

**PARTICIPATION AGREEMENT (CONTRACT)**  
between  
**F.H. Paschen**  
and the  
**STATE OF GEORGIA – DEPARTMENT OF ADMINISTRATIVE SERVICES**  
for

Sourcewell Contract #: **GA-ST01-040820-FHP**  
Georgia Statewide Contract # **99999-SFD-S20100801-0007**

WHEREAS OCGA 50-5-51(9) authorizes DOAS to enter into agreements with nonprofit organizations to further promote the purposes and policies set forth in OCGA 50-5-50 et seq.; and

WHEREAS Sourcewell is a government cooperative purchasing consortium that can expand the purchasing base for DOAS and thereby create leverage and economies of scale DOAS cannot create by itself; and

WHEREAS Sourcewell issued Invitation for Bid GA-040820 soliciting indefinite quantity construction services; and

WHEREAS F.H. Paschen ("Contractor") submitted a bid; and

WHEREAS after reviewing Contractor's Bid, Sourcewell selected Contractor as one of the approved vendors to provide indefinite quantity construction services in accordance with Indefinite Quantity Construction Agreement between Sourcewell and Contractor dated April 20, 2020 and the following contract documents: Book 1 - Project Information, Instructions to Bidders and Execution Documents; (b) Book 2 - IQCC Standard Terms and Conditions and IQCC General Conditions; (c) Book 3 - Construction Task Catalog, (d) Book 4 - Technical Specifications; and any Addenda thereto

WHEREAS the term of this Participating Addendum (Contract) will be effective September 1, 2020 through July 20, 2021 and coterminous with the Master Agreement term unless otherwise cancelled or terminated. The parties must mutually agree to renew this Participation Agreement for additional periods of one year (12 months) each. Sourcewell amendments to extend the term date are automatically incorporated into this Participating Addendum (Contract) unless terminated early in accordance with the terms and conditions of the Master Agreement or this Participating Addendum (Contract).

WHEREAS DOAS has determined the pricing formulas in Contractor's Bids submitted to and approved by Sourcewell are as good as or better than prices ordinarily achieved through individual competitive bids.

NOW THEREFORE the parties agree as follows:

1. Forum and Choice of Law

The laws of the state of Georgia shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of state law. In the event any proceeding of a quasi-judicial or judicial nature is commenced in connection with this Participating Agreement, such proceeding shall solely be brought in a court or other forum of competent jurisdiction within Fulton County, Georgia. This provision shall not be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity, which may be available to the state.

2. Legal Compliance

This Contract shall be interpreted and governed by the laws of Georgia without regard to principles of conflicts of laws. Contractor shall comply with all laws, rules, regulations, ordinances, and orders of any

governmental authority having jurisdiction over the project or the performance of the work, and the specific laws noted below, and shall ensure such compliance of its Subcontractors.

2.1. Open Records Act. Authorized User and Contractor acknowledge and agree that certain records of the project and the work, including records of Subcontractors, are subject to the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, with particular attention being called to O.C.G.A. § 50-18-70(a) regarding the records of private persons, firms, corporations, or other private entities engaged in performance of services or functions on behalf of a state agency, public agency, or public office.

2.2. Energy Efficiency and Sustainable Construction Act of 2008. All projects subject to the Georgia Energy Efficiency and Sustainable Construction Act of 2008 ("Energy Act") must be designed so that not less than 10 percent of all building materials used in the project are materials that are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available. Contractor shall track the value of all Georgia-based materials installed in the project. Contractor shall provide documentation to ensure compliance and shall complete the Georgia-Based Materials and Products Checklist to certify compliance with the requirements of the Energy Act. A copy of Georgia-Based Materials and Products Checklist can be located at the following link:

[https://gsfic.georgia.gov/sites/gsfic.georgia.gov/files/related\\_files/press\\_release/Ga%20Peach%20Guidelines%20Presentation%205-17-13.pdf](https://gsfic.georgia.gov/sites/gsfic.georgia.gov/files/related_files/press_release/Ga%20Peach%20Guidelines%20Presentation%205-17-13.pdf)

2.3. Illegal Immigration Reform and Enforcement Act of 2011. Contractor certifies its compliance with Illegal Immigration Reform and Enforcement Act of 2011 and specifically those provisions codified at O.C.G.A. § 13-10-90 *et seq.* Contractor warrants that it has registered with and uses the federal work authorization program commonly known as "E-Verify." Contractor further agrees that it will contract for the physical performance of services in satisfaction of this Contract only with Subcontractors who present an affidavit as required by O.C.G.A. § 13-10-91. Contractor warrants that it will include a similar provision in all contracts entered into with Subcontractors for the physical performance of services in satisfaction of this Contract.

2.4. Drug-Free Workplace. Contractor certifies that it will provide a drug-free work place in accordance with the Drug-Free Workplace Act, O.C.G.A. §§ 50-24-1 *et seq.* Contractor certifies that it will secure from all Subcontractors the following written certification: "As part of the subcontracting agreement with (contractor's name), (subcontractor's name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-3."

2.5. Applicable Sales and Use Taxes. Contractor shall pay all applicable sales and use taxes, including such taxes on the Authorized User supplied tangible personal property that is to be incorporated into the project as required by O.C.G.A. 50-24-1(h)(1). Prior to supplying such property, Authorized User shall provide notice of the amount of tax owed for such tangible personal property.

2.6. No Boycott of Israel. Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract not to engage in, a boycott of Israel, as defined in O.C.G.A. §§ 50-5-85.

2.7. Sexual Harassment Prevention. The State of Georgia is committed to providing a workplace environment free from sexual harassment for its employees and for all persons who interact with state government. The State of Georgia requires that its contractors and their employees and subcontractors who interact with State employees to act in a professional manner to contribute to a work environment that is free from sexual harassment. The State of Georgia has adopted a Statewide Sexual Harassment Prevention Policy, a copy of which is available on-line at <http://doas.ga.gov/human-resources-administration/board-rules-policy-and-compliance/jointly-issued-statewide-policies/sexual-harassment-prevention-policy>. Pursuant to the State of Georgia's Statewide Sexual Harassment Prevention Policy, all contractors who are regularly on State premises or who regularly interact with State employees must complete sexual harassment prevention training on an annual basis. If



Contractor has employees and Subcontractors that are regularly on State premises or who will regularly interact with State personnel, Contractor certifies that:

2.7.1. Contractor will ensure that such employees and Subcontractors have received, reviewed, and agreed to comply with the State of Georgia's Statewide Sexual Harassment Prevention Policy;

2.7.2. Contractor has provided sexual harassment prevention training in the last year to such employees and subcontractors and will continue to do so on an annual basis; or Contractor will ensure that such employees and Subcontractors complete the Georgia Department of Administrative Services' sexual harassment prevention training located at the following link:

<https://www.youtube.com/embed/NjVt0DDnc2s?rel=0>

Prior to accessing State premises and prior to interacting with State employees; and on an annual basis thereafter; and

Upon request of the Authorized User, Contractor will provide documentation substantiating such employees and subcontractors' acknowledgment of the State of Georgia's Statewide Sexual Harassment Prevention Policy and annual completion of sexual harassment prevention training.

2.8. Variances. If Contractor observes that the construction documents are at variance with any laws, ordinances, rules, regulations, or codes stated above, it shall promptly give Notice to Authorized User. If Contractor performs any work contrary to such laws, ordinances, rules, regulations, or codes without providing such prior notice to Authorized User, it shall bear all costs arising therefrom. No variances from the Contract are allowed except to the extent that the said variances are necessary to comply with the above-stated codes. If any express requirements of the Contract are at variance with the above-stated codes, a change order shall be executed to bring the Contract into compliance with the above-stated codes.

2.9. Notice. Any notice or other material communication required or permitted under this Contract shall be in writing, dated, and signed by an officer or duly authorized representative of the party making same. Unless otherwise required by the provisions of this Contract, notice may be sent via electronic mail, fax, U.S. Mail, or hand delivered. All members of the Project Team shall be copied on any notice. The persons and addresses to which notices should be given may be changed by notice given in accordance with this section. Such notice shall be effective as of the date on which it is received or would have been received but for the refusal of the addressee to accept delivery.

2.10. Order of Precedence of Contract and Changes. In the event of conflict among the Contract documents, a change order shall control over any previous change order; and a change order shall control over the general requirements, which shall control over this Contract, which shall control over the general requirements, which shall control over the specifications.

2.11. Order of Precedence in Construction Documents. The following general principles shall govern the settlement of disputes that may arise over conflicts in the construction documents: (a) as between the drawings and specifications, the specifications shall govern; (b) as between figures given on drawings and the scaled measurements, the figures shall govern; and (c) as between large-scale drawings and small-scale drawings, the larger scale shall govern. Conflicts discovered shall be immediately reported to Authorized User.

### 3. Authorized Source of Supply

DOAS authorizes cooperative purchasing through Sourcewell so that state and local government entities hereafter referred to as Authorized Users may contract for indefinite quantity construction services using the pricing formulas in the Contractor's Bid.

Any such Order placed by an Authorized User for construction services under this agreement shall be bound by the terms and conditions set forth in the Contract Documents referenced above; provided, however;

3.1. Work Order Threshold. Contractor is not obligated to enter into an individual Order with any Authorized User for supplies or services less than \$2,000.00. Contractor shall not enter into an individual Order with any Authorized User for supplies and services more than \$1,000,000 without prior approval from DOAS;

3.1.1 Contractor shall not enter into a series of Orders with the same Authorized User within a thirty (30) day period for supplies and services that together total more than \$2,000,000.00 without prior approval from DOAS.

3.2. Work Order Response. Contractor is required, as soon as practicable after award of the Work Order, to furnish in writing to the Authorized User the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each portion of the work, along with estimated values to be paid to each Subcontractor. The Authorized User will reply promptly to the Contractor in writing stating whether or not, after due investigation, Authorized User has reasonable objection to any such proposed person or entity. Failure of the Authorized User to reply promptly shall constitute notice of no reasonable objection.

3.1.2. The Contractor shall not contract with a proposed person or entity to whom the Authorized User has made reasonable and timely objection.

3.1.3. If the Authorized User has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Authorized User has no reasonable objection.

3.3. Work Order. The Authorized User may issue a Work Order based upon the needs and scope of their particular construction service requirements referencing **SWC**. Any specific requirements would be attached to the Order as "Special Conditions." All orders under this Contract are to be made out to and processed by the Authorized User and should contain the following:

- (i) Mandatory Language "Work Order is subject to the Indefinite Quantity Construction SWC No.:";
- (ii) Agency Name, Address, Contact, & Phone-Number and;
- (iii) Reference to the state contract number and contractor's name. **"99999-SPD-00000 - Contractor's Name"**
- (iv) Completed Project Charter for Services

3.4. Fund Obligation. This Participation Agreement authorizes the Contractor to enter into Orders with Authorized Users hereunder. Each Order that the Contractor executes with Authorized Users is a separate obligation between the Contractor and the Authorized User. DOAS shall not be responsible for the payment of any Orders executed by the Authorized User.

3.5. Reporting. Contractor shall submit the following management reports to the DOAS identified contract administrator. All reports shall be provided by the Contractor in electronic format. All electronic reports must be submitted in Microsoft Excel or Microsoft Access format. Reports should include the ability to sort/summarize by account.

3.5.1. Contractor shall submit a monthly contract status report to DOAS' contract administrator by the fifteenth (15th) calendar day of the following month. Topics to be covered in this report would include, but are not limited to, problems or questions that required more than five working days to resolve, product changes, anticipated problems, small and minority business utilization,

3.5.2. Contractor shall supply a Progress Report to Authorized User by the end of the first week of each month, a minimum of one week prior to the monthly Progress Meeting. The Progress Report shall include the following:

1. Project/management summary
2. Work performed during the reporting period
3. Milestones met and/or achieved
4. Progress against the schedule (any changes is to be identified together with remedial action)
5. Dependencies
6. Problems experienced
7. Activities planned for the next period
8. Risk log status
9. Action log status
10. Assumption log status.

The format of the progress report shall be agreed upon with the Authorized User during the initial Scope Meeting. In addition, the same level of reporting (but by entity) shall be provided to DOAS during the Business Review meetings. Reporting may include, but not limited to, open single and multiple projects.

3.5.3. Upon Request, the Contractor shall provide, evidence of the Contractor's good faith efforts to utilize local, small and minority businesses.

3.6 Construction Task Catalog Updates. On the anniversary of the Sourcwell solicitation, a new Construction Task Catalog will be furnished. The new Construction Task Catalog will be effective for the twelve (12) month period after the anniversary of the Sourcwell award date. The Construction Task Catalogs that accompany each anniversary shall only apply to Work Orders issued after the effective date of that specific renewal option and shall have no impact on Work Orders issued prior to the effective date of that specific renewal option.

SUPPLIER: *F.H. Paschen*  
 739 Trabert Ave., NW, Suite A, Atlanta, GA 30318  
 773-444-3474  
 Leo Wright  
 lwright@fhpaschen.com

SERVICE AREA	Area A	Area B	Area C	Area D
Normal Working Hours - Prevailing Wage - Non-Secure Areas 7am-4pm Mon-Fri; except Holidays	1.0081	1.0081	1.0081	1.0081
Other than Normal Working Hours - Prevailing Wage - Non-Secure Areas 7pm-7am Mon-Fri, all day Sat, Sun & Holiday	1.0283	1.0283	1.0283	1.0283
Normal Working Hours - Non-Prevailing Wage - Secure Areas 7am-4pm Mon-Fri; except Holidays	1.1090	1.1090	1.1090	1.1090
Other than Normal Working Hours - Non-Prevailing Wage - Secure Areas 7pm-7am Mon-Fri, all day Sat, Sun & Holiday	1.1643	1.1643	1.1643	1.1643
Non Pre-Priced Items	1.2432	1.2432	1.2432	1.2432

- 3.7. Quarterly Business Review Meetings. Contractor must participate in quarterly business review ("QBR") meetings at DOAS' request. During the QBR meetings, the Contractor will present a written and oral status to DOAS regarding all work orders/purchase orders (including date and value). The QBR meeting will also focus on the status of service level agreements and key performance indicators agreed to by the Contractor and DOAS. The QBR meeting may involve, but not be limited to, the following: review of the Contractor's performance and submitted reports, identification of areas of improvement to be addressed, review of the previous quarter's sales statistics, development/monitoring of a Contractor service "scorecard."
4. Bonds. Upon execution of the Contract, Contractor shall furnish requested bonds (a performance bond and/or a payment bond), with a penal sum equal to at least the Contract Sum. Surety companies must be acceptable to Authorized User. All bonds at the time of issuance must be issued by a company authorized by the Insurance Commissioner to transact the business of suretyship in the State of Georgia.
5. Indemnification Obligation. Contractor shall indemnify, defend, and hold harmless Authorized User, the State of Georgia and its departments, agencies and instrumentalities, and all of their respective officers, members, employees, and directors (hereinafter collectively referred to as the "Indemnitees") from and against any and all claims, suits, judgments, liability, demands, losses, costs, or expenses, including reasonable attorneys' fees and other costs of litigation including expert witnesses, arising out of bodily injury (including death), personal injury, and property damage arising out of or resulting from the performance of this Contract or any act or omission on the part of Contractor, its Subcontractors, its agents, employees, or others working at the direction of Contractor or on its behalf, or due to any breach of this Contract by Contractor, or due to the application or violation of any applicable Federal, State or local law, rule, or regulation. The indemnification obligation set forth in this section extends to the successors and assigns of Contractor and will survive the termination of the Contract or Contractor's performance hereunder and the dissolution or, to the extent allowed by law, the bankruptcy of Contractor.



This indemnification obligation does not extend beyond the scope of the any Project, this Contract, and the work or obligations undertaken thereunder. Nor does this indemnification extend to claims for losses or injuries or damages incurred due to the sole negligence of the Indemnitees.

## 6. Time

6.1. Duty to Commence and Complete Work. Contractor shall commence physical work at the project site within ten (10) days of the issuance of the Proceed Order but shall not commence any physical work on the site until a Proceed Order is issued. Contractor shall achieve Material Completion of the Project not later than the Material Completion Date.

6.2. Time is of the Essence. Time is of the essence of this Contract and all obligations hereunder. Time being of the essence, it is mutually agreed that Owner will suffer damages if Contractor does not achieve Material Completion by the Material Completion Date and Contractor shall therefore compensate Authorized User for the delay as provided in Section 5.3. Contractor has carefully examined and analyzed the Site, the Contract, Construction Documents, and all known factors related to its ability to achieve Material Completion by the Material Completion Date. Contractor agrees that the stipulated Contract Time is fair and reasonable.

6.3. Liquidated Damages for Delay. The parties may agree to an amount to paid as Liquidated Damages if Contractor fails to achieve Material Completion by the Material Completion Date. If the parties agree to Liquidated damages, such Liquidated Damages shall be stated in the Work Order and the Project Charter. The specified liquidated damages are not a penalty but are agreed to in advance because of the difficulty of determining and proving the amount of delay damages incurred by the Authorized User as a result of the delay. Liquidated Damages shall be charged beginning upon the day following the contractually required Material Completion Date and ending on the date that the Certificate of Material Completion is issued. Liquidated Damages shall be deducted from payments due to Contractor as they accrue and such deduction shall be in addition to the retainage provided for in the Contract. If the parties do not agree to a sum for Liquidated Damages, the Authorized User shall be entitled to recover its actual damages if Contractor fails to reach Material Completion by the Material Completion Day.

## 7. Contract Suspension and Termination

7.1. Termination. The termination of this Contract does not in and of itself terminate any Order(s) executed pursuant to the authorization of this Contract; provided, however, termination of the Contract may be considered by any Authorized User in its determination whether to terminate its individual Order with the Contractor.

7.2. State Right to Terminate Work Order Without Cause. The state may terminate the contract at any time, without cause, upon giving Contractor 60 days' Notice. In the event the state elects to terminate the Contract the state shall pay Contractor, in accordance with the terms of the Contract for all work executed prior to termination, up to the unpaid balance of the Contract Sum.

7.3. Authorized User's Right to Terminate Work Order for Cause. Authorized Users may terminate the Work Order if Contractor is in breach of a Notice of Non-Compliant Work; if Contractor makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency; if Contractor persistently disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction over the project; if Contractor abandons the project for a period of seven (7) or more days; if Contractor is otherwise guilty of a substantial violation of any provision of the Work Order or for any reason that would permit Authorized Users to terminate the Work Order under applicable law. Authorized Users may terminate the Work Order or these causes, without prejudice to any other right or remedy under

this Contract, at equity, or in law, upon giving Contractor fifteen (15) days' Notice of Authorized User's intent to terminate for cause.

7.4. Authorized User's Right to Retain Work Upon Termination for Cause. Upon termination for cause, Authorized Users shall have the right to take possession of the work, together with all materials, equipment, tools, and improvements thereon and to finish the work by whatever reasonable method Authorized Users may deem expedient.

7.5. Payment Due Upon Termination for Cause. Upon termination for cause, Contractor shall not be entitled to receive any further payment until the work is completed. Upon completion, Authorized Users shall pay the positive excess of (i) the unpaid balance of the Contract Sum over (ii) Authorized User's cost of completion of the work, plus any damages incurred by Authorized Users due to such termination or the basis for such termination, including but not limited to liquidated damages for delays in completion.

## 8. Construction Phase Requirements

8.1. Review of Construction Documents. Prior to commencing the work, Contractor shall review all construction documents for any inconsistency, ambiguity, error, or omission. When potential design issues are identified, Contractor shall annotate the construction documents and shall issue an explanation in writing to the Authorized User. The Authorized User shall furnish complete, definite, and clear instructions in response to the request in writing, or by issuing drawings, or both. In the event instructions are given orally for expediency, they shall be confirmed in writing or by drawings within five (5) days following the oral instructions. Any such additional instructions shall be consistent with the Construction Documents and reasonably inferable therefrom. Contractor shall not proceed with the affected work until receiving a response from the Authorized User.

8.2. Progress Reports. During the construction phase, Contractor shall monitor the progress of the work for conformance with the overall project schedule and keep the Authorized User informed of such progress and shall maintain records documenting the progress of the work. Contractor shall submit progress reports at intervals reasonably determined by the Authorized User. Progress reports shall document the progression of the work and shall include information on the percentage of completion and indicate completed activities and any changes in sequencing or activity durations, including approved change orders. Progress reports also note dates by which non-compliant work shall have been cured and note the actual date of cure of the non-compliant work.

8.3. Supervision of Work. Contractor shall supervise and direct the work using diligent skill and attention in order to ensure satisfactory progress of the work and that the quality of the work complies with the Contract. Contractor shall be responsible for and shall coordinate all construction means, methods, techniques, sequences, and procedures. Contractor is fully responsible to Authorized User for the acts and omissions of its officers, employees, agents, all Subcontractors and their respective officers, employees and agents, and all other persons on the site at the direction of Contractor or to perform work. Non-performance, improper performance, or other default by any Subcontractor or employee or agent of Contractor shall not excuse Contractor from its obligation to assure timely performance of the work in compliance with the Contract.

8.4. Safety. The Contractor is responsible for the safety of the site and the work. The Contractor shall comply with the rules and regulations of OSHA and/or the Department of Labor (O.C.G.A. § 34-2-6), and, where not inconsistent with the foregoing, the "Manual of Accident Prevention in Construction" issued by the Associated General Contractors of America, Inc., for safety and prevention of accidents. Contractor shall properly maintain at all times, as required by the conditions and progress of the work, proper safeguards for the protection of workmen and the public and shall post danger warnings against any hazards created thereby.



8.5. Project Charter Compliance. The Project Charter herein must be used to officially start and complete all state projects. It formally authorizes the existence of the project and provides a reference source. The charter gives a direction and a sense of purpose to the project management from start to end. To show consensus, ensure the project remains on schedule, and issues are addressed timely all parties must sign Project Charter document prior to the start and at completion of ANY state entity project.

## 9. Warranties, Inspections and Correction Work

9.1. Construction Warranty. All work shall be free from defects and conform to the requirements of the Contract. Unless otherwise specified, all materials shall be new, and both workmanship and materials shall be of good quality. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials and Work. Such warranties are referred to herein as the Construction Warranty. In addition to the Construction Warranty, Contractor shall provide all additional warranties called for in the construction documents. These warranties shall be in such form as to permit direct enforcement by the Authorized User against any Subcontractor or third party whose guaranty or warranty is called for. The calling for or the furnishing of written warranties or bonds shall in no way limit the Construction Warranty and the contractual obligations of Contractor hereunder.

9.2. Inspection of the Work. Both Contractor and Authorized User have separate duties to inspect the work. Inspection of the work by the Authorized User or any third party shall not diminish, relieve, or alter the responsibility of Contractor to ensure that all work complies with the Contract. The failure of Authorized User or other third-parties to discover or notify Contractor of the existence of non-compliant work shall not relieve Contractor of its responsibility to ensure that all work complies with the Contract, and neither the Certificate of Material Completion or Certificate of Final Completion nor payment shall relieve Contractor of responsibility to ensure that all work complies with the Contract.

9.3. Contractor's Inspection of the Work. Contractor has an indivisible, non-delegable, and nontransferable contractual obligation to Authorized User to make inspections of the work at all stages to confirm at all times that all work has been executed strictly in accordance with the Contract. Contractor shall not rely on an inspection by the Authorized User or any other third party to identify non-compliant work.

9.4. Notice of Non-Compliant Work. The Authorized User may issue a Notice of Non-Complaint work if it observes non-compliant work, including failure to maintain the overall project schedule. The Notice of Non-Compliant Work shall be in writing, dated, and addressed to Contractor with a copy to the Authorized User, as applicable. The Notice of Non-Compliant Work shall include a description of the non-compliant work, a citation to the provision of the Contract (or incorporated document or standard) that has been violated, and a reasonable period to correct the non-compliant work ("Cure Period"). If Contractor is unsure or unaware of any information necessary to correct the non-compliant work, it shall immediately request such information in writing. In the event that the Authorized User incurs increased costs due to re-inspection of work that was found to be non-compliant, Contractor shall be liable for the costs of the re-inspection, including but not limited to the salary, professional fees, and travel expenses of the Authorized User or inspection firm.

9.5. Duty to Promptly Correct Work. Contractor shall promptly correct any non-compliant work within the Cure Period stated in the Notice of Non-Compliant Work. The duty to correct the work shall apply whether the non-compliant work is discovered before or after Material Completion. Contractor shall bear the costs of correcting such non-compliant work, including, without limitation, additional testing and inspections and shall bear the expense of restoring all work of separate contractors affected or destroyed by such removal or replacement. Contractor shall give prompt

notice upon completion of the correction of the non-compliant work. In the absence of such notice, it shall be and is presumed under this Contract that there has been no correction of the non-compliant work.

9.5.1. Notice of Non-Compliant Work for Failure to Maintain Schedule. If the Authorized User issues a Notice of Non-Compliant Work for failure to maintain the Overall Project Schedule, Contractor shall deliver to the Authorized User a written plan explaining how Contractor intends to bring the project back in compliance with the overall project schedule within seven (7) days of the issuance of the Notice of Non-Compliant Work. Contractor's plan must provide sufficient detail to allow the Authorized User to determine the proposal's feasibility.

9.5.2. Authorized User's Option to Accept Non-Compliant Work. If the Contractor and the Authorized User deem it inexpedient to correct Non-Compliant Work, Authorized User may agree, in writing, to accept the Non-Compliant Work and make an equitable deduction from the Contract Sum which shall be deducted from Contractor's next payment.

9.5.3. Authorized User's Remedies for Breach of Notice of Non-Compliant Work or Failure to Prosecute the Work. If Contractor does not correct the Non-Compliant Work within the Cure Period stated in the Notice of Non-Compliant Work, Contractor shall be deemed to have breached the Notice of Non-Compliant Work. If Contractor breaches a Notice of Non-Compliant Work or fails to prosecute the Work in accordance with the Contract, Authorized User may, after giving five (5) days' Notice to Contractor, correct the Non-Compliant Work, prosecute the work, or supplement the labor of Contractor or its Subcontractors and deduct the costs thereof from any payment then or thereafter due to Contractor and recover any resulting deficit from Contractor. The remedies stated in this section are in addition to the remedies otherwise available to Authorized User and are without prejudice to any other remedies.

## 10. Change Orders

10.1. Change Orders. The Authorized User may order changes in the work consisting of additions, deletions, or modifications to the work, with the Contract Sum and the Contract Time being adjusted accordingly. All such changes in the work shall be authorized only by written change order signed by the Authorized User. Without a change order executed by the Authorized User, Contractor shall not make any changes in the work or perform any work that is not a part of the Order, nor shall Contractor receive any compensation or make any claim therefor.

10.2. Change Order Sum. The change order sum may be determined in one or more of the following ways: 1) by an estimate of allowable change order costs agreed upon in advance and paid as a lump sum ("Lump Sum Change Order"), 2) by unit prices named in the Contract or subsequently agreed upon, which unit prices shall include all Contractor overhead, profit, and markup ("Unit Price Change Order"), or 3) by the amount of actual allowable change order costs incurred in the performance of the change order work ("Force Account Change Order").

10.3. Change Order Proposals. Any change order shall contain a description of change order work provided by the Authorized User. Contractor shall promptly respond to the proposed change order with an estimate of the allowable costs of the change order work and the impact to the project schedule. The response shall include an itemized breakdown of allowable change order costs and a justification to the change in the project schedule. The Contractor's justification is provided so that the Contractor, and the Authorized User can determine whether the proposed change in Contract Time or Contract Sum is reasonable and in compliance with the terms of the Contract.

10.3.1. Disagreement as to Change in Contract Sum. In no event shall any increase in the contract sum for such change order work exceed the increase identified in Contractor's response.

10.4. Acceptance of Proposed Change Order. If the Authorized User agrees with Contractor's proposed changes to the contract time and contract sum, then the Authorized User shall execute the Change Order. Upon the Authorized User's execution, the Change Order shall be binding and of full force and effect. All change orders shall be performed under the conditions of the original Contract except as specifically modified by the change order. The change in contract time and contract sum (if any) provided by the change order constitutes compensation in full to Contractor for the change order work and accounts for all delays and impacts related thereto.

## 11. Project Close Out

11.1. Inspections for Material Completion. Contractor shall request an inspection for Material Completion when it has completed all work, except for minor items and permitted incomplete work and submitted all required documents, including final documents.

11.2. Cleaning Prior to Material Completion. Prior to the inspection for Material Completion, Contractor shall remove from the site all waste and perform a thorough cleaning of the Work. Contractor shall dust all hard surfaces, mop all hard floors, vacuum all carpet, remove any stains and paint spots, clean and polish all plumbing fixtures and equipment, clean all electrical and mechanical equipment, and clean all ductwork and filters if dirty. Contractor shall also restore any existing facilities such as roads, landscaping, pavement, fencing, curbing, and the like at the site to at least their pre-construction conditions. Contractor may leave equipment at the site as necessary to achieve Final Completion of the Project. To achieve Material Completion, Contractor shall have fully cleaned the site.

11.3. Notice of Readiness for Inspection for Material Completion. When Contractor determines that the Project is ready for Inspection for Material Completion, Contractor shall give Notice to the Authorized User requesting Inspection for Material Completion. Such notice shall be provided at least seven (7) days in advance of the date requested for Inspection for Material Completion. Such Notice shall include a copy of the Initial Punchlist. If Contractor requests inspection for Material Completion and it is determined by the Authorized User that the Project has not reached Material Completion, referred to as a "false start," then Contractor shall be liable for the costs and damages resulting therefrom.

11.4. Inspection. Certificate of Material Completion. The Authorized User shall conduct the Inspection for Material Completion and shall confirm the Final Punchlist by adding or deleting minor items or permitted incomplete work as appropriate. Upon completion of the Inspection for Material Completion, if the Authorized User determines the work has reached material completion, the Authorized User shall execute the Certificate of Material Completion and attach a first draft of a Final Punchlist, which may be handwritten or in electronic format and which shall list all minor items and permitted incomplete work and assign amounts to be withheld from the Payment for Material Completion on account of each minor item and permitted incomplete work. The Final Punchlist shall include completion dates for the permitted incomplete work. All minor items shall be completed within thirty (30) days of material completion.

11.5. Payment for Material Completion. Upon material completion, Contractor shall submit a Payment Application along with a Payment Affidavit certifying completion of all work in accordance with the contract, except for minor items and permitted incomplete work, and releasing all claims against the Authorized User of any nature arising out of the project except any claims noted on the Payment Affidavit. If Contractor fails to provide a Payment Affidavit, Payment for material completion shall operate as settlement, waiver, release, discharge, and



payment in full of all claims (including Claims) against Authorized User of any nature arising out of the project except for the work associated with the minor items and the permitted incomplete work.

11.6. Material Completion. A determination that Contractor has achieved material completion, the issuance of a Certificate of Material Completion, or Authorized User's Payment for Material Completion shall not preclude or diminish Authorized User's rights or remedies for non-compliant work discovered after such events. All such rights and remedies set forth herein shall continue after such events.

11.7. Final Completion, Payment. Final completion is the completion of all work. When Contractor has completed all work, it shall request an inspection for final completion. The Authorized User shall inspect all work and if it determines that all work is complete, it shall execute the Certificate of Final Completion. Upon final completion, Contractor shall submit a Payment Application requesting the remainder of the contract sum. Acceptance of payment for final completion by Contractor shall operate as settlement, waiver, release, discharge and payment in full of all claims against the Authorized User of any nature arising out of the project.

11.8. Final Completion. A determination that Contractor has achieved Final Completion, the issuance of a Certificate of Final Completion, or Authorized User's Payment for Final Completion shall not preclude or diminish Authorized User's rights or remedies for non-compliant work discovered after such events. All such rights and remedies set forth herein shall continue after such events.

## 12. Payment

12.1. Schedule of Values. Prior to the issuance of the proceed order, Contractor shall submit a Schedule of Values of the work to assist the Authorized User in reviewing Payment Applications. The Schedule of Values shall allocate the contract sum to the portions of the work in such detail as Authorized User require. If requested, Contractor shall provide evidence of the accuracy of the Schedule of Values. Unless objected to by the Authorized User, the Schedule of Values shall be used to determine the payment due for completion of each portion of the work.

12.2. Payment Applications. Contractor shall submit a Payment Application to the Authorized User by the fifth (5th) day of each month for the work performed during the previous month on the form supplied by the Authorized User. The Payment Application shall itemize the total sum billed in the same format as the Schedule of Values and shall include the percentage complete for each item of work. Contractor shall submit no more than one (1) Payment Application during each month. No payment shall become due to Contractor until a proper Payment Application is submitted.

12.3. Representations of Contractor. The Payment Application constitutes a representation by Contractor to the Authorized User that (i) the quality of the work covered by the application is in accordance with the Contract; (ii) Contractor is entitled to payment in the amount requested; (iii) all work covered by any previously approved Payment Application, for which Contractor has been paid, is free and clear of liens, claims, security interests or encumbrances, and (iv) title to all work covered by the Payment Application will pass to Authorized User no later than the time of payment.

12.4. Payment. The Authorized User shall make payment for all work completed in the previous month, based upon the Schedule of Values and Contractor's estimate of percentage complete, less the retainage and subject to Authorized User's right to withhold amounts and Authorized User's right to adjust for overpayments. Authorized User shall make payment to Contractor no later than thirty (30) days after receipt of a properly completed Payment Application.

12.5. Disputed Payments. The Authorized User and Contractor agree to use their best efforts to resolve all disputes concerning the Payment Application during the said thirty (30) day payment period. If Authorized User disputes a portion of the Payment Application, Authorized User shall make payment of all undisputed amounts within the thirty (30) day payment period. If payment disputes continue, DOAS shall be notified for further action.

12.6. Payments Withheld. Authorized Users may withhold payment, or nullify the whole or part of any previous Payment Application, to such extent necessary to protect Authorized Users from loss on account of any one or more of the following: (i) Non-Compliant Work; (ii) failure of Contractor to make payments due to Subcontractors; (iii) reasonable evidence that the Contract cannot be completed for the unpaid contract sum; (iv) damage to a separate contractor or to any other third party, or reasonable evidence that third parties may file claims against Authorized User due to acts or omissions of Contractor; (v) failure to maintain the overall project schedule, or (vi) requests for or prior payment of costs that are not required to be reimbursed hereunder. When the grounds for withholding payment are remedied (if applicable), payment shall be made for amounts withheld because of them. In the case of withholding payment for failure to pay Subcontractors, Authorized User may agree to payment upon receipt of a satisfactory Consent of Surety.

12.7. Payment of Subcontractors. Contractor shall pay Subcontractors the amount due for Subcontractor's work, less applicable retainage, within seven (7) days of receipt of payment from Authorized User for such work unless the contract between Contractor and Subcontractor provides that no such payment is due (e.g. without limitation, as a result of non-performance under the Subcontract). The Authorized User has the right to request evidence from the Contractor that the Contractor has properly paid all Subcontractors. If the Contractor fails to provide such information within seven (7) days of Authorized User request, Authorized User shall have the right to contact Subcontractors to determine if they have been paid. Authorized User shall have no obligation to pay or see to the payment of money to a Subcontractor.

12.8. Milestone Payments. Authorized User shall have the option to make milestone payments in which the Authorized User shall make payments to the Contractor in accordance with an agreed upon Milestone Payment Plan for Work Orders subject to satisfactory completion of the milestone events detailed in the Project Charter.

12.9. Retainage. Until the payment for Material Completion, Authorized User may withhold retainage in the amount of ten percent (10%) from each Payment Application.

12.10. Freezing Retainage. After one-half (1/2) of the Contract sum has been paid, upon submission of the next Payment Application following the payment of one-half of the contract sum, if the work is on or ahead of schedule according to the overall project schedule and there are no unresolved breaches of non-compliant work, Contractor may request that the Authorized User stop the collection of retainage. Upon Authorized User approval, the previously withheld retainage will be converted to a lump sum to be held by Authorized User until Material Completion and Authorized User will collect no additional retainage unless retainage is reinstated. Authorized User will reinstate collection of retainage if the work is five percent (5%) or more behind schedule according to the overall project schedule or if Contractor breaches a Notice of Non-Compliant Work. Authorized User will continue the collection of retainage under this section until the breach is cured or the time is recovered and the project is on or ahead of schedule.

12.12. Retainage Release. When Material Completion is achieved, retainage shall be paid to the Contractor with the payment for Material Completion.

12.13. Contractor Administrative Fee Compliance. For this statewide contract, DOAS requires each Contractor to pay to DOAS an administrative fee on all sales pursuant to the resulting

contract. The administrative fee amount for this statewide contract is 1%. Contractors currently holding one or more Participating Agreements are required to be compliant with the terms and conditions of their current agreement(s) with the State. This includes every quarterly reporting and administrative fee submission requirements. DOAS will not award the resulting Contract to a Contractor, who has failed to meet its current Contract obligations.

### 13. Dispute Resolution

13.1. Dispute Resolution. (a) Initially, all disputes shall be resolved at the agency level. The Authorized User and the Contractor shall resolve disputes regarding issues with the work; to include, technical and design issues, and material changes to Specifications. (b) If the dispute cannot be resolved at the agency level within five (5) calendar days after recognition, either Party shall notify DOAS in writing of the dispute, and DOAS will instructed on further actions.

### 14. DOAS Annual Outreach and Marketing Opportunities

14.1. Participation in DOAS State Purchasing's Annual Georgia Procurement Conference (GPC). DOAS hosts an annual marketing and training trade conference, usually in late April or early May, to educate public procurement professionals on the commodities and services available on Participating Agreements, offer them educational platforms to learn new techniques and best practices from state and national industry experts and provide marketing, networking and training opportunities to Participating Contractors.

The attendees at these events have included public procurement professionals from all state agencies, the colleges and universities of the Board of Regents and the Technical College System of Georgia, local cities and municipalities across the state, and many independent authorities. The Exhibitor Expo, which is one of the highlights of the conference, has significant marketing value and is extremely cost effective as it provides exceptional opportunities for Contractors to market directly to thousands of attendees.

The Georgia Procurement Conference is scheduled each year at the Jekyll Island Convention Center and is primarily supported by statewide Contractors as exhibitors. The cost to exhibit in the past has ranged from \$1,300 to \$1,600 depending on booth location desired. DOAS believes that the Expo is important because it provides public purchasers with an opportunity to meet over 300 Contractors and receive important information on new and existing products and services. It provides Contractors with training workshops and the unparalleled opportunity to establish and renew business relationships with existing customers and to market their business to approximately 800 attendees, many of whom represent potential new customers. Please note that exhibiting at the Georgia Procurement Conference is not required.

14.2. Contract Outreach. Contractor is required, at a minimum, to participate in outreach efforts to raise awareness of potential subcontracting opportunities resulting from work ordered by Authorized Users. The Contractor is strongly encouraged to formally advertise subcontractor opportunities resulting from an Order placed by Authorized Users in publications or communication media regardless of the amount of the Order.

### 15. State Entities' Right to Seek Competitive Bids

15.1. Authorized Users Seeking Other Bid Opportunities. Notwithstanding anything in the Invitation for Bids issued by Sourcewell or Contractor's Bid, Authorized Users shall, at all times prior to signing a contract for work, have the right to reject any offer or proposed engagement from Contractor and seek competitive bids through the normal competitive bidding process.

### 16. Successors and Assigns



16.1. This Participation Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.

17. Entire Agreement

17.1. This Participation Agreement shall be and remain in full force and effect in accordance with its terms and shall constitute the legal, valid, binding and enforceable obligations to the parties. This Participation Agreement (including any written amendments thereto), collectively, are the complete agreement of the parties and supersede any prior agreements or representations, whether oral or written, with respect thereto.

IN WITNESS WHEREOF, the parties hereto have executed this Participation Agreement on the day and year first above written;

**F.H. Paschen**

Authorized Signature: \_\_\_\_\_

Print Name: Leo J. Wright

Date: July 23, 2020

**Department of Administrative Services – State Purchasing**

Authorized Signature: \_\_\_\_\_

Print Name: Lisa Eason

Date: 8/18/2020