

SECTION V

AGREEMENT FOR CONSTRUCTION SERVICES

This Agreement for Construction Services (the "Agreement") is made and entered into this ___ day of _____, 201___, by and between The City of Winder, a political subdivision of the State of Georgia, (hereinafter referred to as the "Owner"), and _____ (hereinafter referred to as the "Contractor").

WITNESSETH:

WHEREAS, the Owner desires to employ a contractor to perform services for the construction of a project known as the **HIGHWAY 81 WATER MAIN REPLACEMENT** (hereinafter referred to as the "Project");

WHEREAS, the Owner solicited bids for construction of the Project;

WHEREAS, the Contractor submitted a timely bid and met all pre-bid requirements such that the Owner awarded the contract to the Contractor;

WHEREAS, the Contractor has agreed to perform the services set forth in this Agreement, according to the terms and conditions provided in this Agreement;

NOW THEREFORE, the Owner and the Contractor, in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, agree as follows:

Section 1. Contract Documents

The following documents, attached hereto (except as expressly noted otherwise below) and incorporated herein by reference, constitute the Contract Documents:

- A. This Agreement;
- B. Exhibits to this Agreement;
- C. Performance and other Bonds;
- D. Notice of Award;
- E. General Conditions;
- F. Supplementary Conditions;
- G. Specifications bearing title "**Bid Documents and Specifications for Highway 81 Water Main Replacement**", **City of Winder (October 2015)**.
- H. Construction Drawings consisting of the Drawings listed in Section 6 of the Supplementary General Conditions, Section X.
- I. Addenda numbers ___to ___, inclusive;
- J. The Contractor's Bid;
- K. Documentation submitted by the Contractor to the Owner prior to Notice of Award;
- L. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and

other documents amending, modifying, or supplementing the Contract Documents.

To the extent that there is any conflict between the Contract Documents referenced herein, any prior version of this Agreement, General Conditions, Supplementary Conditions, and this Agreement and/or most recently revised General Conditions or Supplementary Conditions, this Agreement and the most recently revised General Conditions and Supplementary Conditions and/or Addenda thereto shall control the obligations of the parties. There are no Contract Documents other than those documents listed above in this Section 1. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

Section 2. The Work

The Contractor shall provide all Work as specified or indicated in all applicable Contract Documents as herein below set forth (hereinafter referred to as the "Work"), for the Project.

Section 3. The Engineer

The Project has been designed by ESG Engineering, Inc. (hereinafter referred to as the "Engineer"). The Engineer is to act as the Owner's representative with respect to the Project, and shall assume all duties and responsibilities and have the rights and authority assigned to the Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Section 4. Contract Time

- A. The Contractor shall commence Work pursuant to this Agreement on or before a date to be specified on a written "Notice to Proceed" of the Owner, and to fully complete the Work **within two hundred and forty (240) consecutive calendar days from the "Notice to Proceed"**.
- B. **Liquidated Damages.** The Owner and the Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in Subsection A of this Section 4, plus any extensions thereof allowed in accordance with the General Conditions. The Owner and the Contractor also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the Owner if the Work is not completed within the specified time. Accordingly, instead of requiring any such proof, the Owner and the Contractor agree that as liquidated damages for delay (but not as a penalty), the Contractor shall pay to the Owner **Two hundred fifty and 00/100 (\$250.00) Dollars** for each and every calendar day that expires after the time specified in Subsection A of this Section 4.

Section 5. Contract Price

The Owner shall pay the Contractor for completion of the Work in accordance with Section III, of the Bid Documents titled "Proposal" Section 8, Paragraphs 8.1 8.2, 8.3 and 8.4.

_____ Dollars

Section 6. Payment Procedures

The Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by the Engineer as provided in the General Conditions.

- A. Progress Payments; Retainage. The Owner shall make progress payments on account of the Contract Price on the basis of the Contractor's Applications for Payment as recommended by the Engineer as per General Conditions, Article 14. All such payments will be measured by the schedule of values established in Paragraphs 8.1 and 8.2 of Section III, of the Bid Documents titled "Proposal".
- B. Final Payment. Upon final completion and acceptance of the Work in accordance with Article 14 of the General Conditions, the Owner shall pay the remainder of the Contract Price as recommended by the Engineer.

Section 7. Contractor's Representations

In order to induce the Owner to enter into this Agreement, the Contractor makes the following representations:

- A. The Contractor has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- B. The Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. With the exception of work completed during the course of the construction and included in the bid price, no additional examinations, investigations, explorations, tests, reports studies, or similar information or data in respect to said Underground Facilities are or will be required by the Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time, and in accordance with the other terms and conditions of the Contract Documents.
- C. The Contractor has given the Engineer written notice of all conflicts, errors, or discrepancies that the Contractor has discovered in the

Contract Documents, and the written resolution thereof by the Engineer is acceptable to the Contractor.

Section 8. Alternative Dispute Resolution

Notwithstanding the provisions contained in Article 16 of the General Conditions, the Contractor and the Owner specifically agree to the following processes and procedures for resolution of disputes arising pursuant to this Agreement:

- A. Negotiation. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between representatives of the parties who have authority to settle the controversy, subject to ratification by the governing authority of the Owner.
 - a. Notice & Response. The disputing party shall give the other party written notice of the dispute. Within ten (10) days after receipt of said notice, the receiving party shall submit to the other a written response.
 - b. Content of Position Papers. The notice and response shall include (a) a statement of each party's position, a summary of the evidence and arguments supporting its position and (b) the name and title of the individual(s) ("Representative(s)") who will represent that party.
 - c. Meeting. The Representatives of the parties shall meet at a mutually-acceptable time and place within twenty (20) days of the date of the disputing party's notice and, after that, as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute.
 - d. Impasse. If the matter is not resolved within forty-five (45) days of the disputing party's notice, or if the party receiving said notice will not meet within twenty (20) days, either party may initiate mediation of the controversy or claim according to the terms provided below.
- B. Mediation. In the event any controversy arising under this agreement is not resolved by informal negotiations as provided above, the case may be referred by either party to the nearest office of Henning Mediation for mediation, that is, an informal, non-binding conference or conferences between the parties in which a mediator will seek to guide the parties to a resolution of the case.
 - a. Choice of Mediator. The parties are free to select promptly any mutually-acceptable mediator experienced in governmental construction law from the list at Henning Mediation. If the parties cannot agree or have no particular choice of mediator and simply request that Henning Mediation assign one to the case, then a list of the resumes of available mediators, numbering one more than there are parties, will be sent to the parties, each of whom may strike one

name leaving the remaining name as the mediator. If more than one name remains, the designated mediator shall be selected by Henning Mediation from the remaining names.

- b. Sessions. After the mediator has been selected, the parties shall promptly agree upon a date and time for the initial conference with the mediator, but no later than thirty (30) days after the date the mediator was selected. The parties understand and agree that, besides counsel, a representative from each side with full settlement authority (subject to ratification by the governing authority of the City) will be present at all mediation conferences unless excused by the mediator. In addition, each party may bring additional persons as needed to respond to questions, contribute information and participate in the negotiation. The number of additional persons may be agreed upon in advance with the assistance and advice of the mediator.
- c. Discovery. In the event any party has substantial need for information in the possession of another party to prepare for the mediation conference(s), the parties shall attempt in good faith to agree upon procedures for the expeditious exchange of information, with the help of the mediator, if required.
- d. Briefs. No later than seven (7) days before the first scheduled mediation session, each party shall deliver a concise written summary of its position together with any appropriate documents, views, and a proposed solution to the matters in controversy to the mediator and shall also serve a copy on all other parties.
- e. Fees & Costs. The fees and costs shall conform to the then current fee schedule of Henning Mediation and, in the absence of an agreement to the contrary, will be borne equally by all parties.
- f. Confidentiality of Proceedings. The mediation process is to be considered settlement or compromise negotiation for the purpose of all state and federal rules protecting disclosures made during such conferences from later discovery or use in evidence. The entire procedure is confidential, and no stenographic or other record shall be made except to memorialize a settlement record. All conduct, statements, promises, offers, views, and opinions, oral or written, made during the mediation by any party or a party's agent, employee, or attorney are confidential and, where appropriate, are to be considered work product and privileged. Such conduct, statements, promises, offers, views, and opinions shall not be subject to discovery or admissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties. Provided, however, that evidence otherwise subject to discovery or admissible is not excluded from discovery or admission in evidence simply as a result of its having been used in connection with this settlement process.

- g. Termination. The mediation process shall continue until the case is resolved or the mediator makes a finding that there is no possibility of settlement through mediation—or until either party by written notice to the other announces its decision not to continue further. In any event, the mediation is non-binding on the parties.

Section 9. Miscellaneous

- A. Defined Terms. Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- B. Assignment Prohibited. No assignment by a party hereto of any rights or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.
- C. Successors and Assigns. The Owner and the Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.
- D. Complete Agreement. This Agreement, including the Contract Documents, contains all of the understandings and agreements of whatsoever kind and nature existing between the parties hereto with respect to the subject matter contained herein.
- E. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Georgia.
- F. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- G. Invalidity of Provisions. Should any part of this Agreement for any reason be declared by any court of competent jurisdiction to be invalid, such decision shall not affect the validity of any remaining portion, which remaining portion shall continue in full force and effect as if this Agreement had been executed with the invalid portion hereof eliminated, it being the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts or portions which may for any reason be hereafter declared invalid.

- H. Notice. All notices requests, demands and other communications hereunder shall be in writing and shall be deemed received, and shall be effective when personally delivered or on the third day after the postmark date when mailed by certified mail, postage prepaid, return receipt requested or upon actual delivery when sent *via* national overnight commercial carrier to the parties at the addresses given below, unless a substitute address shall first be furnished to the other parties by written notice in accordance herewith:

NOTICE TO CITY shall be sent to:

David Maynard, Mayor
Post Office Box 566
Winder, Georgia 30680

NOTICE TO CONTRACTOR shall be sent to:

- I. Sovereign Immunity. Nothing contained in this Agreement shall be construed to be a waiver of the Owner's sovereign immunity or any individual's qualified good faith or official immunities.
- J. Force Majeure. Neither the Owner nor the Contractor shall be liable for their respective non-negligent or non-willful failure to perform or shall be deemed in default with respect to the failure to perform (or cure a failure to perform) any of their respective duties or obligations under this Agreement or for any delay in such performance due to: (i) any cause beyond their respective reasonable control; (ii) any act of God; (iii) any change in applicable governmental rules or regulations rendering the performance of any portion of this Agreement legally impossible; (iv) earthquake, fire, explosion or flood; (v) strike or labor dispute, excluding strikes or labor disputes by employees and/or agents of Architect; (vi) delay or failure to act by any governmental or military authority; or (vii) any war, hostility, embargo, sabotage, civil disturbance, riot, insurrection or invasion. In such event, the time for performance shall be extended by an amount of time equal to the period of delay caused by such acts and all other obligations shall remain intact.
- K. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed under seal as of the date first above written.

CONTRACTOR

CITY OF WINDER

By: _____

David Maynard, Mayor

Its: _____
[CORPORATE SEAL]

[CITY SEAL]

SIGNED, SEALED, AND DELIVERED
in the presence of:

SIGNED, SEALED, AND DELIVERED
in the presence of:

Witness

Witness

Notary Public

Notary Public

[NOTARY SEAL]

[NOTARY SEAL]

My Commission Expires:

My Commission Expires:
