



FIXED PRICE AGREEMENT BETWEEN

Brannon Road Sidewalk

Project No. PEB38

P.O. No. (will be assigned)

This Agreement is made by and between Forsyth County, a political subdivision of the State of Georgia, (hereinafter referred to as the "Owner") and **DAF Concrete, Inc.** (hereinafter referred to as the "Contractor") under seal for all work called for in that certain **Forsyth County Bid 22-009-3150 Brannon Road Sidewalk Project No. PEB38**. All work to be in accordance with Forsyth County Specifications and Standards, as well as State of Georgia Department of Transportation Specifications.

ARTICLE 1

THE CONTRACT AND THE CONTRACT DOCUMENTS

1.1 The Contract

The Contract between the Owner and the Contractor, of which this Agreement is a part, consists of the Contract 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 and General Conditions (including those set forth in the Owner's invitation to bid and addenda on the project), Contractor's Bid Schedule, the Drawings, all Change Orders and Field Orders issued hereafter, and any other amendments hereto executed by the parties hereafter. Documents not enumerated in this paragraph are not Contract Documents and do not form part of this Contract.

1.3 Entire Agreement

1.3.1 This Contract, together with the Contractor's payment bond for the Project, constitutes the entire and exclusive agreement between the Owner and the Contractor with reference to the Project.

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 Owner 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. Any work that may be required implied or inferred by the Contract Documents, or any one or more of them, as necessary to produce the intended result shall be provided by the Contractor for the Contract Price.
- 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.

1.6 Ownership of Contract Documents

- 1.6.1 The Contract Documents, and each of them, shall remain the property of the Owner. The Contractor shall have the right to keep one 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 Owner's prior written authorization.

ARTICLE II THE WORK

- 2.1 The Contractor shall perform all of the Work required, implied or reasonably inferable from, this Contract, all in accordance with plans, specifications and drawings of the Project and in accordance with the bid and specifications as outlined in **Bid No. 22-009-3150 Brannon Road Sidewalk Project No. PEB38**.
- 2.2 The term "Work" 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 portion of the Project; furnishing of any required bonds and insurance; provision of required certifications and documentation of associated testing results; provision or furnishing of labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, permits and licenses required of the Contractor, fuel, heat, light, cooling and all other utilities as required by this Contract. The Work to be performed by the Contractor is generally described as follows:
- a) To provide all equipment, materials, and labor for the construction of Brannon Road Sidewalk as detailed in Bid Specifications, Plans, Documents in **Bid No. 22-009-3150 Brannon Road Sidewalk Project No. PEB38**.

ARTICLE III

CONTRACT TIME

3.1 Time and Liquidated Damages

3.1.1 The Contractor shall complete the Work as follows:

Substantial Completion: 180 calendar days (6 months) of issuance of Notice to Proceed.

Final Completion: 225 calendar days of issuance of Notice to Proceed (45 days from Substantial Completion)

3.1.2 The Contractor shall pay the Owner the following sum per day for each and every calendar day of delay not excused by Section 8.2.5.1 in achieving Substantial Completion, as defined below, beyond the time set forth herein for completion of the Work:

<u>Contract Price</u>	<u>Amount Per Day</u>
Less than \$1,000,000.00	\$500.00
\$1,000,000.00 - \$10,000,000.00	\$1,000.00
More than \$10,000,000.00	\$1,500.00

The Contractor shall pay the Owner the following sum per day for each and every calendar day of delay not excused by Section 8.2.5.1 in achieving final completion beyond the time set forth herein for completion of the Punch List Items, as defined below:

<u>Contract Price</u>	<u>Amount Per Day</u>
Less than \$1,000,000.00	\$250.00
\$1,000,000.00 - \$10,000,000.00	\$500.00
More than \$10,000,000.00	\$750.00

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 Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Contractor overcomes the delay in achieving completion, or any part there, for which the Owner has withheld payment, the Owner shall promptly

release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

3.2 Substantial Completion

3.2.1. Substantial Completion" shall mean that state in the progression of the Work when the Work is sufficiently complete in accordance with this Contract that the Owner can enjoy beneficial use or occupancy of the Work and can utilize the Work for its intended purpose such that any remaining Work includes only Punch List Items that can be completed or corrected within the following forty-five (45) calendar days, weather permitting. Substantial Completion shall require that all vehicular lanes and pedestrian and bicycle routes be fully surfaced, marked, signalized, and open to the public. "Punch List Item" means a portion or element of the Work whose lack of completion does not interfere with complete use of and access to the Project, as determined by the Owner in its reasonable discretion.

3.2.2 The Contractor shall provide a written request for Substantial Completion and request for inspection to the Forsyth County Director of Engineering, or his designee (the "Engineer"). Thereupon, the Owner shall promptly inspect the Work and shall notify the Contractor in writing either of its acceptance or rejection of the request for Substantial Completion. Where the Owner rejects the request for Substantial Completion, the Owner shall set forth in writing those portions or elements of the Work which the Owner, in its reasonable discretion, has determined are not substantially complete. Where the Owner accepts the request for Substantial Completion, the Owner shall thereafter issue a written notice of Punch List Items to be completed or corrected within forty-five (45) calendar days of the notice, unless the Owner specifies a longer time period in its reasonable discretion. The Owner may notify the Contractor of additional Punch List Items which are identified after the original notice of Punch List Items. The Owner may, in its reasonable discretion and where warranted, provide additional time to complete newly identified Punch List Items. The Owner may decline to provide additional time where the Contractor has failed to complete any previous Punch List Items within the time specified, and the delay is not excused by Section 8.2.5.1.

3.3 Time is of the Essence

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

ARTICLE IV
CONTRACT PRICE

4.1 The Contract Price

The Owner shall pay, and the Contractor shall accept, as full and complete payment for all of the work required herein, the fixed sum of **\$740,160.00**. Said fixed sum consists of furnishing all materials, labor, and equipment necessary to complete the project as detailed in bid documents. The sum set for in this Paragraph 4.1.1 shall constitute the Contract Price which shall not be modified except by Change Order as provided in this Contract. Actual quantities used for the subject Work will be verified and paid using unit pricing as detailed in the Bid Documents, unless stipulated as "lump sum".

ARTICLE V
PAYMENT OF THE CONTRACT PRICE

5.1 Payment Procedure

5.1.1 Based upon the Contractor's applications and certificates for payment issued to the Owner, Owner shall make progress payments to the Contractor on account of the Contract Price.

5.1.2 On or before the 25th day of each month after commencement of the Work, the Contractor shall submit an Application for Payment for the period ending the last day of the prior month to the Owner in such form and manner, and with such supporting data and content, as the Owner may require. Therein, the Contractor may request payment for ninety five percent (95%) of that portion of the Contract Price properly allocable to Contract requirements properly provided, i.e., labor, materials and equipment properly incorporated in the Work plus ninety five percent (95%) of that portion of the Contract Price properly allocable to materials or equipment incorporated in the Work, less the total amount of previous payments received from the Owner. Such Application for Payment shall be accompanied by a monthly critical path schedule setting forth that portion of the Work to be completed in the following one-month period. Such Application for Payment shall be signed by the Contractor and shall constitute the Contractor's representation that the Work has been properly performed in full accordance with this Contract. When Owner determines amounts requested to be properly owing to the Contractor, the Owner shall make partial payments on account of the Contract Price to the Contractor.

5.1.3 The Contractor warrants that upon submittal of an Application for Payment, all work for which payments have been received from the Owner 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. The Contractor shall promptly pay each Subcontractor out of the amount paid to the Contractor on account of such Subcontractor's work, the amount to which such Subcontractor is entitled. In the event the Owner becomes informed that the Contractor has not paid a Subcontractor as herein provided, the Owner 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.

5.1.4 No progress payment, nor any use or occupancy of the Project by the Owner, shall be interpreted to constitute an acceptance of any work not in strict accordance with this Contract.

5.2 Withheld Payment

5.2.1 The Owner 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 Owner from loss because of:

- (a) Defective work not remedied by the Contractor;
- (b) Claims of third parties against the Owner;
- (c) Failure by the Contractor to pay Subcontractors or others in a prompt and proper fashion;
- (d) Evidence that the balance of the Work cannot be completed in accordance with the Contract for the unpaid balance of the Contract Price;
- (e) Evidence that the Work will not be completed in the time required for substantial or final completion;
- (f) Persistent failure to carry out the Work in accordance with the Contract;
- (g) Damage to the Owner or a third party to whom the Owner is, or may be, liable.

5.3 Completion and Final Payment

5.3.1 When all of the Work is finally complete and the Contractor is ready for a final inspection, it shall notify the Owner thereof in writing. Thereupon, the Owner will make final inspection of the work and, if the work is complete in full accordance with this Contract and this Contract has been fully performed, the Owner will promptly issue a final Certificate for Payment certifying to the Owner that the Project is complete and the Contractor is entitled to the remainder of the unpaid Contract Price, less any amount withheld pursuant to this Contract.

5.3.2 The Contractor shall not be entitled to final payment unless and until it submits to the Procurement Department its affidavit that all payrolls, invoices for materials and equipment, and other liabilities connected with the Work for which the Owner, or the Owner'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 Engineer or the Owner; consent of Surety to final payment. If any third party fails or refuses to provide a

release of claim or waiver of lien as required by the Owner, the Contractor shall furnish a bond satisfactory to the Owner to discharge any such lien or indemnify the Owner from liability.

5.3.3 The Owner shall make final payment of all sums due the Contractor within ten (10) days of the Engineer's execution of a final Certificate for Payment.

5.3.4 Acceptance of final payment shall constitute a waiver of all claims against the Owner by the Contractor except for those claims previously made in writing against the Owner 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.

5.3.5 Payment shall be made at the unit rates as set out in the Bid Schedule submitted by the Contractor for the Work for the quantities actually installed into the Work except as follows:

(a) There are no exceptions.

ARTICLE VI

THE OWNER

6.1 Information, Services and Things Required from Owner

6.1.1 The Owner shall furnish to the Contractor, at the time of executing this Contract, any and all written and tangible material in its possession that are necessary to facilitate the completion of this project in a timely manner, if any.

6.1.2 The Owner shall furnish the Contractor, free of charge, two copies (electronic and hardcopy) of the Contract Documents for execution of the Work.

6.2 Right to Stop Work

6.2.1 If the Contractor persistently fails or refuses to perform the Work in accordance with this Contract, the Owner may order the Contractor to stop the Work, or any described portion thereof, until the cause for stoppage has been corrected, no longer exists, or the Owner orders that Work be resumed. In such event, the Contractor shall immediately obey such order. The stop Work order referenced herein must be in writing and must specify in detail the alleged failure of the Contractor in accordance with the contract documents.

6.3 Owner's Right to Perform Work

- 6.3.1 If the Contractor's Work is stopped by the Owner under Paragraph 6.2, and the Contractor fails within seven (7) days of such stoppage to provide adequate assurance to the Owner that the cause of such stoppage will be eliminated or corrected, then the Owner may, without prejudice to any other rights or remedies the Owner may have against the Contractor, proceed to carry out the subject Work. In such a situation, an appropriate Change Order shall be issued deducting from the Contract Price the cost of correcting the subject deficiencies, plus compensation for the Engineer's additional services and expenses necessitated thereby, if any. If the unpaid portion of the Contract Price is insufficient to cover the amount due the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE VII

THE CONTRACTOR

- 7.1** The Contractor shall perform the Work strictly in accordance with this Contract.

- 7.2** The Contractor shall supervise and direct the Work using the Contractor's best skill, effort and attention. The Contractor shall be responsible to the Owner for any and all acts or omissions of the Contractor, its employees and others engaged in the Work on behalf of the Contractor.

7.3 Warranty

- 7.3.1 The Contractor warrants to the Owner that all labor furnished to progress the Work under this Contract will be competent to perform the tasks undertaken, that the product of such labor will yield only first-class results, that materials and equipment furnished will be of good quality and new unless otherwise permitted by this Contract, and that the Work will be of good quality, free from faults and defects and in strict conformance with this Contract. All work not conforming to these requirements may be considered defective.

- 7.4** The Contractor shall obtain and pay for all permits, fees and licenses necessary and ordinary for the Work. The Contractor shall comply with all lawful requirements applicable to the Work and shall give and maintain any and all notices required by applicable law pertaining to the Work.

7.5 Supervision

- 7.5.1 The Contractor shall employ and maintain at the Project site only competent supervisory personnel. Absent written instruction from the Contractor to the contrary, the superintendent shall be deemed the Contractor's authorized

representative at the site and shall be authorized to receive and accept any and all communications from the Owner. The Contractor shall ensure that its employees engage the public in a courteous manner that limits Project-related communications to Work that directly affects an inquiring property owner, such as installation of a driveway upon the owner's property. The Contractor's employees shall direct all other public inquiries (e.g., discussion of other properties, Project scope, schedule, cost, etc.) to the superintendent, who shall in turn direct the public to the appropriate County personnel.

7.6 Cleaning the Site and the Project

7.6.1 The Contractor shall keep the site reasonably clean during performance of the Work. Upon final completion of the Work, the Contractor shall clean the site and the Project and remove all waste, together with all of the Contractor's property therefrom.

7.7 Access to Work

7.7.1 The Owner and the Engineer shall have access to the Work at all times from commencement of the Work through final completion. The Contractor shall take whatever steps necessary to provide access when requested.

7.8 Indemnity

7.8.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner from and against liability, claims, damages, losses and expenses, including attorneys' fees, arising out of or resulting from performance of the Work, provided that such liability, claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of , or trespass against tangible property (other than the Work itself) including loss or interference of use resulting therefrom, but only to the extent caused in whole or in part by negligent, reckless, or intentionally wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

7.8.2 In claims against any person or entity indemnified under this Paragraph 7.8 by an employee of the Contractor, a Subcontractor, any one directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 7.8 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.

ARTICLE VIII

CONTRACT ADMINISTRATION

8.1 Administration

- 8.1.1 The Forsyth County Capital Projects Department shall be the Owner's representative from the effective date of this Contract until final payment has been made for work site operations. Any and all change orders must be submitted through the Forsyth County Department of Procurement.
- 8.1.2 The Owner and the Contractor shall communicate with each other in the first instance through the Forsyth County Capital Projects Department.
- 8.1.3 The Owner's Representative shall be the initial interpreter of the requirements of the drawings and specifications and the judge of the performance thereunder by the Contractor.
- 8.1.4 The Owner's Representative shall have authority to reject work that is defective or does not conform to the requirements of this Contract.
- 8.1.5 The Owner's Representative will review the Contractor's Applications for Payment and will certify those amounts then due the Contractor as provided in this Contract. All invoices are to be submitted to the attention of the Procurement Department.
- 8.1.6 The Owner's Representative, shall, upon request from the Contractor, conduct inspections to determine the date of final completion, will receive records, written warranties and related documents required by this contract and will issue a final Certificate for Payment upon compliance with the requirements of this Contract.

8.2 Claims by the Contractor

- 8.2.1 All Contractor claims shall be initiated by written notice and claim to the Owner attention the Procurement Department. Such written notice and claim must be furnished within seven (7) days after occurrence of the event, or the first appearance of the condition, giving rise to the claim.
- 8.2.2 Pending final resolution of any claim of the Contractor, the Contractor shall diligently proceed with performance of this Contract and the Owner shall continue to make payments to the Contractor in accordance with this Contract. The resolution of any claim under this paragraph 8.3 shall be reflected by a Change Order executed by the Owner and the Contractor.
- 8.2.3 ***Claims for Concealed and Unknown Condition*** - Should concealed and unknown conditions encountered in the performance of the Work (a) below the surface of the ground or (b) in an existing structure be at variance with the conditions indicated by this Contract, or should unknown conditions of an unusual nature

differing materially from those ordinarily encountered in the area and generally recognized as inherent in Work of the character provided for in this Contract, be encountered, the Contract Price shall be equitably adjusted by Change Order upon the written notice and claim by either party made within seven days after the first observance of the condition. As a condition precedent to the Owner having any liability to the Contractor for concealed or unknown conditions, the Contractor must give the Owner written notice of, and an opportunity to observe, the condition prior to disturbing it. The failure by the Contractor to make the written notice and claim as provided in this Subparagraph shall constitute a waiver by the Contractor of any claim arising out of or relating to such concealed or unknown condition. Any failure of the Plans to accurately depict utilities shall not constitute a concealed and unknown condition.

8.2.4 ***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 Owner therefore, the Contractor shall give the Owner written notice of such claim within seven 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 or changed Work. The failure by the Contractor to give such notice and to give such notice prior to executing the Work shall constitute a waiver of any claim for additional compensation.

8.2.4.1 In connection with any claim by the Contractor against the Owner for compensation in excess of the Contract Price, any liability of the Owner for the Contractor's costs 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 Owner shall not be liable to the Contractor for claims of third parties, including Subcontractors, unless and until liability of the Contractor has been established therefor in a court of competent jurisdiction. The Owner shall not be liable to the Contractor for any delays, inconvenience, or damage to the Contractor arising from or caused by the existence, operation, maintenance, relocation, construction, reconstruction, installation, or reinstallation of any utilities or utility appurtenances, whether in their current, temporary, or relocated positions, and whether or not depicted on the Plans.

8.2.5 ***Claims for Additional Time***

8.2.5.1 If the Contractor is delayed in progressing any task which at the time of delay is then critical or which during the delay becomes critical, as the sole result of any act or neglect to act by the Owner or someone acting in the Owner's behalf, or by changes ordered in the Work, unusual delay in transportation, unusually adverse weather conditions not reasonably anticipated, fire or any causes beyond the Contractor's control, then the date for achieving completion of the Work shall be extended upon the written notice and claim of the Contractor to the Owner's Procurement Department for such reasonable time as the Owner's representative

may determine. Any notice and claim for an extension of time by the Contractor shall be made not more than fifteen (15) 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 Project.

8.2.6 ***Claims for Weather Delays***

8.2.6.1 Claims for weather delays shall not be considered unless work is not feasible for more than one-half of a day due to weather conditions. Claims for weather delays shall not be considered for Sundays unless the Contractor consistently works on Sundays prior to the claim. Claims for weather must be submitted within four weeks of the requested delay time.

ARTICLE IX

CHANGES IN THE WORK

9.1 Changes Permitted

9.1.1 Changes in the Work within the general scope of this Contract, consisting of additions, deletions, revisions, or any combination thereof, may be ordered without invalidating this Contract, by Change Order. Change Orders are to be issued through the Forsyth County Department of Procurement, with the County Administrator signature required as authorization.

9.1.2 Changes in the Work shall be performed under applicable provisions of this Contract and the Contractor shall proceed promptly with such changes.

9.2 Change Order Defined

9.2.1 Change Order shall mean a written order to the Contractor executed by the Owner, issued after execution of this Contract, authorizing and directing a change in the Work or an adjustment in the Contract Price or the Contract Time. The Contract Price and the Contract Time may be changed only by Change Order.

9.3 Changes in the Contract Price

9.3.1 Any change in the Contract Price resulting from a Change Order shall be determined as follows: (a) by mutual agreement between the Owner 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 Owner and the Contractor, then as provided in Subparagraph 9.3.2 below.

9.3.2 If no mutual agreement occurs between the Owner and the contractor as contemplated in Subparagraph 9.3.1 above, the change in the Contract Price, if any,

shall then be determined by the Owner on the basis of the reasonable expenditures or savings of those performing, deleting or revising the Work attributable to the change, including, in the case of an increase or decrease in the Contract Price, a reasonable allowance for direct job site overhead and profit. In such case, the Contractor shall present, in such form and with such content as the Owner requires, an itemized accounting of such expenditures or savings, plus appropriate supporting data for inclusion in a Change Order.

- 9.3.3 If unit prices are provided in the Contract, and if the quantities contemplated are so changed in a proposed Change Order that application of such unit prices to the quantities of Work proposed will cause substantial inequity to the Owner or to the Contractor, the applicable unit prices shall be equitably adjusted.

ARTICLE X

CONTRACT TERMINATION

10.1 Termination by the Contractor

- 10.1.1 If the Work is stopped for a period of ninety (90) days 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 may, upon ten (10) days' written notice to the Owner, terminate performance under this contract and recover from the Owner payment for the actual reasonable expenditures of the Contractor for all work executed.
- 10.1.2 If the Owner shall persistently or repeatedly fail to perform any material obligation to the Contractor for a period of thirty (30) 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 Owner. In such event, the Contractor shall be entitled to recover from the Owner as though the Owner had terminated the Contractor's performance under this Contract for convenience pursuant to Subparagraph 10.2.1.

10.2 Termination by the Owner

10.2.1 *For Convenience*

- 10.2.1.1 The Owner may for any reason whatsoever terminate performance under this Contract by the contractor for convenience. The Owner shall give written notice of such termination to the Contractor specifying when termination becomes effective.
- 10.2.1.2 The Contractor shall incur no further obligations in connection with the Work and the Contractor shall stop work when such termination becomes effective. The Contractor shall also terminate outstanding orders and subcontracts. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Contractor to assign the

Contractor's right; title and interest under terminated orders or subcontracts to the Owner or its designee.

10.2.1.3 The Contractor shall transfer title and deliver to the Owner such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Contractor has.

10.2.1.4

- (a) The Contractor shall submit a termination claim to the Owner specifying the amounts due because of the termination for convenience together with costs, pricing or other data required by the Owner. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Owner shall pay the Contractor, an amount derived in accordance with subparagraph (c) below.
- (b) The Owner 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 Owner shall pay the Contractor the following amounts:
 - (i) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (ii) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the Work, 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 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 10.2.1.2 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 10.2.1 shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.

10.2.2 *For Cause*

10.2.2.1 If the Contractor persistently or repeatedly refuses or fails to prosecute the Work 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 Owner may by written notice to the Contractor, without prejudice to any other right or remedy, terminate the employment of the contractor and take possession of the site and of all materials, equipment, tools, construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever methods it may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

- 10.2.2.2 If the unpaid balance of the Contract Price exceeds the cost of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.
- 10.2.2.3 In the event the employment of the Contractor is terminated by the Owner for cause pursuant to subparagraph 10.2.2 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 10.2.1 and the provisions of Subparagraph 10.2.1 shall apply.

ARTICLE XI

INSURANCE

11.1 Contractor's Insurance Requirements

- 11.1.1 The Contractor shall maintain in full force and effect at all times during the Contract period Comprehensive General Liability Insurance as specified in the Contract Documents.
- 11.1.2 The Contractor shall provide to the Owner Certificates of Insurance naming the Owner as additional insured party under the policy or policies of Comprehensive General Liability Insurance required by Paragraph 11.1.1.
- 11.1.3 The insurance policy or policies as aforesaid shall provide that thirty (30) days written notice be given to the Owner prior to cancellation thereof.
- 11.1.4 The Contractor shall maintain in full force and effect at all times during the Contract period Workers' Compensation Insurance as provided by Georgia law.

ARTICLE XII

NONDISCRIMINATION

- 12.1** 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, Contractor agrees that, during performance of the 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 Section in every subcontract for services contemplated under the Agreement.

ARTICLE XIII

E-VERIFY

- 13.1** It is the policy of Client that unauthorized aliens shall not be employed to perform work on Client contracts involving the physical performance of services. Therefore, Client shall not enter into a contract for the physical performance of services within the State of Georgia unless:

- (1) Contractor shall provide evidence on Client-provided forms, attached hereto as Exhibits "B" and "C" (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' subcontractors have conducted a verification, under the federal Employment Eligibility Verification ("EEV" or "E-Verify") program, of the social security numbers, or other identifying information now or hereafter accepted by the E-Verify program, of all employees who will perform work on the County contract to ensure that no unauthorized aliens will be employed, **or**
- (2) Contractor provides evidence that it is not required to provide an affidavit because it is licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing as of the date when the contract for services is to be rendered.

Contractor hereby verifies that it has, prior to executing this Agreement, executed a notarized affidavit, the form of which is provided in Exhibit "B", and submitted such affidavit to Client or provided Client with evidence that it is 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 Contractor employs or contracts with any subcontractor(s) in connection with the covered contract, 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 "C", which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is licensed and in good standing as noted in subsection (2) above. If a subcontractor affidavit is obtained, Contractor agrees to provide a completed copy to Client 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 Contractor' and Contractor' subcontractors' verification process at any time to determine that the verification was correct and complete. Contractor and Contractor' subcontractors shall retain all documents and records of their respective verification process for a period of three (3) 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 Client contractor or their subcontractors employ unauthorized aliens on County contracts. By entering into a contract with Client, 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. Contractor' failure to cooperate with the investigation may be sanctioned by termination of the contract, and Contractor shall be liable for all damages and delays occasioned by Client thereby.

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

ARTICLE XIV
MISCELLANEOUS

14.1 Governing Law

14.1.1 The Contract shall be governed by the laws of the State of Georgia.

14.2 Successors and Assigns

14.2.1 The Owner 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 written consent of the Owner.

14.3 Surety Bonds

14.3.1 The Contractor shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the contract price. 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 executed by the Contractor, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. Thee performance and payment bonds furnished by the Contractor shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably suitable to the Owner.

IN WITNESS WHEREOF, the Undersigned have set their hands and seals on the day and date appearing below the signatures of their authorized representatives.

FORSYTH COUNTY, A Political Subdivision
Of the State of Georgia

By: _____
Kevin Tanner, County Manager

-
a Georgia Corporation
By: _____

Printed Name / Title

Attest: _____

Attest: _____

Date: _____

Date: _____

BID BOND

FORSYTH COUNTY

BID NUMBER: 22-009-3150 Project PEB38

KNOW ALL MEN BY THESE PRESENTS, that

(Name of Contractor)

(Address of Contractor)

a _____
(Corporation, Partnership or individual)
hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

a Corporation of the State of _____, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto
Forsyth County Board of Commissioners
110 Main Street, Cumming, GA 30040

hereinafter referred to as Obligee, in the penal sum of: _____ Dollars (\$_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to submit, or has submitted, to Forsyth County, Georgia, a proposal for furnishing materials, labor, and equipment for:

WHEREAS, the Principal desires to file this Bond in accordance with law in lieu of a certified Bidder's check otherwise required to accompany this Proposal.

BID BOND

BID NUMBER: 22-009-3150 Brannon Road Sidewalk Project PEB38

BID DATE: 4/28/22

NOW, THEREFORE, the conditions of this obligation are such that if the proposal be accepted, the Principal shall within ten days after receipt of notification of the acceptance, execute a Contract in accordance with the Proposal and upon the terms, conditions, and prices set forth in the form and manner required by Forsyth County, Georgia, and execute a sufficient and satisfactory Performance Bond and Payment Bond payable to Forsyth County, Georgia, each in the amount of 100% of the total Contract Price, in form and with security satisfactory to said Forsyth County, Georgia, and otherwise, to be and remain in full force and virtue in law, and the Surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to Forsyth County, Georgia, upon demand, the amount hereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. 13-10-1, *et seq.* and 36-86-101, *et seq.*, and is intended to be and shall be constructed as a bond in compliance with the requirements thereof.

(This space intentionally left blank)

(Signatures Next Page)

BID BOND

BID NUMBER: 22-009-3150 Brannon Road Sidewalk Project PEB38

BID DATE: 4/28/22

Signed, sealed, and dated this _____ day of _____ A.D., 202____.

ATTEST:

(Principal Secretary)

(Principal)

(SEAL)

By: _____

(Witness as to Principal)

(Address)

(Address)

(Surety)

ATTEST:

By: _____
(Attorney-in-Fact and Resident Agent)

(Attorney-in-Fact)

(SEAL)

(Witness as to Surety)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

CONSENT OF SURETY

(This Consent of Surety is Part of the Bid Documents)

BID NUMBER: 22-009-3150 Project PEB38

BID DATE: 4/28/22

PROJECT DESCRIPTION: Bid 22-009-3150 Project PEB38 Brannon Road Sidewalk.

KNOW ALL MEN BY THESE PRESENTS, that we _____, as principal
and _____
(Name of Company),

a Corporation created and Surety existing under the laws of the State of _____ and
having its principal office at

(Complete Address of Surety Company)

are held firmly bound unto Forsyth County, Georgia hereby jointly and severally bind
ourselves, our heirs, successors, administrators, executors, legal representatives, and
assigns by these presents.

THE CONDITIONS OF THIS OBLIGATION are such that whereas, the above-named
principal submits the herewith Bid 22-009-3150 Brannon Road Sidewalk Project PEB38.

Forsyth County, Georgia to the Board of Commissioners of Forsyth County, Georgia in
conformance with the Advertisement for Bids and Information for Bidders; we, the above
Surety will meet all stipulations and will execute the Surety Bonds as hereinafter, to the
above named principal in the event he should be awarded a Contract and in the amount of
one hundred percent (100%) of the total Bid Price for performing the Work and
guaranteeing its performance in conformity with the Plans and Specifications and in
amount one hundred percent (100%) of the total Bid Price for the payment of all persons
performing labor or furnishing materials therewith, to Forsyth County, Georgia.

(This space intentionally left blank)

CONSENT OF SURETY
(Continued)

(This Consent of Surety is Part of the Bid Documents)

WITNESS OUR SIGNATURES this _____ day of _____, 202__.

Attest: _____
(Principal Secretary)

By: _____
(Principal- printed name, title)

(SEAL)

By: _____
(Signature)

Surety:

Attest: _____
(Name of Surety)

By: _____
(Attorney in Fact and Resident Agent)

(SEAL)

Witness as to Surety

Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

PERFORMANCE BOND

PROJECT NAME: Bid 22-009-3150 Project PEB38 Brannon Road Sidewalk.

BID NUMBER:22-009-3150 Project PEB38

KNOW ALL MEN BY THESE PRESENTS, that

(Name of Contractor)

(Address of Contractor)

a _____
(Corporation, Partnership or Individual)

hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

a Corporation of the State of _____, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto:

*Forsyth County Board of Commissioners
110 E. Main Street, Cumming, GA 30040*

hereinafter referred to as Obligee, are held and firmly bound unto said Obligee and all persons doing work or furnishing skill, tools, machinery, supplies, or material under or for the purpose of the Contract hereinafter referred to, in the penal sum of \$ _____ in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

This condition of this obligation is such, as whereas the Principal entered into a certain contract, hereto attached with the Obligee, dated _____, 202__.

PERFORMANCE BOND

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well, truly, fully and faithfully perform said contract according to its terms, covenants, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Obligee, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreement of any and all duly authorized modifications of said contract that may hereafter be made, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations or additions to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed thereunder.

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. 13-10-1, *et seq.* and 36-86-101, *et seq.*, and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

(Signatures Next Page)

(This space intentionally left blank)

PERFORMANCE BOND

Signed, sealed, and dated this _____ day of _____ A.D., 202__.

ATTEST:

(Principal Secretary)

(SEAL)

(Witness as to Principal)

(Address)

ATTEST:

Agent)

(Attorney-in-Fact)

(SEAL)

(Witness as to Surety)

(Address)

(Principal)

By: _____

(Address)

(Surety)

By: _____
(Attorney-in-Fact and Resident

(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.

PAYMENT BOND

BID NUMBER: 22-009-3150 Brannon Road Sidewalk Project PEB38

KNOW ALL MEN BY THESE PRESENTS, that

(Name of Contractor)

(Address of Contractor)

a _____
(Corporation, Partnership or Individual)

hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

a Corporation of the State of _____, and a surety authorized by law to do business in the State of Georgia, hereinafter called Surety, are held and firmly bound unto

*Forsyth County Board of Commissioners
110 E Main Street, Cumming, GA 30040*

hereinafter called Obligee, for the use and protection of all subcontractors and all persons supplying labor, services, skill, tools, machinery, materials and/or equipment in the prosecution of the Work provided for in the contract hereinafter referred to in the full and just sum of \$ _____ in lawful money of the United States, for the payment of which sum, well and truly to be made, the Principal and Surety bind themselves, their, and each of their heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents.

The condition of this obligation is such, as whereas the Principal entered into a certain contract, hereto attached, with the Obligee, dated _____, 202__ for Forsyth County.

NOW, THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall well, truly, and faithfully perform said contract according to its terms, covenants and conditions, and shall promptly pay all persons furnishing labor, materials services, skill, tools, machinery and/or equipment for use in the performance of said Contract, then this obligation shall be void; otherwise it shall remain in full force and effect.

All persons who have furnished labor, materials, services, skill, tools, machinery and/or equipment for use in the performance of said Contract shall have a direct right of action on this Bond provided payment has not been made in full within ninety (90) days after the last day on which labor was performed, materials, services, skill, tools, machinery, and equipment furnished or the subcontract completed.

PROVIDED FURTHER, that said Surety to this Bond, for value received, hereby stipulates and agrees that no change, extension of time, alterations, or additions to the terms of the Contract or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alterations, or additions to the terms of the Contract or to the work to be performed thereunder.

PROVIDED, HOWEVER, that no suit or action shall be commenced hereunder by any person furnishing labor, materials, services, skill, tools, machinery, and/or equipment having a direct contractual relationship with a subcontractor, but no contractual relationship express or implied with the Principal:

Unless such person shall have given notice to the Principal within ninety (90) days after such person did, or performed the last of the work or labor, or furnished the last of the materials, services, skill, tools, machinery and/or equipment for which claim is made stating with substantial accuracy the amount claimed and the name of the party to whom the materials, services, skill, tools, machinery and/or equipment were furnished, or for whom the work or labor was done or performed. Such a notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Principal, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the State in which legal process may be served in the State in which the aforesaid project is located, save that such service need not be made by a public officer, and a copy of such notice shall be delivered to the Obligee, to the person and at the address provided for in the Contract, within five (5) days of the mailing of the notice to the Principal.

PROVIDED, FURTHER, that any suit under this bond must be instituted before the expiration of one (1) year after the acceptance of the public works covered by the Contract by the proper authorities.

PROVIDED, FURTHER, that Principal and Surety agree and represent that this bond is executed pursuant to and in accordance with the applicable provisions of the Official Code of Georgia Annotated, as Amended, including, but not limited to, O.C.G.A. 13-10-1, *et seq.* and 36-

86-101, *et seq.*, and is intended to be and shall be construed as a bond in compliance with the requirements thereof.

PAYMENT BOND

Signed, sealed, and dated this _____ day of _____ A.D., 202__.

ATTEST:

(Principal Secretary)

(Principal)

(SEAL)

By: _____

(Witness as to Principal)

(Address)

(Address)

(Surety)

ATTEST:

By: _____
(Attorney-in-Fact and Resident

Agent)

(Attorney-in-Fact)

(SEAL)

(Witness as to Surety)

(Address)

(Address)

NOTE: Date of Bond must not be prior to date of Contract. If Contractor is Partnership, all partners should execute Bond.

IMPORTANT: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.