

AGREEMENT BETWEEN OWNER AND CONTRACTOR FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)

THIS AGREEMENT is by and between FLOYD COUNTY, GEORGIA, A POLITICAL SUBDIVISION OF THE STATE OF GEORGIA (“Owner”) and _____ (“Contractor”).
Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows.

Demolition of existing accordion partitions and ceilings. All new ceilings and lighting installed. All wall, flooring and ceiling finishes to be removed and replaced with new finishes. A new canopy and lighting installed to exterior. As defined in specifications and drawings provide in bid documents.

ARTICLE 2 – THE PROJECT

The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Complete renovation of Ballroom per specifications and drawings provided in bid documents.

ARTICLE 3 – ENGINEER

3.01 The Project has been designed by Peacock Partners, Inc. The Owner will designate a Project Manager to act as Owner’s representative, assume all duties and responsibilities, and have the rights and authority assigned in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 4 – CONTRACT TIMES

4.01 *Time of the Essence*

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 *Days to Achieve Substantial Completion and Final Payment*

- A. The Work will be substantially completed within _____ calendar days after the Notice to Proceed is issued, and completed and ready for final payment within _____ calendar days after the date the Notice to Proceed is issued. Calendar days do not include documented inclement weather delays, which will be calculated prior to the end of the project and may result in an extension.

4.03 *Liquidated Damages*

- A. Contractor and Owner recognize that time is of the essence as stated in Paragraph 4.01 above and that Owner will suffer financial loss if the Work is not completed within the times specified in Paragraph 4.02 above. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner \$200 for each day that expires after the time specified in Paragraph 4.02 above for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner \$200 for each day that expires after the time specified in Paragraph 4.02 above for completion and readiness for final payment until the Work is completed and ready for final payment.

ARTICLE 5 – CONTRACT PRICE

- 5.01 A preliminary Schedule of Values for all of the Work will be submitted. This will include quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- 5.02 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraph 5.02.A below:
- A. For all Work included in base bid, a sum of: \$_____

ARTICLE 6 – PAYMENT PROCEDURES

6.01 *Submittal and Processing of Payments*

- A. Contractor shall submit to Owner for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of

sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.

6.02 *Progress Payments; Retainage*

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 20th day of each month during performance of the Work as provided herein. Floyd County's normal payment cycle is 30 days from invoice date. A retainage of 10% will be withheld from each payment.
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 90 percent of the Work completed, less 100 percent of Owner's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work Owner shall pay the remainder of the Contract Price

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

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

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

- E. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- F. Contractor has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Owner is acceptable to Contractor.
- G. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. This Agreement
 - 2. Invitation to Bid # 17-0112
 - 3. Addenda
 - 4. Contractor’s Bid Package
 - 5. Payment and performance bonds
 - 6. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
 - a. Work Change Directives, which must be in writing and approved in advance by Floyd County Manager and/or Board of Commissioners.
 - b. Change Orders, which must be in writing and approved in advance by Floyd County Manager and/or Board of Commissioners. Any change orders requested by the contractor has to be approved in writing by Floyd County and change orders requested by Floyd County shall be approved in writing by contractor. If either contractor or Floyd County does not approve the change order, the reasons therefore shall be put in writing.
- B. There are no Contract Documents other than those listed above in this Article 8.

ARTICLE 9 – MISCELLANEOUS

9.01 *Assignment of Contract*

- A. No assignment by a party hereto of any rights under or interests in the Contract 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.

9.02 *Successors and Assigns*

- A. Owner and 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.

9.03 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.04 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.05 *Mediation/Arbitration*

- A. The parties agree to attempt to resolve any dispute by first using the Engineer as a mediator to resolve any dispute. If this is unsuccessful, the parties shall engage by agreement an Attorney Certified Mediator and engage in mediation, and shall split the costs thereof unless otherwise agreed to in mediation. If mediation is not successful, either party may initiate arbitration in

accordance with the American Arbitration Association (“AAA”) conducted in Floyd County, Georgia. Whenever an arbitratable dispute arises the parties shall use their best efforts to agree upon an independent third-party arbitrator within fourteen (14) days with due regard in the selection process for the nature of the dispute and the circumstances regarding same. In the event the parties are unable to agree on the selection of such an arbitrator, either party may then submit the dispute to the AAA for arbitration in accordance with the Rules then in effect before an arbitrator selected by petition to the AAA. Judgment upon the award rendered by the arbitrator may be entered in any court having appropriate jurisdiction.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

CONTRACTOR:

FLOYD COUNTY, GEORGIA

By: _____

By: _____

Larry Maxey

Printed or Typed Name

Printed or Typed Name

Title: Chairman

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Attest: _____

Title: Clerk

Title: _____

Printed or Typed Name

Printed or Typed Name

Address for giving notices:

Address for giving notices:

Floyd County Board of Commissioners

12 East 4th Ave., Suite 209

Rome, GA 30161

License No.: _____

(Where applicable)

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

Agent for service of process:
