

TRANSMITTAL: Request for Qualifications

To:	Construction Company	Sent Via:	N/A
From:	Mark Mack	Date:	N/A
Re:	Request for Construction Contractor Qualification	Pages:	(40) Pages

Grady Health System Facilities Development (GHS-FD) appreciates your interest in providing Construction services and our intention is to qualify your firm for construction project involvement.

GHS-FD provides services for maintenance, engineering and construction operations for all the GHS facilities. GHS-FD typically manages projects that have dollar values ranging from \$2,000 to \$20,000,000. GHS-FD manages approximately 150-200 projects annually. New design and construction, light and heavy interior and exterior renovation, equipment replacements, engineering studies, commissioning of existing utility systems, asbestos abatement, and cosmetic upgrades are the types of projects GHS-FD is involved with annually.

GHS-FD is soliciting a qualification package in order to add your firm to our bid list for future project work. We are looking for favorable experience, size, services offered, insurance, bonding capacity, references, financial strength, and safety records.

Per your expressed interest, GHS-FD is requesting the completion of the *Qualification Form* attached. Please be sure to include the requested back-up documentations including signature of acceptance of GHS-FD **General Conditions of Contract** for Construction Services (form attached). The **W-9 Form** is also required. Feel free to send any additional documents such as brochures, business cards, etc.

Please send the qualifications package to:

*Grady Health Systems
Attn: David Yoo, Facilities Development
80 Jesse Hill Jr. Drive, S.E.
P.O. Box 26083
Atlanta, GA 30303*

GHS-FD encourages the participation of local, small, minority, women, and disadvantaged businesses.

GHS-FD is excited and looks forward to possibly working with your firm. Please do not hesitate to call me at 404-616-3872 or by email at dyoo@gmh.edu if you have any questions or concerns. We look forward to hearing from you.

Sincerely,

David Yoo

Project Manager
GHS-FD

Contractor Qualification Form

Name: _____

Date: _____

Address: _____

Contact: _____

City/State/Zip: _____

Phone No. _____

Email: _____

President: _____

Type of Firm: Corporation

Vice President: _____

Partnership

Sec/Treas: _____

Other

Year Founded _____ Years under present name: _____

Years Performing Work Specialty: _____

Work now under Contract: _____

Percentage of Work Performed by Own Forces: _____

Average Contract Amount: _____

Contract Range: _____ to _____

Work in Place Last Year: _____

Average Annual Sales last Three Years: _____

Average Work in Place Last 3 Years: _____

Number of Employees in the Office: _____

Number of Employees in Field: _____

Value of Capital Equipment Owned by Firm: _____

Type of Contractor: General Contractor

Specialty Contractor (*specify*): _____

List by Division, Work Your Firm Self Performs:

2 3 4 5 6 7 8 9 10 11 12 13 14 15 16

Union Affiliation: _____ Local: _____ National _____

Current Work (Health Care, Commercial, Hospitality, Other)

Quality of Work Performed References:

_____ % Volume
_____ % Volume
_____ % Volume
_____ % Volume

Institution	Contact	Phone
_____	_____	_____
_____	_____	_____
_____	_____	_____

Submit a list of relevant projects and references with this form.

Insurance Company: _____

Contact: _____ Phone: _____

General Liability Policy Number: _____

Limit: _____ Effective Period: _____

Automotive Liability Policy Number: _____

Limit: _____ Effective Period: _____

Workers Compensation Policy Number: _____

Limit: _____ Effective Period: _____

Excess Liability Policy Number: _____

Limit: _____ Effective Period: _____

Submit a copy of your latest Certificate of Liability Insurance with this form.

Bank: _____

Phone No.: _____

Address: _____

Contact: _____

City/State/Zip: _____

Federal Identification Number: _____

Dunn and Bradstreet Number: _____

Submit a copy of your latest Financial Statement with this form.

Has Firm Failed to Complete a Contract? Yes No

Has Firm been involved in Bankruptcy or Reorganization? Yes No

Does Firm have any Pending Judgements, Claims, or Suits? Yes No

If the answer to any of the last three questions is yes, submit details.

Contractor Qualification Form – page 2

Credit References:

	Items Supplied	Name	Monthly Bill	Contact/Phone
Suppliers	_____	_____	_____	_____
	_____	_____	_____	_____
Other	_____	_____	_____	_____
	_____	_____	_____	_____
Contractors	_____	_____	_____	_____
	_____	_____	_____	_____

Is Firm qualified as a local, small economically disadvantaged business that is certified by the City of Atlanta, Fulton County, DeKalb County and/or the Georgia Department of Transportation? Yes No

If yes, where: _____

Enclose Copy of Certification

List Your Firms Workers Compensation Experience Modification Rate (EMR) for the Preceding Three Years:

1. _____ Year: 20 ____

2. _____ Year: 20 ____

3. _____ Year: 20 ____

Do you have a written Safety Program? Yes No

Do you have a "Drug Free" Program Yes No

Bonding Company and Current Bonding Rate Formula

Signature – Information Release:

My signature below authorizes any references including credit-reporting agencies to furnish information requested by GHS-FD.

The undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

Name: _____ Title: _____ Date: _____

Contractor Comments: _____

GHS-FD Comments: _____

General Conditions of Contract Acceptance Form

Firm:

To whom it may concern:

Type of General Conditions of Contract Accepted (Circle all that Apply): Architect Contractor Engineer Consulting Services

I certify that the terms and General Conditions of Contract Between Owner and our firm have been specifically noted and that I have taken them into consideration in the submission of this Qualifications Package. I agree to abide by the General Conditions of Contract Between Owner and Contractor and certify that I am authorized to sign this acceptance form.

The undersigned certifies under oath that the information provided herein is true and sufficiently complete so as not to be misleading.

By:

NAME: _____

TITLE: _____

PHONE: () _____

FAX: () _____

SIGNATURE: _____

DATE: _____

Note: this form may, at the firm's discretion, be replaced by another document to the same effect.

**GENERAL CONDITIONS OF
CONTRACT BETWEEN
OWNER AND CONTRACTOR**

(For Review and Acceptance in Order to be Pre-Qualified)

**GRADY MEMORIAL HOSPITAL CORPORATION
(D/B/A GRADY HEALTH SYSTEM)**

**80 Jesse Hill Jr. Drive, SE
Atlanta, Georgia 30303**

("Owner")

and

Contractor Company Name

Contractor Address

("Contractor")

Date: Same as date on page 3

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**GENERAL TERMS AND CONDITIONS OF
CONTRACT BETWEEN
OWNER AND CONTRACTOR**

THIS DOCUMENT OF GENERAL TERMS AND CONDITIONS OF CONTRACT ("Document") BETWEEN OWNER AND CONTRACTOR dated as of 3/16/05, by and between Grady Memorial Hospital Corporation d/b/a Grady Health System ("Owner"), and Name of Company. ("Contractor").

RECITALS

Owner may desire to engage Contractor for the performance of construction and/or other related services.

In order to engage the services of Contractor, Owner shall issue an offer substantially in the form of Exhibit A, which is attached and incorporated by reference (the "Project Engagement Letter"). The Project Engagement Letter shall set forth the scope of the work, the consideration to be paid and other project-specific matters. The provisions of the Project Engagement Letter shall be controlling to the extent they are inconsistent or conflict with any of the provisions of the Document.

The parties understand and agree that this Document sets forth the general terms and conditions of the Contract that is formed upon the issuance and acceptance of a Project Engagement Letter; together these documents are hereafter referred to as the "Contract."

This Document shall constitute the controlling general terms and conditions upon the acceptance of a Project Engagement Letter. Separate and distinct Project Engagement Letters may be issued by Owner during the term of this Document. Each such Project Engagement Letter together with the general terms and conditions contained in this Document shall constitute a separate and distinct Contract.

Contractor understands and agrees that: (i) the term "Owner" shall mean and refer to Grady Memorial Hospital Corporation d/b/a Grady Health System .

THEREFORE, IN CONSIDERATION of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and Contractor agree as follows:

**ARTICLE 1
GENERAL PROVISIONS**

1.1 BASIC DEFINITIONS

1.1.1 CONTRACT DOCUMENTS

The Contract Documents consist of the Project Engagement Letter issued by Owner and accepted by Contractor, as referenced in Exhibit A, this Document, drawings, specifications, plans, addenda and other documents listed in the Project Engagement Letter. A Modification to the Contract is (1) a written amendment to the Contract signed by both Owner and Contractor; (2) a Change Order signed by Owner and Contractor; (3) a Construction Change Directive signed by Owner; or (4) a written order signed by Owner for a minor change in the Work. The Contract Documents do not include other documents such as bidding requirements, advertisements or invitations to bid, instructions to bidders, sample forms, Contractor's bid or portions of addenda relating to bidding requirements, shop drawings, product data, and samples, except as specifically set forth in the Project Engagement Letter.

1.1.2 THE CONTRACT

The Contract Documents form the Contract and represent the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than Owner and Contractor.

1.1.3 THE WORK

Work means the construction and services required by the Contract Documents and includes all other labor, materials, equipment and services provided or to be provided by Contractor to fulfill the Contractor's obligations and labor, materials, equipment and services provided or to be provided by a subcontractor, material supplier or any other entity for whom Contractor is responsible under or pursuant to the Contract Documents.

1.1.4 OWNER DEFINED

Owner means Grady Memorial Hospital Corporation (d/b/a Grady Health System).

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Contract Documents shall be signed by Owner and Contractor. Execution of the Contract by Contractor is a material representation that Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. In the case of a conflict between the terms and conditions within a particular Contract Document, the specific shall control over the general. In the event of a conflict between the Contract, any supplementary or other conditions of the Contract, the Drawings and Specifications, or any other documents comprising the Contract Documents, then the terms and provisions of such documents shall control in the following order: first the provisions of the Project Engagement Letter shall control; then the supplementary or other conditions; then the Drawings and Specifications; then this Document; and finally, any other documents comprising the Contract Documents. In case of conflict between or among the Drawings and Specifications, the Drawings will take precedence over the Specifications in matters of construction or installation detail; Specifications over Drawings in matters of equipment or material specified; large scale drawings over small scale; and any special drawing details over standard details. If questions arise concerning Drawings and Specifications, or omissions or errors are found in the same, or should conditions arise which would make it impractical to follow any part of the Drawings or Specifications, or which would result in substandard work, it shall be the duty of Contractor to so notify Owner before proceeding with the Work in question, and such Work shall then be performed according to Owner's interpretation of the intent of the Drawings and Specifications. The Contract Sum shall be adjusted, if necessary, in accordance with the provisions of Article 7.

1.3 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

All Contract Documents, including plans, specifications, drawings and copies thereof prepared and developed in connection with the Project are or shall become the sole and absolute property of Owner (including copyright and other intellectual property rights) and may be used by Owner for any purpose relative to this Project. The Contractor and Architect each shall be permitted to retain

one copy of such documents for their records only. The filing or submission of such documents with any governmental agency or body for the purpose of obtaining permits for the Project shall not constitute publication thereof, or any derogation of Owners' rights hereunder. Neither the Contractor, nor anyone hired by, under or through Contractor, shall use the drawings, plans, specifications, or any other design or Contract Documents on any other project without the prior written consent of Owner, and Contractor is granted a limited license to copy said Contract Documents only as may be necessary to perform the Work of the Contract.

ARTICLE 2 **OWNER**

2.1 INFORMATION AND SERVICES REQUIRED OF OWNER

2.1.1 When appropriate to the Work, in Owner's sole discretion, Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the project, and a legal description of the site. Contractor shall review the foregoing materials to determine whether the same conform to visible or ascertainable conditions at the project site, and Contractor shall notify Owner of any inaccuracies contained in such materials as soon as possible, but in any event not later than twenty (20) days after the same have been furnished by Owner to Contractor.

2.1.2 Contractor will be furnished, free of charge, one (1) set of reproducible transparencies of the Drawings and one (1) copy of the Specifications. Additional sets of Drawings and Specifications are the responsibility of Contractor. Contractor shall furnish all required copies of the Drawings and Specifications to each entity or person required to have such copies. Drawing copies shall only be printed from the above mentioned set of reproducible transparencies. Owner does not make any warranty or guaranty that the Drawings or the Specifications are error free or without defect. All warranties or guarantees are specifically disclaimed by Owner.

2.2 OWNER'S RIGHT TO STOP THE WORK

If Contractor defaults under the Contract Documents or fails to correct Work that is not in accordance with the Contract Documents or fails to carry out Work in accordance with the Contract Documents, within three (3) days of written notice, Owner may direct Contractor, in writing, to stop the Work or any portion of the work until the default is cured or the correction is made. If Contractor fails to cure such defaults or make such corrections in a timely manner as Owner shall reasonably specify, Owner may terminate the Contract in accordance with the provisions of Section 14.2 of this Document.

2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If Contractor defaults under the Contract Documents or fails to correct Work that is not in accordance with the Contract Documents or fails to carry out Work in accordance with the Contract Documents within three (3) days of written notice, Owner may, without prejudice to other remedies and without further notice, correct such deficiencies. In such case, a Change Order shall be issued deducting the cost of correction from payments due Contractor. If the cost of cure or correction is greater than the amount of the Contract Sum remaining unpaid to Contractor, then the excess shall be paid by Contractor to Owner immediately upon demand.

2.4 OWNER'S RIGHTS NOT LIMITED

The rights stated in Article 2 and elsewhere in the Contract Documents shall be in addition to and not in limitation of any other rights of Owner granted in the Contract Documents or at law or in equity.

ARTICLE 3 **CONTRACTOR**

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by Owner. Before commencing activities, Contractor shall: (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to Owner. It is the responsibility of Contractor, before entering into this Contract, to satisfy itself as to the accuracy, consistency and completeness of the Contract Documents. Contractor's execution and delivery of the Contract Documents constitutes an acknowledgment by the Contractor that it is satisfied that the Drawings and Specifications are sufficient in content and detail to complete the Work and to enable Contractor to deliver, within the Contract Sum and Contract Time, a fully completed project with all appurtenant improvements without the need for any change to the Contract Sum or Contract Time as specified in the applicable Project Engagement Letter.

3.1.2 Contractor's execution and delivery of the Contract Documents shall constitute a representation by Contractor that it has evaluated the field conditions present at the site, to the extent consistent with industry practice and that such investigation has revealed no condition, concealed or patent, inconsistent with the plans and specifications.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 Contractor shall supervise and direct the Work, using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work.

3.2.2 Contractor, as soon as practicable after execution of the Contract Documents, shall furnish, in writing, to Owner the names of subcontractors or suppliers proposed by Contractor for each portion of the Work. Owner will promptly reply to Contractor in writing if Owner, after due investigation, has reasonable objection to the subcontractors or suppliers listed. If Owner objects to any subcontractor or supplier, Contractor shall instead employ alternative subcontractors or suppliers, provided, however, that if Contractor shall be required by Owner to employ a specific subcontractor or supplier and the cost of employing such subcontractor or supplier shall exceed the cost of the subcontractor or supplier originally proposed by Contractor, Owner shall promptly execute and deliver to Contractor an appropriate Change Order and the Contract Sum shall be adjusted to reflect the Contractor's additional cost.

3.2.3 If specifically required by the Project Engagement Letter, at the earliest possible time after the commencement of the Work on the project site, Contractor shall have all property corners and benchmarks verified or established by a state-licensed land surveyor, shall locate the project on the project site, establishing necessary reference marks and axes from which the Work accurately can progress, shall furnish Owner evidence of such verification and shall report at once any errors discovered during the process of such verification.

3.2.4 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, subcontractors, their agents and employees, and any other persons performing portions of the Work under a contract with Contractor or claiming by, through or under Contractor and for any damages, losses, costs and expenses resulting from such acts or omissions.

3.3 LABOR AND MATERIALS

3.3.1 Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

3.3.2 Contractor shall deliver, handle, store and install materials in accordance with manufacturer's instructions, or as otherwise required by Owner pursuant to written instructions delivered to Contractor from time to time.

3.3.3 Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Contract. Contractor shall not permit employment of unfit persons or persons unskilled in tasks they perform.

3.3.4 After the Contract has been executed, Owner will consider a formal request for the substitution of products in place of those specified only if Contractor submits a written request to Owner, and only under the following circumstances:

1. When the specified product is discontinued and not available from the manufacturer;
or
2. When a guarantee of performance is required and, in the reasonable judgment of Contractor, the specified product or process will not produce the desired results.

Owner may, in its sole discretion, reject or approve such substitution. Approval by Owner shall not make Owner responsible for such substitution.

Requests for substitutions shall be in writing and will be accompanied by evidence that the proposed substitution: (1) is equal or superior in quality and serviceability to the specified item; (2) will not entail changes in details and construction of related work; (3) will be acceptable in consideration of the required design and artistic effect; and (4) shall not involve additional cost to Owner. Credits to Owner shall be described in an accompanying request for a Change Order. Contractor will furnish with its request such drawings, specifications, samples, performance data and other information as may reasonably be required to assist Owner in making its decision. The burden of proof shall be upon Contractor.

Regardless of the evidence submitted or any review or independent investigation by Owner, a request for a substitution of products, materials or processes shall constitute a representation, warranty and covenant of the matters set forth in Section 3.3.5 of this Document.

Contractor shall bear and be responsible for the cost of any additional changes to the Work resulting from or arising in connection with such substitutions requested by Contractor unless the substitution is required due to the discontinuation and inability to obtain a product which did not arise and could not have reasonably been anticipated until after the execution of the Contract Documents.

3.3.5 By making requests for substitutions based on Section 3.3.3 above, Contractor represents, warrants and covenants that:

1. Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
2. Contractor shall provide the same warranty for the substitution that Contractor would for the product specified;
3. the cost data presented is complete and includes all related costs under this Contract except Owner's redesign costs, and that Contractor waives all claims for additional costs related to the substitution which subsequently become apparent; and
4. Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

3.4 WARRANTY

3.4.1 Contractor warrants to Owner that materials and equipment furnished under the Contract will be of specified quality and new unless otherwise required or permitted by the Contract Documents; that the Work will be free from defects not inherent in the quality required or permitted; and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be, at the election of Owner, considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. Contractor's warranty will not be affected by the specification of any product or procedure unless Contractor objects promptly to such product or procedure and so advises Owner, in writing, of proposed products and procedures, which will affect Contractor's warranty. Contractor's warranty will not be restricted by any manufacturer's warranty. Contractor is responsible for any subcontractor's nonperformance on warranty Work. The refusal of a subcontractor or supplier to correct defective work for which it is responsible will not excuse Contractor from performing under Contractor's warranty. No limitation on warranties anywhere in this Document shall be deemed to apply to the warranties made pursuant to this Section. If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Contractor shall obtain all guarantees and warranties required under the Contract Documents, including without limitation, those set forth in Article 4 of the applicable Project Engagement Letter. No such guarantee or warranty shall contain exclusions, limitations or conditions that are not normally and customarily imposed by contractors or suppliers in guarantees or warranties for the type of item being guaranteed.

3.4.2 Contractor shall, within five (5) days after receipt of a notice of warranty claim from Owner, begin the repair or replacement of all defective, non-conforming or non-performing work and/or materials at Contractor's sole cost and expense, including, without limitation, all labor, materials, and necessary uncovering of completed work and the corresponding repair or restoration, as is required to fully and completely cure each and every breach of Contractor's warranty contained in this Document. All such repairs or replacements shall be completed not later than thirty (30) days after receipt of the original notice of warranty claim from Owner.

3.5 TAXES

Contractor shall pay sales, consumer, use and similar taxes that are legally required when the Contract Documents are executed whether with respect to the Contract or any related subcontract.

3.6 PERMITS, FEES AND NOTICES

3.6.1 Contractor shall obtain the building permit and other permits and governmental licenses and inspections necessary for proper execution and completion of the Work. Contractor shall directly pay to the appropriate government body the fees for all such permits.

3.6.2 Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If Contractor performs Work contrary to laws, statutes, ordinances, building codes, and rules and regulations without notice to Owner, Contractor shall assume full responsibility for such Work and shall bear the attributable costs. Contractor shall promptly notify Owner in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

3.6.3 Contractor shall file and post a Notice of Commencement as provided in O.C.G.A. § 13-10-62 no later than fifteen days after physically commencing Work.

3.7 USE OF SITE

Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and Owner, and Contractor shall otherwise conform its operations at the site to such directions and requirements as Owner shall from time to time specify, provided that, subject to the provisions of Section 10.1, such directions and requirements do not materially impair the ability of Contractor to carry out the Work.

3.8 CUTTING AND PATCHING

3.8.1 Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.8.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and of such separate contractor, as applicable. Such consent shall not be unreasonably withheld and Contractor shall not unreasonably withhold from Owner or a separate contractor Contractor's consent to cutting or otherwise altering the Work.

3.9 CLEANING UP

Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of debris and trash related to the Work. If the Contractor fails to clean up as provided herein, Owner may do so and charge the cost thereof to Contractor.

3.10 INDEMNIFICATION

To the fullest extent permitted by law, Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless Owner, their subsidiaries and their agents, directors, officers, trustees, employees and volunteers (collectively referred to as "Indemnitees") from and against any and all claims, demands, suits, damages, losses, and expenses including but not limited to reasonable attorney's fees and court costs, which may be alleged, claimed, or recovered against Indemnitees arising out of, resulting from, or in any way connected to the performance or nonperformance of the Work under the Contract Documents, whether as a result of breach of contract, tort or otherwise, including but not limited to any such claim, demand, suit, damage, loss or expense attributed to personal injury, sickness, disease, death, or injury to or destruction of property, including loss of use, caused in whole or in part by the negligent acts or omissions of Contractor, any subcontractor, agent, or anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor is, or may be, liable, or any other person or persons including but not limited to Owner, their agents and employees. Contractor's obligations of indemnification shall exclude only those matters in which the claim, demand, suit, damage, loss or expense arises out of allegations of the sole negligence of Owner, or any of their respective agents, servants and employees. Contractor's liability insurance shall be primary as to any coverage maintained by Owner.

3.11 BOND REQUIREMENTS

Contractor shall furnish a payment bond and a performance bond for all contracts valued at \$100,000.00 or more. A performance bond and payment bond may be required for contracts valued at less than \$100,000.00 in the sole discretion of the Owner. The Surety on any bond furnished shall be one which is authorized to do business in the State of Georgia and is listed in the latest circular of the Department of the Treasury's "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies; Notice". Bond premiums shall be included in the price for the Work.

ARTICLE 4 **ADMINISTRATION OF THE CONTRACT**

4.1 OWNER'S THIRD PARTY REPRESENTATIVES

Contractor expressly acknowledges and agrees that Owner may, from time to time, designate a third party, for example but not in limitation, an architect, engineer or construction manager, to perform any of its duties or obligations under the Contract. In the event of any such designation, Owner shall provide written notice to Contractor.

4.2 SITE VISITS

Owner will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

4.3 CONSTRUCTION MEANS AND METHODS

Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely Contractor's responsibility. Owner will not be

responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents.

4.4 PAYMENT CERTIFICATION

Based on Owner's observations and evaluations of Contractor's Applications for Payment Owner will review and certify the amounts due Contractor. Payments to Contractor are subject to final approval by the Owner in all cases.

4.5 REJECTION OF WORK

Owner will have authority to reject Work that does not conform to the Contract Documents.

4.6 SUBMITTAL REVIEW

Owner will promptly review and approve or take appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

4.7 INTERPRETATION AND DECISION

Owner will promptly interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of Contractor. Interpretations and decisions Owner will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

4.8 SENIOR OFFICERS' RESOLUTION/MEDIATION

4.8.1 All claims, disputes, events of default or other controversies arising out of, or relating to, this Agreement (hereafter collectively referred to as a "Dispute") shall initially, prior to non-binding mediation, arbitration, or the commencement of legal proceedings, be submitted to a Senior Officer from each party for resolution by mutual agreement between said officers. Any mutual agreement by the Senior Officers shall be final and binding upon the parties.

4.8.2 For purposes of this section, the term "Senior Officer" shall mean, with respect to the Contractor, the Contractor's chief executive officer, president, managing partner, chief financial officer, or any vice president or general manager, and with respect to Owner, the chief executive officer, president, chief financial officer or any vice president of Owner.

4.8.3 Should the Senior Officers fail to arrive at a mutual agreement resolving the Dispute within thirty (30) days after the submission of the Dispute, the Owner, at its sole option, may submit the Dispute to non-binding mediation as provided in Sections 4.8.3 through 4.8.6 of this Contract. Such non-binding mediation shall be conducted in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. If Owner chooses, at its sole option, to not submit the Dispute to mediation, Owner may submit such Dispute to Arbitration as provided for in Section 4.9 of the Contract.

4.8.4 If Owner chooses to proceed with non-binding mediation, Owner has thirty (30) days from the date the Senior Officers failed to arrive at a mutual agreement resolving the dispute to submit

the Dispute to non-binding mediation before the American Arbitration Association. Owner shall provide Contractor with reasonable notice of its intent to submit the Dispute to mediation.

4.8.5 The Owner and Contractor shall include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as between all parties on the Project, if required by Contractor as the case may be.

4.8.6 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon.

4.9 ARBITRATION

4.9.1 A Dispute where the aggregate amount at issue is equal to or less than \$250,000 that has not been resolved by the Senior Officers in accordance with the terms and provisions of Section 4.8.1 through 4.8.2 hereof or by mediation at the Owner's option in accordance with the terms and provisions of Section 4.8.3 through 4.8.6 may be submitted to arbitration, at Owner's sole option, in accordance with the terms and provisions set forth in Section 4.9.4 through 4.9.10 hereof.

4.9.2 A Dispute where the aggregate amount at issue is greater than \$250,000, but equal to or less than \$1,000,000, that has not been resolved by the Senior Officers in accordance with the terms and provisions of Section 4.8.1 through 4.8.2 hereof or by mediation at the Owner's option in accordance with the terms and provisions of Section 4.8.3 through 4.8.6 hereof may be submitted to arbitration, at Owner's sole option, in accordance with the terms and provisions set forth in Section 4.9.4 through 4.9.10 hereof.

4.9.3 If the Owner and the Contractor mutually agree in writing, any Dispute where the aggregate amount at issue is greater than \$1,000,000 that has not been resolved by the Senior Officers in accordance with the terms and provisions of Section 4.8.1 through 4.8.2 hereof or by mediation at the Owner's option in accordance with the terms and provisions of Section 4.8.3 through 4.8.6 hereof may be submitted to arbitration, at Owner's sole option, in accordance with the terms and provisions of Section 4.9.4 through 4.9.10 hereof. In the event Owner chooses, at its sole option, not to submit any such Dispute to arbitration, both parties shall nevertheless be entitled to avail themselves of any rights or remedies set forth in this Agreement or as otherwise provided at law and/or in equity.

4.9.4 All arbitration proceedings shall take place in Fulton County, Georgia, and shall be conducted in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect as of the time of the demand. Owner shall file notice of its demand for arbitration with the American Arbitration Association, and provide reasonable notice to Contractor of its demand to submit the Dispute to arbitration.

4.9.5 All demands for arbitration must contain either a statement that (i) the total sum or value in controversy, does not exceed \$1,000,000, or (ii) the total sum or value in controversy exceeds \$1,000,000. If Owner chooses not to proceed with arbitration as set forth in Section 4.9.3, the arbitrators shall not have jurisdiction, power or authority to consider or make findings concerning any Dispute where the amount at issue exceeds \$1,000,000. Similarly, the arbitrators shall not have jurisdiction, power or authority to render monetary awards in excess of \$1,000,000 for any Dispute that was initially submitted to arbitration as a Dispute described in either Section 4.9.1 or 4.9.2.

4.9.6 Notwithstanding anything to the contrary contained in the Construction Industry Arbitration Rules, the method of discovery permitted for any arbitration shall be as follows:

- (i) as to Disputes described in Section 4.9.1, no discovery shall be permitted or performed;
- (ii) as to Disputes described in Section 4.9.2, discovery shall be limited to the exchange of documents relevant to the dispute between the Owner and the Contractor; and
- (iii) as to Disputes described in Section 4.9.3, all methods of discovery available under the Federal Rules of Civil Procedure shall be permitted and shall govern the proceedings.

4.9.7 For Disputes described in Section 4.9.1, the arbitration panel shall consist of one (1) individual appointed by the Owner and Contractor. Such individual shall (i) have been selected from the American Arbitration Association's list of potential arbitrators; (ii) have at least 10 years experience in the discipline which is the subject of the Dispute; and (iii) be an attorney whose 10 years of experience has been in the realm of litigating and arbitrating issues which are of the subject of the Dispute. If the Owner and Contractor fail to mutually agree upon an arbitrator within 20 days after receipt of notice to arbitrate given by either party, then the arbitration panel shall be selected by the administrative office of the American Arbitration Association. Such office shall, within 20 days after notice by either party to this Agreement, select a single arbitrator who complies with the requirements otherwise set forth in this Section. The arbitrator selected shall conduct the hearing and render his or her decision within 25 days after his or her appointment.

4.9.8 For Disputes described in Section 4.9.2 and 4.9.3, the arbitration panel shall consist of three (3) individuals selected as follows. Within 20 days after the receipt of a notice to arbitrate given by either party, the Owner and Contractor shall each select an individual from the list of potential arbitrators furnished by the American Arbitration Association who is an attorney with at least 10 years experience in litigating and arbitrating issues which are of the subject of the Dispute. Within 10 days after both arbitrators have been selected, such individuals shall appoint the third arbitrator. Said third member shall likewise be selected from the list supplied by the American Arbitration Association and shall similarly have 10 years experience in the discipline which is the subject of the Dispute, but need not be an attorney. If the first two arbitrators cannot agree upon the third within 10 days after their appointment, they shall be dismissed and two other persons shall be appointed as described above. This procedure shall continue until a full panel results. Once assigned, the panel of arbitrators need not resolve the dispute within any specific time limit, but shall use all reasonable means to render a decision with reasonable dispatch.

4.9.9 No arbitration arising under this Agreement shall include, by consolidation, joinder or any other manner, any person or entity not a party to this Agreement, unless (i) such person or entity is substantially involved in a common question of fact or law, (ii) the presence of such person or entity is required if complete relief is to be accorded in the arbitration, and (iii) such person or entity has consented to such inclusion.

4.9.10 The agreement herein among the parties to arbitrate under certain circumstances shall be specifically enforceable in any court having jurisdiction thereof. Any award rendered by the arbitrator(s) pursuant to any arbitration shall be final and binding upon the parties hereto, and judgment may be entered upon it in accordance with applicable law in any court of competent jurisdiction.

ARTICLE 5
SUBCONTRACTORS

5.1 SUBCONTRACTUAL RELATIONS

5.1.1 By appropriate written agreement, Contractor shall require each subcontractor to be bound to Contractor by the terms of the Contract Documents and to assume toward Contractor all the obligations and responsibilities which Contractor assumes toward Owner. Each subcontract agreement shall preserve and protect the rights of Owner under the Contract Documents with respect to the Work to be performed by the subcontractor. Each subcontract shall not prejudice such rights and shall allow to the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against Contractor that Contractor, by the Contract Documents, has against Owner. The foregoing provisions shall apply to any tier of subcontractor. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound. Additionally, Contractor, upon written request of the subcontractor, shall identify to the subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents.

5.1.2 Any part of the Work performed by any tier of subcontractor shall be pursuant to a written subcontract, which shall, without limitation, contain provisions that:

- (a) require that such portion of the Work be performed in accordance with the requirements of the Contract Documents;
- (b) require timely submission of subcontractor applications for payment and ancillary materials in order to enable Contractor to apply for payment in accordance with the provisions of Article 9 of this Document;
- (c) waive all rights the subcontracting parties may have against one another or that the subcontractor may have against Owner for damages caused by fire or other perils covered by the property insurance described in Article 11 of this Document;
- (d) recognize the rights of Owner pursuant to Section 5.2.1 of this Document and require the subcontractor (upon notice by Owner that Owner has terminated the Contract with Contractor pursuant to the terms of Article 14 of this Document and that Owner has elected, pursuant to Section 5.2.1 to retain the subcontractor pursuant to the terms of its subcontract with Contractor) to complete the unperformed obligations under such subcontract and, if requested by Owner, to enter into an appropriate agreement evidencing the fact that the subcontractor is bound to Owner under his subcontract in the manner in which he had been bound to Contractor;
- (e) require the subcontractor to carry and maintain the insurance described in Article 11 of this Document unless otherwise approved by Owner and to deliver certificates of insurance prior to commencement of its portion of the Work. Certified copies of the policies of insurance shall be promptly delivered upon request of Owner;
- (f) contain the following sentence: "Owner is an intended third party beneficiary of this subcontract.";
- (g) notify the Subcontractor that the Work is part of a public works contract on public property and any claim of a mechanic's or materialmen's lien is invalid and the Subcontractor's recourse in lieu of statutory lien rights is a claim on the payment bond, if any, furnished by Contractor for the Project; and
- (h) contain no provisions inconsistent with any of the provisions of this Section.

5.2 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.2.1 Each subcontract agreement for a portion of the Work is assigned by Contractor to Owner provided that:

1. assignment is effective only after termination of the Contract by Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which Owner accepts by notifying the subcontractor in writing; and
2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.2.2 Upon Owner's reasonable request, Contractor shall execute further documentation conditionally assigning each subcontract agreement to Owner and Contractor shall cause subcontractor to acknowledge said assignment. Copies of the executed subcontract agreements shall be delivered to Owner upon request.

5.3 SUBCONTRACTOR'S CLAIMS

5.3.1 Contractor shall promptly advise Owner in writing of any claim or demand by a subcontractor claiming that any amount is due to such subcontractor or claiming any default by Contractor or any other subcontractor in any of its obligations to such subcontractor.

ARTICLE 6 **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

6.1 Owner reserves the right to perform construction or operations related to the project with Owner's own forces, and to award separate contracts in connection with other portions of the project. Contractor shall coordinate and cooperate with separate contractors employed by Owner.

ARTICLE 7 **CHANGES IN THE WORK**

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 A Change Order shall be based upon agreement between Owner and Contractor; a Construction Change Directive may be issued by the Owner alone and may or may not be agreed to by Contractor.

7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are changed in a proposed Change Order or Construction Change Directive such that application of such unit prices to quantities of Work proposed will

cause substantial inequity to Owner or Contractor, the applicable unit prices shall be equitably adjusted.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument signed by Owner and Contractor, stating their agreement upon all of the following:

1. a change in the Work;
2. the amount of the adjustment in the Contract Sum, if any; and
3. the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

7.3 CONSTRUCTION CHANGE DIRECTIVES

7.3.1 A Construction Change Directive is a written order prepared and signed by Owner, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both. Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive may be used by Owner in the absence of total agreement on terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in the Contract Documents or subsequently agreed upon;
3. cost to be determined in a manner agreed upon by the parties according to a mutually acceptable fixed or percentage fee; or
4. as provided in Section 7.3.6.

7.3.4 Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Owner of Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

7.3.5 A Construction Change Directive signed by Contractor indicates that Contractor agrees with its terms, including adjustment in Contract Sum and Contract Time, and the method for determining them. Such agreement shall be effective immediately.

7.3.6 If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by Owner as follows:

(i) If the "actual cost" in performing the Work is increased by any such change, the Contract Sum shall be increased by the "actual cost" to Contractor in performing the Work attributable to the change plus a percentage fee for overhead and profit. For Work which is performed by Contractor's own forces in relation to any such change, such percentage fee shall be equal to a fixed percentages set forth in Attic 4 of the Project Engagement Letter, of the "actual cost" incurred by Contractor for such additional Work. For Work which is performed by any tier of subcontractor of any of the above in relation to any such change, the percentage fee payable to Contractor shall be equal to a fixed percentage as set forth in Article 4 of the Project Engagement Letter, of the "actual cost" incurred by Contractor (or such Subcontractor) for the additional work performed by any tier of subcontractor.

(ii) If the "actual cost" in performing the Work is decreased by any such change, the Contract Sum shall be decreased by the sum of the "actual cost" plus percentage fees calculated as described in clause (i) above, which would have been incurred by Contractor (or any tier of subcontractor) in the absence of such change.

In the event the Contract Sum is revised pursuant to this Section or Section 7.3.3, Contractor shall keep and present, in such form as Owner may prescribe, an itemized accounting of "actual costs" together with appropriate supporting data. For the purposes of this Section, "actual cost" shall be defined and limited to the cost of the following:

1. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' or workmen's compensation insurance;
2. costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. reasonable rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; and
4. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work.

"Actual cost" shall not be deemed to include any item, which could be considered a general conditions cost or overhead, including, but not limited to, the cost of supervisory personnel, and field office and related expenses.

7.3.7 If Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the method or adjustment shall be determined by a mutually appointed independent third party.

7.3.8 When the adjustments in the Contract Sum and Contract Time are determined, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

ARTICLE 8 **TIME**

8.1 DATES OF COMMENCEMENT, FINAL COMPLETION

The date of commencement and the date of final completion of the Work shall be as set forth in Article 2 of the Project Engagement Letter, subject to adjustment by Change Order. Substantial

Completion (as defined in Section 9.7) shall occur prior to final completion as set forth in Article 2 of the Project Engagement Letter.

8.2 TIME OF THE ESSENCE

Time limits stated in the Contract Documents are of the essence.

8.3 EXTENSIONS OF TIME

8.3.1 No extension of time will be allowed to cover losses due to bad weather, availability or non-availability of workmen, failure to receive material on schedule, or other causes. Contractor acknowledges that it has made a reasonable allowance for such events in preparing its bid and in agreeing to the times or dates of completion, and in preparation of the progress schedule referred to in Article 2 of the Project Engagement Letter. If it becomes necessary in the opinion of Owner, in order to complete the Work in the agreed time, the Work shall be done beyond regular working hours as required to complete the Work, and without additional cost to Owner.

8.3.2 No extension of time will be allowed for correction of faulty work.

8.4 CALENDAR DAYS USED

Time periods in the Contract Documents are expressed on a calendar basis unless the Contract Documents expressly provide otherwise.

ARTICLE 9 **PAYMENT AND COMPLETION**

9.1 CONTRACT SUM

The Contract Sum stated in the Project Engagement Letter, including authorized adjustments, is the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents. Subject to additions and deductions by Change Order, the Contract Sum shall be as set forth in Article 3 of the Project Engagement Letter and, for purposes of progress payments, the Contract Sum shall be allocated as set forth in the schedule of values set forth in Article 3 of the Project Engagement Letter. The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

9.1.1 Selection of "Labor and Materials" to define the Contract Sum in Article 3 of the Project Engagement Letter is based upon the following:

(a) Labor shall be paid according to the hourly rates specified in the Project Engagement Letter. The hourly rates shall include all labor costs, profit, and overhead. Labor costs shall include salary or hourly wage, taxes, insurance, fringes, and benefits. Overhead shall include home office overhead, support personnel, administrative costs related to procurement of Materials, and the cost of small tools and consumables.

(b) Materials payment shall be equal to the direct costs incurred by Contractor for equipment and materials used in performing the Work, other than small tools and consumables.

9.2 SCHEDULE OF VALUES AND INITIAL SWORN STATEMENT

9.2.1 The schedule of values set forth in Article 3 of the Project Engagement Letter shall be used as the basis for reviewing the Contractor's Applications for Payments.

9.2.2 Prior to commencement of the Work, Contractor shall deliver to Owner a contractor's sworn statement, duly executed and acknowledged and in form satisfactory to Owner, listing all subcontracts and the amount of each such subcontract.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 On the 25th of each month, Contractor shall submit to the GHS-FD Project Manager a draft of the Application for Payment on AIA "Application for Payment" and "Continuation Sheet" forms (AIA Documents G702 and G703) for operations completed in accordance with the values stated in the Project Engagement Letter and shall show the percentage of proper completion of the Work as of the end of the period covered by the Application for Payment. Upon acceptance by the GHS-FD Project Manager of the draft Application for Payment, and no later than the 30th of the month, Contractor shall submit to GHS-FD an itemized, final of the Application for Payment on AIA "Application for Payment" and "Continuation Sheet" forms (AIA Documents G702 and G703) for operations completed in accordance with the values stated in the Project Engagement Letter and shall show the percentage of proper completion of the Work as of the end of the period covered by the Application for Payment. Such application shall be supported by such data substantiating Contractor's right to payment as Owner may reasonably require, including (i) duly executed mechanics' and materialmen's lien waivers from Contractor, all subcontractors and all suppliers covering the payments made pursuant to all previous Applications for Payment and reflecting retainage as set forth in Article 3 of the Project Engagement Letter, (ii) a duly executed and acknowledged Contractor's sworn statement showing all subcontractors with whom Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any subcontractor in the application for payment and the amount to be paid to Contractor from such progress payment, together with similar sworn statements from all subcontractors and materialmen, and (iii) with respect to materials identified to the project but stored off-site with Owner's written consent to such off-site storage, evidence satisfactory to Owner that title (free of any lien whatsoever) to such material will vest in Owner not later than the time of payment, evidence that such material is stored according to manufacturers' specifications and that such materials are fully insured according to the provisions of the Contract Documents.

9.3.2 Contractor covenants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment, and the submission of an Application for Payment shall constitute a warranty to that effect. Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from Owner shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to Owner's interests.

9.4 CERTIFICATES FOR PAYMENT

9.4.1 Owner will, within fifteen (15) days after receipt of Contractor's Application for Payment, either issue a Certificate for Payment for such amount as Owner determines is properly due, or notify Contractor in writing of Owner's reasons for withholding certification in whole or in part.

9.4.2 If Contractor and Owner cannot agree on a revised amount, Owner will promptly issue a certificate for payment for the amount for which Owner determines is justified based upon the progress and quality of the Work. Owner shall also not certify payment (or because of subsequently discovered evidence or subsequent observations, shall nullify the whole or a part of a certificate for payment previously issued), to such extent as may be necessary, in Owner's opinion, to protect Owner from loss because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims;
3. failure of Contractor to make payments properly to subcontractors or for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to Owner or another contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay;
7. persistent failure to carry out the Work in accordance with the Contract Documents;
- or
8. failure to have supplied operations and maintenance manuals, record documents, and/or other information that may be required by other sections of the Contract Documents earlier than 45 days prior to Substantial Completion.

9.5 PAYMENTS

9.5.1 After OWNER has issued a Certificate for Payment, Owner shall make payment in the manner provided in the Project Engagement Letter.

9.5.2 Contractor shall promptly pay each subcontractor and material supplier, upon receipt of payment from Owner, out of the amount paid to Contractor on account of such entities' portion of the Work.

9.5.3 Owner shall not have responsibility for the payment of money to a subcontractor or material supplier, and Contractor shall defend, indemnify and hold Owner harmless from all claims by or on behalf of any subcontractor or material supplier. Such duty to defend Owner harmless shall include the duty to post appropriate bonds or undertakings with any title insurer as may be required to obtain appropriate endorsements to any policy of title insurance covering the site or any real property of which the site constitutes a part.

9.5.4 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the project by Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

9.6 SUBSTANTIAL COMPLETION

9.6.1 Substantial Completion is the stage in the progress of the Work when the Work or a designated portion is sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work for its intended use. The determination of whether the Work

or a designated portion is "substantially complete" shall be made by Owner in its reasonable discretion.

9.6.2 When Contractor considers that the Work, or a portion of the Work, which Owner agrees to accept separately, is substantially complete, Contractor shall prepare and submit to Owner a comprehensive list of items to be completed or corrected. Upon receipt of Contractor's list Owner will make an inspection to determine whether the Work or designated portion of the Work is substantially complete. Failure to include an item on such list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. If Owner's inspection discloses any item, whether or not included on Contractor's list, which is not in accordance with the requirements of the Contract Documents, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Owner. When the Work or designated portion of the Work is substantially complete, Owner will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which Contractor shall finish all items on the list accompanying the Certificate. Contractor shall proceed promptly to complete and correct items on the punchlist to be prepared by Owner. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion of the Work unless otherwise provided in the Certificate of Substantial Completion. With respect to Work enumerated on the list accompanying the Certificate of Substantial Completion or the punchlist, the warranty period shall start at the time of subsequent acceptance of this Work in writing by Owner. The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.6.3 Upon Substantial Completion of the Work or designated portion of the Work and upon application by Contractor and certification by Owner, Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or a portion of the Work as provided in the Project Engagement Letter. Amounts withheld for incomplete work or unsettled claims will be paid prior to final payment as such Work is completed or claims settled, in accordance with the regular monthly payment procedures.

9.7 FINAL COMPLETION AND FINAL PAYMENT

9.7.1 Final Completion denotes that the Work has been completed in accordance with terms and conditions of the Contract Documents.

9.7.2 Upon receipt of a final Application for Payment, Owner will inspect the Work. When Owner finds the Work acceptable and the Contract fully performed, Owner will promptly issue a final Certificate for Payment.

9.7.3 Neither final payment nor any remaining retained percentage shall become due until Contractor submits to Owner:

- (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner;

- (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
- (4) consent of surety, if any, to final payment;
- (5) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner;
- (6) final prints for record drawing use marked by Contractor with record information set forth in the Contract Documents, and which shows changes made to the Drawings during performance of the Work, utilizing a method which highlights the changes on the prints;
- (7) a final Contractor's sworn statement from Contractor duly executed and acknowledged showing all subcontractors to be fully paid, and similar final sworn statements from subcontractors and, where appropriate, materialmen;
- (8) evidence of final inspection and approval of the Work by any local authority whose approval is required pursuant to any construction permit (or otherwise) as a condition of occupancy of the project by Owner.

If a subcontractor refuses to furnish a release or waiver required by Owner, Contractor may furnish a bond satisfactory to Owner to indemnify Owner against such claim. If such claim remains unsatisfied after payments are made, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such claim, including all costs and reasonable attorneys' fees.

9.7.4 Acceptance of final payment by Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee, and to the fullest extent permitted by law all persons claiming under or through such payee, except those claims previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 **PROTECTION OF PERSONS AND PROPERTY**

10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law, in connection with performance of the Contract. Contractor shall promptly remedy damage and loss to property caused in whole or in part by Contractor, or by anyone for whose acts Contractor may be liable. Without limiting the foregoing, Contractor shall immediately comply with all safety-related instructions and directives from any party acting on behalf of Owner.

10.1.2 In the event Contractor encounters on the site material reasonably believed to be hazardous material including, but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances which has not been rendered harmless, Contractor may immediately stop Work in the area affected and report the condition to Owner in writing. The suspected hazardous material shall be examined by a qualified specialist at Owner's expense. Should the examination confirm the presence of previously unidentified hazardous material, Owner shall be responsible for conducting abatement by separate contract to remove the potential hazard. The qualified specialist shall certify that no hazardous material exists or that abatement has been satisfactorily accomplished. The work in the affected area shall not be resumed except by written agreement of Owner and Contractor if in fact the material is hazardous material and has

not been rendered harmless. The Work in the affected area shall be resumed in the absence of a hazardous material, or when it has been rendered harmless, as certified by the qualified specialist. Any losses suffered by Contractor relating to the performance of the Work and not attributable to a wrongful act or omission of Contractor and which are due to hazardous material on the site shall be compensated by Owner and reflected in a Change Order.

10.1.3 Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to hazardous materials, including but not limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

10.1.4 Contractor shall comply with all provisions of federal and applicable state law or regulation relating to transportation, storage and handling of hazardous materials, including, without limitation, all regulations relating to the so-called Hazardous Communications Standard promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act including labeling, Material Safety Data Sheets, and employee information and training requirements. In addition, when use or storage of Hazardous Materials or equipment or unusual methods are necessary, Contractor shall give Owner ten (10) days' notice in advance of such use, storage or unusual methods. Contractor shall take care to minimize its use of Hazardous Materials to the extent consistent with the orderly conduct of the Work. To the maximum extent practical, Contractor shall cause Hazardous Materials (and any explosive materials which are not Hazardous Materials) to be stored off the site and Owner's premises. All Hazardous Materials used, stored or generated at the project site shall be used, stored, transported and disposed of in strict conformity with applicable laws, codes, rules, regulations, guidelines and orders of governmental authorities having jurisdiction, and Contractor shall maintain -- and provide promptly to Owner upon demand -- appropriate and complete documentation evidencing Contractor's compliance with all such laws, codes, rules, regulations, guidelines and orders. (The term "Hazardous Substances" shall have the meaning provided in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et. seq. (or any successor statute)). Contractor shall not include asbestos, polychlorinated biphenyls or urea formaldehyde in any construction materials. Contractor shall be responsible for the removal and cleanup of all hazardous and toxic materials and wastes brought to the project site or generated at the project site by Contractor or any subcontractor. Contractor shall indemnify, defend and hold harmless Owner from and against all claims, suits, damages, losses, fines, penalties, costs and expenses, including reasonable attorneys' fees, arising from or in connection with or otherwise relating to the use, generation, storage, release, transporting and disposal of any hazardous or toxic materials or waste in the performance of the Work.

ARTICLE 11 **INSURANCE**

11.1 Contractor shall provide insurance as set forth in Schedule A that is attached to this Document and incorporated by reference.

11.2 Owner and Contractor waive all rights against each other and any of their subcontractors, suppliers, and the agents and employees of any of them for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. Owner and Contractor shall require their subcontractors, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall

be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property.

11.3 Neither party nor their respective subcontractors, suppliers, agents, employees or representatives shall be deemed an employee of the other party, and each party shall indemnify, hold harmless, and defend the other party and its subcontractors, agents, employees and representatives from and against any liability of the indemnifying party for compensation under any applicable state or Federal worker's compensation law, including worker's compensation and/or employer's liability claims of employees.

ARTICLE 12 **UNCOVERING AND CORRECTION OF WORK**

12.1 Contractor shall promptly correct Work rejected by Owner as failing to conform to the requirements of the Contract Documents. Contractor shall bear all costs associated with the identification, review, design, correction and testing of correcting such rejected Work.

12.2 If Contractor fails to correct nonconforming Work within a reasonable time, Owner may correct it and Contractor shall reimburse Owner for the actual costs to correct any nonconforming Work.

12.3 If a portion of the Work is covered contrary to Owner's written request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by Owner, be uncovered for Owner's observation and be replaced at Contractor's expense without change in the Contract Time.

ARTICLE 13 **MISCELLANEOUS PROVISIONS**

13.1 ASSIGNMENT OF CONTRACT

Contractor shall not assign the Contract without written consent of Owner.

13.2 TESTS AND INSPECTIONS

13.2.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall arrange for such tests, inspections and approvals with Owner or such other entity as Owner shall specify. In addition, Contractor shall arrange to have performed such additional tests and inspections as are specified in the Project Engagement Letter, if any. Owner shall bear all related costs of such required tests, inspections and approvals. If an independent testing laboratory is required by the Contract Documents, Owner shall select, provide and pay for initial testing by the independent testing laboratory.

13.2.2 Owner may in its reasonable discretion require additional testing. Contractor shall, if so required, cause these tests to be performed by such entity as Owner shall designate, at Owner's expense.

13.3 GOVERNING LAW

The Contract shall be governed by the law and construed in accordance with internal laws of the State of Georgia exclusive of its conflict of laws rules. Any suits brought in connection with this Contract shall be brought in the Superior Court of Fulton County, Georgia or in the United States District Court for the Northern District of Georgia, and all parties consent to jurisdiction and venue in these courts for purposes of all matters arising out of this Contract.

13.4 NOTICE

Every notice, demand or other document or instrument required or permitted to be given under the Contract may be given by either party by depositing the same in the US Mail, first class, addressed to the other as follows:

To Owner: Grady Health System - Facilities Development
80 Jesse Hill Jr. Drive, S.E.
P.O. Box 26083
Atlanta, Georgia 30303
Attn: Director

With a copy to: Grady Memorial Hospital Corporation (d/b/a Grady Health System)
80 Jesse Hill Jr. Drive, S.E.
Atlanta, Georgia 30303
Attn: Administration

To Contractor: _____

Attn: _____

With a copy to: _____

Attn: _____

The foregoing shall not be deemed to preclude the use of other means of notification other than oral or to invalidate any notice properly given by any such other means than oral.

13.5 SEVERABILITY

If any provision of the Contract shall be held invalid or unenforceable, that provision shall be deemed deleted from the Contract and replaced by a valid and enforceable provision which so far as possible achieves the parties' intent in agreeing to the original provision. The remaining provisions of the Contract shall continue in full force and effect.

13.6 NON-WAIVER

No course of dealing or failure of Owner to enforce strictly any term, right, obligation or provision of the Contract shall be construed as a waiver of such provision.

13.7 JOINT WORK PRODUCT

The Contract is the joint work product of representatives of Owner and Contractor. Accordingly, no inferences will be drawn against either party, including the party that drafted the Contract in its final form.

13.8 AUTHORITY

Each party represents to the other that it has full authority to enter into and secure performance of the Contract, and that the person signing the Contract on behalf of the party has been properly authorized to enter into the Contract. Each party further acknowledges that it has read the Contract, understands it, and agrees to be bound by all of its terms, conditions and provisions.

ARTICLE 14 **TERMINATION OR SUSPENSION OF THE CONTRACT**

14.1 TERMINATION BY THE CONTRACTOR

14.1.1 Contractor may terminate the Contract if the Work is stopped for a period of 90 days through no act or fault of Contractor or a subcontractor, or their agents or employees or any other persons performing portions of the Work under contract with Contractor, for any of the following reasons:

1. issuance of an order of a court or other public authority having jurisdiction;
2. because Owner has not issued a Certificate for Payment and has not notified Contractor of the reason for withholding certification as provided in Section 9.4, or because Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
3. if repeated suspensions, delays or interruptions by Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

14.1.2 If the Work is stopped for a period of 90 days through no act or fault of Contractor or a subcontractor or their agents or employees or any other persons performing portions of the Work under contract with Contractor because Owner has persistently failed to fulfill Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, Contractor may, upon seven additional days' written notice to Owner, terminate the Contract and recover from Owner for the value of Work performed as determined in accordance with the schedule of values including reasonable demobilization costs.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 If Contractor shall institute proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law, or if a petition under any federal or state bankruptcy or insolvency law is filed against Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or if Contractor admits in writing his inability to pay his debts generally as they become due, or if he makes a general assignment for the benefit of his creditors, or if a receiver, liquidator, trustee or assignee is appointed on account of his bankruptcy or insolvency; or if a receiver of all or any substantial portion of Contractor's properties is appointed; or if Contractor abandons the Work; or if he fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or to supply enough properly skilled workmen or proper materials for the Work; or if he submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified; or if he fails to make prompt payment of amounts properly owing to subcontractors or for materials or labor or otherwise breaches his obligations under any subcontract with a subcontractor; or if a claim is filed against any part of the Work or the site of the project and, where the Contractor has furnished no payment bond, not promptly bonded or otherwise settled by Contractor in a manner satisfactory to Owner; or if Contractor disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body, or public or quasi-public authority having jurisdiction of the Work or the site of the project; or if he otherwise violates any provision of the Contract Documents; then Owner, without prejudice to any right or remedy available to Owner under the Contract Documents or at law or in equity, may, after giving Contractor and the surety under any Performance Bond or Payment Bond furnished in connection with the Contract, seven (7) days' written notice, terminate the Contract. If requested by Owner, Contractor shall remove any part or all of his equipment, machinery and supplies from the project site within seven (7) days from the date of such request, and in the event of Contractor's failure to do so, Owner shall have the right to remove or store such equipment, machinery and supplies at Contractor's expense. In case of such termination, Contractor shall not be entitled to receive any further payment for Work performed by Contractor through the date of termination, pending the final completion of the project and the determination of the sums due Contractor as indicated by Section 14.2.4.

14.2.2 When any of the above reasons exist, Owner may without prejudice to any other rights or remedies of Owner and after giving Contractor and Contractor's surety, if any, seven (7) days' written notice, terminate the Contract and may, subject to any prior rights of the surety:

1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor;
2. accept assignment of subcontractors pursuant to Section 5.2; and
3. finish the Work by whatever reasonable method Owner may deem expedient.

14.2.3 When Owner terminates the Contract for one of the reasons stated in Section 14.2.1, Contractor shall not be entitled to receive further payment until the Work is finished.

14.2.4 If the unpaid balance of the Contract Sum exceeds all costs to Owner of completing the Work, then Contractor shall be paid for all Work performed by Contractor to the date of termination. If such costs to Owner of completing the Work exceed such unpaid balance, Contractor shall pay the difference to Owner immediately upon Owner's demand. The costs to Owner of completing the Work shall include (but not be limited to) the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another contractor or other subcontractors, any additional interest or fees which Owner must pay by reason of a delay in

completion of the Work, attorneys' fees and expenses, and any other damages, costs and expenses Owner may incur by reason of completing the Work. The amount, if any, to be paid to Contractor shall be certified by Owner, upon application, in the manner provided in Section 9.4 and this obligation for payment shall survive the termination of the Contract.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 Owner may, without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as Owner may determine.

14.3.2 An adjustment shall be made pursuant to Change Order in accordance with Article 7, for increases in the cost of performance of the Contract and the Contract Time, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of this Contract.

14.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 Owner may, at any time, terminate the Contract for Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from Owner of such termination for Owner's convenience, Contractor shall:

1. cease operations as directed by Owner in the notice;
2. take actions necessary, or that Owner may direct, for the protection and preservation of the Work; and
3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for Owner's convenience, Contractor shall be entitled to receive payment from Owner for the value of Work performed as determined in accordance with the schedule of values including reasonable demobilization costs.

14.5 LIMITATION ON LIABILITY

Notwithstanding anything to the contrary contained in the Contract Documents, Owner, GHS-FD or any of their respective partners, officers, shareholders, directors, agents or representatives shall not have any personal liability for any matters arising under this Contract, it being agreed that in the event of any judgment in favor of Contractor, Contractor's sole recourse shall be against the interest of Owner in the site and the project.

ARTICLE 15
PROTECTION OF OWNER'S OPERATIONS

15.1 To ensure the required protection and maintenance of Owner's operations, Contractor shall comply with the requirements set forth in Article 1 of the Project Engagement Letter.

This Agreement is entered into as of the day and year first written above.

OWNER:
GRADY MEMORIAL HOSPITAL
CORPORATION
(D/B/A GRADY HEALTH SYSTEM)

CONTRACTOR:
Name of Contractor
Company Address

By: Grady Health System

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

SCHEDULE A

Contractor's Minimum Insurance Requirements

Compliance by the Seller with the insurance requirement set forth herein shall not relieve the Seller from liability for amounts in excess of the required limits of insurance.

The types of insurance and minimum limits required hereunder are:

- a) Worker's Compensation Insurance with statutory limits, as required by the State of Georgia
- b) Employer's Liability Insurance with limits of not less than \$1,000,000 to any one person;
 - (1) USL&H, FELA, Jones Act & Continental Shelf Act endorsements, if applicable.
- c) Commercial General Liability Insurance, written on an occurrence form including explosion, collapse, and underground:
 - \$1,000,000 Each Occurrence (BI & PD Combined Single Limit)
 - \$2,000,000 General Aggregate (Per Project)*
 - \$1,000,000 Personal Injury and Advertising Liability
 - \$1,000,000 Products & Completed Operations Aggregate
 - Contractual Liability to cover all Liabilities assumed under this purchase order or Contract subject to policy exclusions.
 - \$100,000 Premises Legal Liability
 - \$10,000 Medical Expense
- d) Automobile Liability Insurance covering all non-owned, and hired automobiles used in connection with the Seller's work with combined single limits for Bodily Injury and Property Damage of not less than \$1,000,000 per accident.
- e) Professional Liability Insurance, if applicable, with limits of not less than \$5,000,000 each occurrence.
- f) Umbrella Liability Insurance excess of all the above required coverages with a minimum limit of \$5,000,000 each occurrence.

In addition to the above Insurance requirements, Seller shall obtain and keep in force until Owner Occupancy an All Risk Builders Risk Policy with limits of liability equal to or exceeding the full Contract Value of the Project. Such Insurance shall be primary in the event of any covered loss. Grady Health System (Owner) shall be included as an additional insured under all coverages (except workers' compensation and employers' liability) as required by this purchase order or Contract and such additional insured status shall be specifically identified on the certificate of insurance.

Prior to commencement of work, the Seller shall deliver to Owner's Agent, insurance certificates evidencing that the required insurance is in force with insurance companies satisfactory to Owner (Minimum A.M. Best A-VII). All certificates of insurance required hereunder shall specifically state that there shall be no material change in, or cancellation of, the policy or policies evidenced except upon 30 days prior written notice via certified mail to Owner's Agent and that 30 days prior to the renewal date. The Seller shall furnish Owner's Agent with updated or replacement certificates of insurance that clearly evidence continuation of coverages in the same manner, limits and protections as required by Owner and Owner's Agent.

Such insurance as required shall be kept in force by the Seller continuously during the life of this purchase order or Contract and for a period of not less than 90 days after the date of final completion; additionally, the Completed Operations insurance required herein under shall be kept in force by the Seller for a period of not less than three (3) years after the date of final completion.

EXHIBIT A

PROJECT ENGAGEMENT LETTER FOR CONSTRUCTION SERVICES

GHS-FD PROJECT # 90XXX
ECC Blue Zone Electrical Outlets

CONTRACT # XXXXXXXX

GRADY MEMORIAL HOSPITAL CORPORATION (D/B/A GRADY HEALTH SYSTEM)

80 Jesse Hill Jr. Drive
Atlanta, GA 30303
("Owner")

and

Mark Henderson, Inc. Electrical Contractors

5322 Snapfinger Park Drive
Decatur, Georgia 30035
770/987-6780
Fax: 770/987-6783
(Contractor)

Project Manager: David Yoo

Date

Dear Mr. Henderson,

Grady Memorial Hospital Corporation d/b/a Grady Health System ("Owner) desires to retain Mark Henderson, Inc. Electrical Contractors, a Georgia Corporation, ("Contractor"), as set forth in this Project Engagement Letter and in the General Terms and Conditions of Contract for Construction Services between Owner and Contractor ("Document"). All the terms and conditions of the Document are incorporated by reference and shall be effective with respect to the subject matter of the letter as if such provisions, terms and conditions were fully set forth. All terms used in this Letter that begins with an initial capital letter, that are not otherwise defined in the in the Letter, but that are defined in the Document, shall have the same meaning for purposes of the Document. This letter relates to the ECC Blue Zone Electrical Outlets Project. The legal description of the "Project" is on file and available for inspection during regular business hours at Grady Health System Facilities Development.

ARTICLE 1: SCOPE

- 1.1 Provide all labor, material, equipment, facilities, and the ways and means necessary to complete the Work per Grady Health System Facilities Development Project Manual Volume 1 dated 3/1/05, Project Manual Volume 2 dated 3/16/05, and Project Manual Volume 3 dated 4/4/05. The scope consists of but not limited to the following:
 - 1.1.1 Mark Henderson will conduct field investigations as required to understand and reflect existing conditions at the jobsite.
 - 1.1.2 Mark Henderson will be required to meet weekly for (1) hour with the GHS-FD Project Manager to provide updates regarding status of project progress.
 - 1.1.3 Cut existing drywall (only if necessary) and ceramic tiles to install conduit runs and electrical boxes.
 - 1.1.4 Repair, patch, and paint any damaged walls, mullions, or glazing.
 - 1.1.5 Mark Henderson will provide all permits with AHJ.
 - 1.1.6 Mark Henderson will adhere to all OSHA regulations.
 - 1.1.7 Mark Henderson will provide 2 copies of as-built drawings.
 - 1.1.8 After hours work will be required only (Sunday-Thursday from 10:00 PM to 6:00 AM).
- 1.2 It is agreed that plans, drawings, specifications attached to or referenced are intended to describe the scope of Work and will not include any term or conditions that conflicts with the Document of this Letter. Any term or conditions not consistent with this provision shall not be binding on the Owner, unless agreed to in a separate document signed by both parties as provided in Section 1.1.1.

ARTICLE 2: SCHEDULE

- 2.1. The project start date is Monday, April 11, 2005.
- 2.2. The on-site construction work will begin on Monday, April 11, 2005.
- 2.3. The Project Substantial Completion Date is Monday, April 25, 2005.

ARTICLE 3: CONTRACT SUM AND PAYMENTS

- 3.1. The Contract Sum is: \$ 3,978.00 (Three thousand Nine hundred and Seventy-eight dollars).
- 3.2. Contract Sum will be paid on a % completion basis by Monthly Progress Payments, with Retainage as set forth in 3.3.
- 3.3. Progress Payments Retainage:
 - 10% as to Work Properly Completed
 - 30% as to materials delivered to the site (of off-site if consented to by Owner in writing), and suitably stored, insured and segregated for subsequent incorporation in the Work
 - 10%as to materials properly incorporated in the Work

Upon Substantial Completion the Retainage held by Owner shall be reduced to the greater of:
5% of the Contract the Contract Sum or
200% of the estimated cost (as determined by Owner) of completing Punch List items.

3.4 Payment: Contractor is to be made aware the Grady Health System pays invoices on a sixty (60) day cycle.

ARTICLE 4: ADDITIONAL PROVISIONS

4.1. Fees for Changes in the Work

The following fee schedule shall apply for all Change Order Work on a net basis:

- Self-Performed Additive Work: 20%
- Self-Performed Deductive Work: 20%
- Subcontractor Performed Additive Work: 10%
- Subcontractor Performed Deductive Work: 10%

4.2. Provide one (1) year warranty on forms acceptable to Grady Health System

If you are in agreement with the terms and conditions of this letter and wish to accept the Contract, then please sign and return one copy to me.

Sincerely,

WE ACCEPT AND AGREE TO THE TERMS OF THE CONTRACT:

OWNER:
Grady Memorial Hospital Corporation
(d/b/a Grady Health System)

CONTRACTOR:
Mark Henderson, Inc. Electrical Contractors
5322 Snapfinger Park Drive.
Decatur, Ga 30035

By: _____

By: _____

Name: _____

Name: Mark Henderson

Title: _____

Title: President

Date: _____

Date: _____

SWORN STATEMENT

STATE OF:

COUNTY OF:

_____ being duly sworn, deposes and says that he/she/is/makes this affidavit on behalf of _____, who is the contractor for the construction of the building situated on the following described property, viz.:

that the following is a statement of the number and names of every sub-contractor and laborer in our employ in connection with said building and every person furnishing materials therefore; that the amounts due or to become due to such subcontractors, laborers and persons for work done and materials furnished at the date hereof, is correctly and fully set forth opposite their names, respectively, in said statement to-wit:

NO.	NAME	LABOR OR MATERIAL	AMOUNT

Deponent further says that the Contractor has not employed, or procured material from or subcontracted with, any person or persons other than those above mentioned, and owes no moneys for labor upon material for the construction of said building other than the sums above set forth.

Subscribed and sworn to before me, this _____ day of _____ of 20__.

Notary Public _____ County of _____

My Commission expires _____, 200

SCHEDULE B

INVOICING INSTRUCTIONS

Please send all invoices for payment to:

Grady Health Systems
Attn: Facilities Development Accountant
80 Jesse Hill Jr. Drive, SE
PO Box 26083
Atlanta, GA 30303

This letter serves as guidelines for your firm when invoicing Grady Health Systems for services rendered. Your invoice package should be sent to the above address with a copy to the Facilities Development Project Manager.

Your invoice packages should contain the following items when submitted:

- Your invoice document
- The Application & Certificate for Payment and Continuation Sheet
- Sworn Statement
- Lien Waiver for the final payment of a contract ONLY.
- Grady's Project and Contract Number reference on invoice document.
- Grady's Project and Contract Number referenced on the Application for Payment
- Contractors Invoice Number referenced on the Application for Payment
- Name of Project and Location.
- Name of Grady's Project Manager on invoice document.
- Period of services rendered.

Invoices should **NOT** be sent to Grady Accounts Payable. Failure to provide the information required on your invoices will result in delays. Improper invoices will be returned to your accounting department. Grady requires invoices and does not pay from statements. Should you have any questions regarding these invoicing instructions, please contact PM or Grady's FD Accountant.