof at least five (5) calendar days in advance of the termination date. The Contractor shall have no right to terminate this Agreement prior to completion of the Work, except in the event of the County's failure to pay the Contractor within thirty (30) days of Contractor providing the County with a proper notice of a delinquent payment and an opportunity to cure.

**D.** Upon termination, the County shall provide for payment to the Contractor for services rendered and expenses incurred prior to the termination date.

**E.** Upon termination, the Contractor shall: (1) promptly discontinue all services, cancel as many outstanding obligations as possible, and not incur any new obligations,

unless the notice directs otherwise; and (2) promptly deliver to the County all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Contractor in performing this Agreement, whether completed or in process, in the form specified by the County.

F. The rights and remedies of the County and the Contractor provided in this Article are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

## VI. MISCELLANEOUS

A. **Entire Agreement.** This Agreement, including all exhibits hereto, constitutes the complete agreement between the Parties and supersedes any and all other agreements, either oral or in writing, between the Parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. In the event of a conflict in the terms of this Agreement and/or the exhibits attached hereto, the terms most beneficial to the County shall govern. This Agreement may be modified or amended only by a written change order (as provided in Section II above) or other document signed by representatives of both Parties with appropriate authorization.

B. **Successors and Assigns.** Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective Parties, provided that no Party may assign this Agreement without prior written approval of the other Party.

C. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Georgia will control. Any action or suit related to this Agreement shall be brought in the Superior Court of Forsyth County, Georgia, and Contractor submits to the jurisdiction and venue of such court.

D. **Captions and Severability.** The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed illegal, invalid or unenforceable by a court of competent jurisdiction, the offending portion of the Agreement should be severed, and the remainder of this Agreement shall remain in full force and effect to the extent possible, as the Parties declare they would have agreed to the remaining parts of this Agreement if they had known that the severed provisions or portions thereof would be determined illegal, invalid or unenforceable.

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

F. **Notices.** All other notices, as required by this Agreement, shall be in writing and shall be deemed received, and shall be effective, when: (1) personally delivered to the individual identified below where a signed receipt is given, or (2) on the third day after the postmark date when mailed by registered mail, postage prepaid, return receipt requested, or (3) upon actual delivery when sent via national overnight commercial carrier to the party at

the address given below, or at a substitute address previously furnished to the other party by written notice in accordance herewith:

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

Attn: \_\_\_\_\_  
Forsyth County, Georgia

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

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

Attn: \_\_\_\_\_

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

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

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

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

**J. Counterparts; Agreement Construction and Interpretation.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either party by facsimile is binding upon the other party as an original. The Parties shall treat a photocopy of such facsimile as a duplicate original. Contractor represents that it has reviewed and become familiar with this Agreement and has notified the County of any discrepancies, conflicts or errors herein. The Parties hereto agree that, if an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of the Agreement.

**K. Force Majeure.** Neither the County nor Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (a) any cause beyond their respective reasonable control; (b) any act of God; (c) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (d) earthquake, fire, explosion or flood; (e) strike or labor

dispute, excluding strikes or labor disputes by employees and/or agents of CONTRACTOR; (f) delay or failure to act by any governmental or military authority; or (g) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts, and all other obligations shall remain intact.

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

**IN WITNESS WHEREOF** the County and the Contractor have executed this Agreement, which is effective as of last signature below.

[SIGNATURES ON FOLLOWING PAGE]

**CONTRACTOR:**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_ (circle one)  
President/Vice President (Corporation)  
General Partner (Partnership/Limited  
Partnership)  
Member/Manager (LLC)  
Date: \_\_\_\_\_

[CORPORATE SEAL]  
(Required if corporation)

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

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
(Assistant) Corporate Secretary (required if corporation)

**FORSYTH COUNTY, GEORGIA**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Kevin Tanner, County Manager  
Date: \_\_\_\_\_

[COUNTY SEAL]

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

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