



CONTRACT DOCUMENTS FOR

EMERGENCY

**CONTRACT RATIFICATION BETWEEN FULTON
COUNTY AND WESTERN WATERPROOFING
COMPANY OF AMERICA d/b/a WESTERN SPECIALTY
CONTRACTORS OF AMERICA**

For

REAL ESTATE & ASSET MANAGEMENT

EMERGENCY AUTHORIZATION AGREEMENT

This Agreement made and entered into this _____ day of _____ 2017, by and between the **FULTON COUNTY, GEORGIA**, a political subdivision of the State of Georgia, hereinafter referred to as "County", and **Western Waterproofing Company of America d/b/a Western Specialty Contractors of America**, hereinafter referred to as "Contractor", authorized to transact business in the State of Georgia.

WITNESSETH:

WHEREAS, the County desires to engage Contractor to perform all emergency work required by the County to furnish and install all necessary labor, materials, equipment, supervision and insurance for the overhead protection scaffolding at the Slaton Courthouse; and

WHEREAS, the Contractor has the necessary licenses, permits, experience, personnel and facilities to perform the work; and

WHEREAS, the Purchasing Agent with approval and concurrence of the County Manager has determined that an emergency exists under 102-385, Emergency Procurement and makes this contract award pursuant thereto and the information shall be forwarded to the Board of Commissioners for ratification and be made a part of the minutes of the next scheduled meeting of the Board of Commissioners.

1.0 Contract Documents

County and Contractor agree that the Agreement consists of the following contract documents:

- I. Form of this Contract Agreement
- II. Scope of Work and Compensation
- III. Project Special Conditions
- IV. Certificate of Insurance

2.0 Scope of Work

The County hereby engages Contractor to perform and Contractor agrees to perform for the County, all work required by this Agreement to perform all tasks described in Exhibit A, Scope of Work and Compensation.

3.0 Contractor Representations

- (a) Contractor represents that it has, or will secure at its own expenses, all personnel required to perform all work to be completed under this Agreement.

- (b) The Contractor shall perform all services as an independent contractor and not as an agent of the County.
- (c) The Contractor hereby agrees to perform the duties of this agreement and further agrees to furnish all labor, materials, tools and equipment specified or required for the completion of all work called for herein and as set forth in Exhibit A, Scope of Work and Compensation.
- (d) All personnel engaged in the Project by Contractor shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services.
- (e) None of the work or services covered by this Agreement shall be transferred, assigned, or subcontracted by Contractor without the prior written consent of the County.
- (f) Contractor by the execution of this Agreement, acknowledges that it is possessed of that degree of care, learning skill and ability which is ordinarily possessed by other members of its profession and further contract that in the performance of the duties herein set forth it will exercise such degree of care, learning, skill and ability as is ordinarily employed by Contractor under similar conditions and like circumstances and shall perform such duties without neglect.

4.0 Contract Modifications

If during the course of performing the Project, County and Contractor agree that it is necessary to make changes in the Project as described herein and referenced exhibits, such changes will be incorporated by written amendments in the form of Change Orders to this Agreement. Any such Change Order and/or supplemental agreement shall not become effective or binding unless approved by the County. Such modifications shall conform to the requirements of Fulton County Purchasing Code §102-420 which is incorporated by reference herein.

5.0 Compensation

Compensation for work performed by Contractor on Project shall be in accordance with the payment provisions and compensation schedule, attached as Exhibit A, Compensation.

The total contract amount for the Project shall not exceed Three Hundred Thirty Three Thousand Four Hundred Thirty Two Dollars and No Cents (\$333,432.00), which is full payment for a complete scope of work.

6.0 Insurance

Contractor agrees to obtain and maintain during the entire term of this Agreement, all of the insurance required as specified by Risk Management with the County as an additional insured and shall furnish the County a Certificate of Insurance showing the required coverage, as listed below.

Contractor shall provide written notice to Fulton County Government immediately if it becomes aware of or receives notice from any insurance Contractor that coverage afforded under such policy or policies shall expire, be cancelled or materially altered. Certificates of Insurance are to list Fulton County Government, Its Employees, Servants and Agents as an Additional Insured (except for Workers' Compensation), using Travelers Blanket Additional Insured Endorsement CGD246 or its equivalent for ongoing operations and completed operations for two years after substantial completion of Contractor's work."

The Contractor's insurance shall apply as Primary Insurance before any other insurance or self-insurance, including any deductible, non-contributory, and Waiver of Subrogation provided in favor of Fulton County.

7.0 Contract Commencement

The agreement shall be effective upon issuance of the Notice to Proceed ("NTP") and the installation of the sidewalk overhead protection equipment shall be erected within 30 days after issuance of the NTP.

8.0 Termination of Agreement for Cause

- (1) Either County or Contractor may terminate work under this Agreement in the event the other party fails to perform in accordance with the provisions of the Agreement. Any party seeking to terminate this Agreement is required to give thirty (30) days prior written notice to the other party.
- (2) Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender.
- (3) **TIME IS OF THE ESSENCE** and if the Contractor refuses or fails to perform the work as specified in Exhibit C, Scope of Work and maintain the scheduled level of effort as proposed, or any separable part thereof, with such diligence as will insure completion of the work within the specified time period, or any extension or tolling thereof, or fails to complete said work within such time. The County may exercise any remedy available under law or this Agreement. Failure to maintain the scheduled level of effort as proposed or deviation from the aforesaid proposal without prior approval of County shall constitute cause for termination

- (4) The County may, by written notice to Contractor, terminate Contractor's right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the County may take over the work and perform the same to completion, by contract or otherwise, and Contractor shall be required to provide all copies of finished or unfinished documents prepared by Contractor under this Agreement to the County.
- (5) Contractor shall be entitled to receive compensation for any satisfactory work completed on such documents as reasonably determined by the County.
- (6) Whether or not the Contractor's right to proceed with the work has been terminated, the Contractor shall be liable for any damage to the County resulting from the Contractor's refusal or failure to complete the work within the specified time period, and said damages shall include, but not be limited to, any additional costs associated with the County obtaining the services of another Contractor to complete the project.

9.0 Termination for Convenience of County

Notwithstanding any other provisions, the County may terminate this Agreement for its convenience at any time by a written notice to Contractor. If the Agreement is terminated for convenience by the County, as provided in this article, Contractor will be paid compensation for those services actually performed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by Contractor which shall itemize each task element and briefly state what work has been completed and what work remains to be done.

If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the government.

Rental costs of the Overhead Protection Equipment will be on a month-to-month basis provided sufficient notice of termination, (60 days because of permitting/lane closure approval time frames) is delivered.

10.0 Indemnification

The Contractor shall indemnify and hold harmless the County, its officers, agents and employees from and against any and all claims against the County, its officers, agents and employees to the extent they arise out of any negligent act or omission of the Contractor or any subcontractors employed by the Contractor or any of their officers, agents or employees, and any and all claims which result from any condition created or maintained by the Contractor or any subcontractors

employed by the Contractor or any of their officers, agents or employees, which condition was not specified to be created or maintained by this Agreement. The Contractor further agrees that its agreement to indemnify and hold harmless the County, its officers, agents and employees shall not be limited to the limits of the liability insurance under this Agreement and the attached specifications.

11.0 Permits and Licenses

All permits and licenses necessary for the work shall be secured and paid for by the Contractor. If any permit, license or certificate expires or is revoked, terminated, or suspended as a result of any action on the part of the Contractor, the Contractor shall not be entitled to additional compensation or time.

12.0 Invoicing and Payment

Contractor shall submit monthly invoices for work performed during the previous calendar month, in a form acceptable to the County and accompanied by all support documentation requested by the County, for payment and for services that were completed during the preceding phase. The County shall review for approval of said invoices. The County shall have the right not to pay any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined by the County, are reasonably in excess of the actual stage of completion.

Time of Payment: The County shall make payments to Contractor within thirty (30) days after receipt of a proper invoice. Parties hereto expressly agree that the above contract term shall supersede the rates of interest, payment periods, and contract and subcontract terms provided for under the Georgia Prompt Pay Act, O.C.G.A. 13-11-1 et seq., pursuant to 13-11-7(b), and the rates of interest, payment periods, and contract and subcontract terms provided for under the Prompt Pay Act shall have no application to this Agreement; parties further agree that the County shall not be liable for any interest or penalty arising from late payments.

Submittal of Invoices: Invoices shall be submitted as follows:

Via Mail:

Fulton County Government
141 Pryor Street, SW
Suite 7001
Atlanta, Georgia 30303
Attn: Finance Department – Accounts Payable

OR

Via Email:

Email: Accounts.Payable@fultoncountyga.gov

At minimum, original invoices must reference all of the following information:

- 1) Vendor Information
 - a. Vendor Name
 - b. Vendor Address
 - c. Vendor Code
 - d. Vendor Contact Information
 - e. Remittance Address
- 2) Invoice Details
 - a. Invoice Date
 - b. Invoice Number (uniquely numbered, no duplicates)
 - c. Purchase Order Reference Number
 - d. Date(s) of Services Performed
 - e. Itemization of Services Provided/Commodity Units
- 3) Fulton County Department Information (needed for invoice approval)
 - a. Department Name
 - b. Department Representative Name

Contractor's cumulative invoices shall not exceed the total not-to-exceed fee established for this Agreement.

County's Right to Withhold Payments: The County may withhold payments, not to exceed the total of two months' fees of the applicable SOW, for services that involve disputed costs, involve disputed audits, or are otherwise performed in an inadequate fashion. Payments withheld by the County will be released and paid to the Contractor when the services are subsequently performed adequately and on a timely basis, the causes for disputes are reconciled or any other remedies or actions stipulated by the County are satisfied. If there is a good faith dispute regarding a portion of an invoice, Contractor will notify County and detail the dispute before the invoice date. The County shall promptly pay any undisputed items contained in such invoices. Upon resolution of the dispute, any disputed amounts owed to Contractor will be promptly paid by County.

Payment of Sub-Contractors/Suppliers: The Contractor must certify in writing that all subcontractors of the Contractor and suppliers have been promptly paid for work and materials and previous progress payments received. In the event the prime Contractor is unable to pay subcontractors or suppliers until it has received a progress payment from Fulton County, the prime Contractor shall pay all subcontractors or supplier funds due from said progress payments within forty-eight (48) hours of receipt of payment from Fulton County and in no event later than fifteen days as provided for by State Law.

Acceptance of Payments by Contractor; Release. The acceptance by the Contractor of any payment for services under this Agreement will, in each instance, operate as, and be a release to the County from, all claim and liability to the Contractor for work performed or furnished for or relating to the service for which payment was accepted, unless the Contractor within five (5) days of its receipt of a payment, advises the County in writing of a specific claim it contends is not released by that payment.

13.0 Taxes

The Contractor shall pay all sales, retail, occupational, service, excise, old age benefit and unemployment compensation taxes, consumer, use and other similar taxes, as well as any other taxes or duties on the materials, equipment, and labor for the work provided by the Contractor which are legally enacted by any municipal, county, state or federal authority, department or agency at the time bids are received, whether or not yet effective. The Contractor shall maintain records pertaining to such taxes as well as payment thereof and shall make the same available to the County at all reasonable times for inspection and copying. The Contractor shall apply for any and all tax exemptions which may be applicable and shall timely request from the County such documents and information as may be necessary to obtain such tax exemptions. The County shall have no liability to the Contractor for payment of any tax from which it is exempt.

14.0 Notices

Notices concerning the termination of this Agreement, notices of alleged or actual violations of the terms or conditions of this Agreement, and other notices of similar importance shall be made:

Notice to County, shall be addressed as follows:

Director
Department of Real Estate and Asset Management
141 Pryor Street, Suite G-119
Atlanta, GA 30303
Attn: Ellis Kirby
E-mail: ellis.kirby@fultoncountyga.gov

With a copy to:

Director
Department of Purchasing & Contract Compliance
130 Peachtree Street, S.W., Suite 1168
Atlanta, Georgia 30303
Attn: Felicia Strong-Whitaker

Email: felicia.strong-whitaker@fultoncountyga.gov

Notices to Contractor shall be addressed as follows:

Branch Manager

Western Waterproofing Company of America d/b/a Western Specialty
Contractors of America

3790 Browns Mill Road, SE

Atlanta, GA 30354

Attn: Jeff Johnson

Email: jeffjwesternspecialtycontractors.com

IN WITNESS THEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed and their corporate seals to be hereunto affixed as of the day and year date first above written.

OWNER:

FULTON COUNTY, GEORGIA

JH H.E.

John H. Eaves, Commission Chair
Board of Commissioners

ATTEST:

Tonya R. Grier
Tonya R. Grier
Interim Clerk to the Commission



(Affix County Seal)

APPROVED AS TO FORM:

[Signature]
Office of the County Attorney

APPROVED AS TO CONTENT:

[Signature]
Ellis Kirby, Director
Department of Real Estate & Asset
Management

CONTRACTOR:

WESTERN WATERPROOFING
COMPANY OF AMERICA D/B/A
WESTERN SPECIALTY
CONTRACTORS OF AMERICA

[Signature]

Jeff Johnson
Branch Manager

ATTEST:

Secretary/
Assistant Secretary

(Affix Corporate Seal)



ITEM # 17-0505 RCS 6/21/17
RECESS MEETING

EXHIBIT A

SCOPE OF WORK AND COMPENSATION

SCOPE OF WORK AND COMPENSATION

The Contract shall furnish and install all necessary labor, materials, equipment, supervision and insurance and will perform the following tasks required for this scope of work and Contractor shall be compensated for each task as described below:

	Description of Tasks	Price
1	Lane closures and permits for pedestrian overhead protection erection and sub-support	\$9,130.00
2	Erect (Overhead Protective Canopy) Aluminum beam 16" O.C. with 1 layer of ¾" treated plywood, 8'5" under clearance. MLK, Pryor, Grand Stairs Entrance and Judges Entrance and exits. (See Attachment 1 for areas included)	\$22,322.00
3	First 12 months/monthly rental at \$8,408.00 per month on Item 2	\$100,896.00
4	Second 12 months/monthly rental at \$7,634.00 per month on Item 2	\$91,608.00
5	Third 12 months/monthly rental at \$6,934.00 per month on Item 2	\$83,208.00
6	Lane closures and permits for pedestrian overhead protection dismantle and sub-support	\$13,042.00
7	Dismantle Overhead Protective Canopy (Item 2)	\$13,226.00
GRAND TOTAL FOR 3 YEARS		\$333,432.00

ANNUAL COSTS ARE AS FOLLOWS:

YEAR 1	Permitting/Installation + 12 months rental	\$132,348.00
YEAR 2	Rental Only	\$91,608.00
YEAR 3	Rental + Permitting/Dismantling	\$109,476.00

HOURS OF WORK. Contractor is obligated to perform the Work only during its regular working hours and has no responsibility to work beyond such regular hours. All time beyond regular hours, except for the installation and dismantling of equipment, which is required by County shall be paid for by County in addition to the contract price, at applicable premium rates of pay.

EXHIBIT B
SPECIAL CONDITIONS

SPECIAL CONDITIONS

The following are special conditions specific to this project.

1. LIMITED WARRANTY AND EXCLUSIVE REMEDIES.

- A. Workmanship.** For the term of this Agreement, Contractor warrants that it will promptly repair or replace any improper or defective workmanship performed by Contractor under this contract; provided that Contractor has been paid for all work performed. County will not pay for any inspections or repairs performed by others prior to receipt of written notice by County and a reasonable opportunity to make repairs, if warranted.
- B.** Contractor warrants that it use only materials intended for the work called for in this Agreement that are in good condition and structurally sound, and will deliver to County standard warranties as issued by the manufacturer of the materials, if available. Contractor shall have no obligation under any such manufacturer's warranty, and shall not be required to seek changes to terms of such warranties.
- C. Disclaimer of Other Warranties.** THE PROVISIONS IN PARAGRAPHS A AND B ARE THE EXCLUSIVE WARRANTIES PROVIDED TO COUNTY AND ARE EXPRESSLY IN LIEU OF ANY OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.
- D. Mold Exclusion.** Contractor specifically excludes from any and all warranties connected with this Work any warranty against the growth, infestation or spread of mold, mildew, or other fungal, bacterial or biological substance however caused.

2. OBLIGATIONS OF CONTRACTOR AT SITE OF WORK

- A. Site Conditions.** For work performed by Contractor at the site, County Contractor acknowledges County has provided (i) sufficient and proper space for handling and storing the materials and equipment of Contractor; (ii) sufficient power and water for the performance of the Work; (iii) and removed of all obstructions to performing the Work as economically as possible.
- B. Unanticipated Conditions.** If Contractor encounters unanticipated conditions or structural features, not reasonably ascertainable upon such inspection or testing as was allowed by County, Contractor will so advise County, and the parties will work out a mutually acceptable adjustment to the Work.

C. Asbestos, Lead, Mold and PCB. Contractor specifically excludes the abatement of any hazardous material, including but not limited to asbestos, lead, mold or polychlorinated biphenyl ("PCB"). If Contractor encounters material reasonably believed to be asbestos, lead mold or PCB or other hazardous substance which has not been rendered harmless, Contractor shall immediately stop Work in the area affected and report the condition to the County. The Work in the affected area shall be resumed in the absence of such hazardous substance, or when it has been rendered harmless. All cost of testing for, removal of, or to render asbestos, lead, mold or PCB harmless, shall be borne by County.

EXHIBIT C

CERTIFICATE OF INSURANCE

STANDARD INSURANCE ADDENDUM

Indicating Insurance Carried by

**Western Waterproofing Company of America d/b/a Western Specialty Contractors of America
("Contractor")**

and incorporated into its Proposal Submitted to

NOVA Engineering ("Customer")

Project: *Fulton County Courthouse Investigation*

Contractor maintains, and shall maintain, insurance coverage substantially as outlined below, throughout the life of the project (shown above) which is the subject of the Proposal, Bid, Contract or Subcontract to which this Addendum is attached. Any contract or subcontract entered into is qualified to include this coverage, exclusive of any other insurance requirements.

Workers Compensation coverage is maintained in all states where Contractor operates, including the state in which the project which is the subject of this proposal or bid is located. Employer's Liability coverage is also included with limits up to \$1,000,000. Stop gap coverage is provided in monopolistic states: ND, OH, WA, WY.

Carrier: **Charter Oak Fire Insurance Company (MA, OR, WI)**

Carrier: **Travelers Property Casualty Company of America (All other states)**

General Liability coverage is written on the ISO COMMERCIAL GENERAL LIABILITY FORM CG 0001 10 01 which includes the following:

Carrier: **Travelers Property Casualty Company of America**

COVERAGES

- Bodily Injury
- Broad Form Property Damage
- Premises/Operations
- Products/Completed Operations
- Contractual Liability
- Medical Payments
- Fire Damage Legal Liability
- Personal and Advertising Injury
- Independent Contractor's Liability
- Coverage for Explosion, Collapse, and Underground
- Separation of Insureds/Severability of Interest

POLICY LIMITS

General Aggregate ⊕	\$4,000,000
Products Completed Operations Aggregate	\$4,000,000
Personal and Adv. Injury	\$2,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$500,000
Medical Exp. (Any one person)	\$5,000

⊕ General Aggregate applies per project.

The General Liability Policy contains an exclusion for claims arising in whole or in part out of the presence of fungi or bacteria in a building or structure.

Automobile Liability coverage is carried in all states consistent with or greater than statutory requirements.

Carrier: **Travelers Property Casualty Company of America**

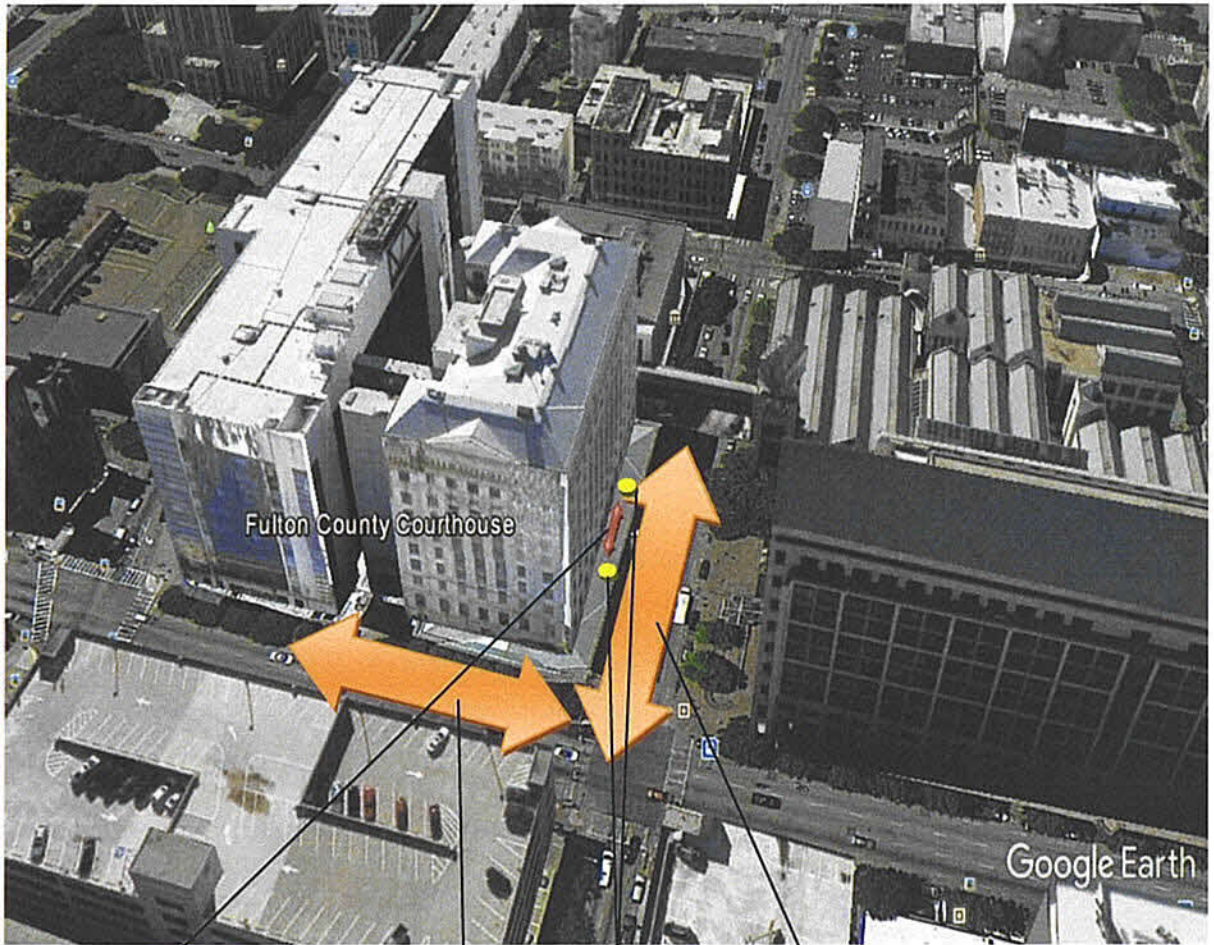
Combined Single Limit: \$2,000,000

A 30 day notice of cancellation provision is included under our policies.

Coverage and limits will be certified through a standard form Certificate of Insurance issued to Customer or through a Memorandum of Insurance upon Execution of Contract.
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Contractor's insurance program is written on a nationwide basis for all its locations, and not on an individual project basis. Any requests for deviations from standard coverage must be requested in writing, prior to Contract execution. Contractor reserves the right to increase its price to cover additional insurance requests.

ATTACHMENT 1
WORK AREAS



Grand Staircase (Main Entrance Only)

Judges Entrances/Exits (1 Lane EA)

MLK JR DRIVE SW (130 LF)

PRYOR STREET SW 230 LF