



shall be given to the Contractor. All defective work, whether or not in place, may be rejected, corrected, or accepted.

- Subcontractors. Vendor/Contractor will be fully responsible for all acts and omissions of its Subcontractors and of persons directly or indirectly employed by them and of persons for whose acts any of them may be liable to the same extent that it is responsible for the acts and omissions of persons directly employed by it.
- Permits. Vendor/Contractor will secure and pay for all permits, certifications, and licenses and will pay all governmental charges and inspection fees necessary for the prosecution of the Work.
- Laws and Regulations. Vendor/Contractor will give all notices and comply with and cause all Subcontractors to comply with all federal, state, and/or local laws, ordinances, requirements, standards, rules and/or regulations ("Laws") applicable to the Work and materials to be provided. If the Vendor/Contractor performs any services contrary to such laws, it shall bear all costs arising therefrom.
- Taxes. Vendor/Contractor will pay all sales, consumer, use, and other similar taxes required by the law of the place where the Work is to be performed. Notwithstanding the preceding sentence, no sales tax shall be charged to the City on any of the material and/or equipment incorporated or used in the performance of the Work.
- Indemnification and Limitations of Liability. Vendor/Contractor, shall indemnify and save harmless the City, its officers, council members, agents, contractors, assigns, volunteers, and employees from and against all claims, demands, liabilities, suits, judgments and decrees, including reasonable attorneys' and other professional fees, losses and costs and expenses of any kind or nature whatsoever on account of injuries to or death of any person or persons or damage to any property occurring directly or indirectly from performance of the Work by the Vendor/Contractor or its employees, agents, servants, associates, or Subcontractors, however such injuries or death or damage to property may be caused arising out of any breach by the Vendor/Contractor of any representation, warranty, covenant, duty or obligation. City shall not be liable to the Vendor/Contractor or any Subcontractor, of any tier, for any lost profits, special, incidental, punitive, exemplary or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities or services, or down time cost, even if advised of the possibility of such damages, arising out of or resulting from the City's performance or non-performance of the City's obligations under this Agreement, or from the City's termination or suspension of Work under this Agreement, or for any other reason. Furthermore, the City shall not be liable in contract or tort to Vendor/Contractor, Subcontractors, or suppliers thereof, regardless of tier, for incidental or consequential damages arising out of or resulting from the City's performance or non-performance of the City's obligations under the Agreement, or from the City's termination or suspension of the Work under the Agreement, or for any other reason.
- Warranty and Guarantee. Vendor/Contractor will perform the Work in accordance with this Agreement, the Laws, and, at a minimum, that degree of care and skill ordinarily exercised by and consistent with the standards of care of others ordinarily providing the same or similar services/work in the same or similar locality as the area where the Work is to be performed. Vendor/Contractor further warrants and guarantees to the City that all materials and equipment will be new unless otherwise specified and expressly agreed to by the City and that all Work will be, at a minimum, of the degree of care and skill set forth above and in accordance with the requirements of the Agreement and of any inspections, tests, or approvals. Contractor warrants and guarantees that title to all Work, materials and equipment covered by an application for payment, whether incorporated in the Project or not, will have passed to the City prior to the making of the application for payment, free and clear of all liens, claims, security interests, and encumbrances (referred to below as "liens"); and that no work, materials, or equipment covered by an application for payment will have been acquired by the Contractor or by any other person performing the Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest or encumbrance is retained by the seller or otherwise imposed by the Contractor or such other person.
- Work Stoppage. If the attached quoted services are defective, or if the Vendor/Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or if the Vendor/Contractor fails to make prompt payments to Subcontractors or for labor, materials, or equipment, the City may order the Contractor to stop the Work, or any portion thereof, until the cause for such an order has been eliminated; however this right of the City to stop the Work shall not give rise to any duty on the part of the City to exercise this right for the benefit of the Contractor or any other person or entity.
- Correction or Removal of Defective Work. If required by the City prior to approval of final payment, the Vendor/Contractor will promptly, without cost to the City and as specified by the City, either correct any defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by the City, remove it from the site and replace it with non-defective Work. If the Contractor does not correct defective Work or remove and replace rejected Work within a reasonable time, all as specified in a written notice from the City, the City may have the deficiency corrected or the rejected Work removed or replaced. All direct or

indirect costs of such correction or removal and replacement, including compensation for additional professional services, shall be paid by the Contractor.

- Termination. The Agreement may also be terminated for cause upon five (5) days written notice for a failure to both (a) perform substantially in accordance with the terms and conditions of the Agreement and (b) for the sole convenience of the City. Upon written notice to the Vendor/Contractor, the City may also exercise its right to early termination in the event of the cancellation of funds, a change of priorities, or cancellation of a program with no right of appeal available to the Vendor/Contractor. City shall reimburse the Vendor/Contractor for Work actually and properly performed by the Contractor up to the date of termination. The City has the right to monitor performance, certification, and any subsequent recourse available in the event of default or non-performance by the Vendor/Contractor.
- Force Majeure. Except for payment of sums due and except as otherwise specified herein, neither Party shall be liable to the other nor deemed in default under the Agreement if and to the extent that such Party's performance under the Agreement is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the Party affected and occurs without its fault or negligence. Force Majeure shall not include (i) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with the terms and conditions set forth herein and (ii) the Contractor's failure to comply with the terms and conditions of this Agreement regarding disaster recovery.
- Registration with a Federal Work Authorization Program. Vendor/Contractor shall comply with the requirements of the Official Code of Georgia ("O.C.G.A") Sec. 13-10-91 and Rule 300-10-1-.02 and compliance therewith is a condition of the Agreement. Compliance shall include but not be limited to execution of the attached Contractor Affidavit and Agreement and Subcontractor Affidavit should there be any subcontractor or subcontractors. In lieu of providing such Affidavit, a contractor, subcontractor, or sub-subcontractor who has no employees and does not hire or intend to hire employees for purposes of satisfying or completing the terms and conditions of the Agreement shall instead provide a copy of the state issued driver's license or state issued identification card of such contracting party and a copy of the state issued driver's license or identification card of each independent contractor utilized in the satisfaction of part or all of the Agreement.
- Jurisdiction. The Agreement shall be governed and interpreted by the laws of the State of Georgia and any action brought to clarify or enforce this Agreement shall be brought in a court of competent jurisdiction located in Cobb County, Georgia.
- Contractual Relationship. The relationship between the City and the Vendor/Contractor is that of an independent contractor. Vendor/Contractor is not authorized to act as an agent, employee, or legal representative of the City, and may not hold itself out to the public as such. The method and manner of performance of the Work shall be under the exclusive control of the Contractor. The City shall have the right to inspect such undertakings at any time without prior notice.
- Time of the Essence. Time is of the essence regarding all dates and deadlines in this Agreement. If the deadline for performance of any obligation by the City or the Vendor/Contractor shall fall on a weekend day or a date recognized as a holiday by the City, then such deadline shall automatically be deemed to fall on the first business day thereafter.
- Assignment. Vendor/Contractor may not assign this Agreement without the prior written of the City.
- Entire Agreement. This Agreement contains the entire agreement between the parties. No modification or amendment of this Agreement shall be of any force or effect unless made in writing and executed by City and Vendor/Contractor. Should any provision or term of any exhibits, attachments, or other matters incorporated herein by reference conflict with or differ from the provisions of this Agreement, this Agreement shall control.
- Severability: This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules and regulations. If any of the provisions of this Agreement or the application thereof to any person or circumstances shall for any reason and to any extent be invalid or unenforceable, then the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by law.
- Notices. Notwithstanding anything to the contrary contained in the Agreement, any notice or other instrument or communication that may be or is required to be given hereunder shall be in writing and delivered in person or by email, or sent by United States certified mail postage prepaid or by nationally recognized overnight courier to the address of the City or Vendor/Contractor, as applicable. Notices shall be deemed given on the date such notices are emailed, faxed, or deposited with such courier, overnight delivery service, or the U.S. Postal Service; provided, however, the timeframe for any action or response thereto shall not commence until such notice has been delivered (or on the date delivery was first attempted if such notice is rejected or unable to be delivered due to a change in address of which no notice has been given). Notices that are required to be given hereunder the Lease shall go to the following:

To Vendor/Contractor:

Mauldin & Cook Fence Co  
4985 Deen Rd  
Marietta, GA 30066  
Attn: Steve Cook, Sec./Treas.  
[stevecook@mauldincookfence.com](mailto:stevecook@mauldincookfence.com)

To the City:

City of Powder Springs  
4426 Marietta Street  
Powder Springs, GA 30127  
Attn: Pam Conner, City Manager  
[PCONNER@CityOfPowderSprings.org](mailto:PCONNER@CityOfPowderSprings.org)

With a copy to:

Gregory, Doyle, Calhoun, & Rogers, LLC  
49 Atlanta Street  
Marietta, GA 30060  
Attn: Julie Livingston  
[jlivingston@gdcrlaw.com](mailto:jlivingston@gdcrlaw.com)

IN WITNESS WHEREOF, each of the parties hereto has executed this Contract as of the date first above written.

The City of Powder Springs, Georgia

Mauldin & Cook Fence Co

BY: Albert Thurman

BY: [Signature]

PRINT: Albert Thurman

PRINT: Steven Cook

ITS: Mayor

ITS: Sec/Treas

DATE: 12/14/23

DATE: 11-16-23

ATTEST: Kelly Axt

ATTEST: [Signature]

PRINT: Kelly Axt

PRINT: Taylor Cook

ITS: City Clerk

ITS: Project Manager

CITY ATTORNEY: \_\_\_\_\_

**CONTRACTOR AFFIDAVIT AND AGREEMENT**

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is contracting with the City of Powder Springs, Georgia, has registered with and is participating in a federal work authorization program\* [any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603], in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this Contract with the City of Powder Springs, Georgia, Contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91 on the Subcontractor Affidavit provided in Rule 300-10-01-.08 or a substantially similar form. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Powder Springs, Georgia, at the time the subcontractor(s) is retained to perform such service.

151864  
EEV / Basic Pilot Program\* User Identification Number

Mauldin C Cook Fence Co  
BY: Authorized Officer or Agent Date Sept 2023  
(Contractor Name)

Secretary  
Title of Authorized Officer or Agent of Contractor

Steven Cook  
Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS 29 DAY OF NOVEMBER, 2023

Scott M Hughes  
Notary Public  
My Commission Expires: 31 AUG 2027



\* As of the effective date of O.C.G.A. 13-10-91, the applicable federal work authorization program is the "EEV / Basic Pilot Program" operated by the U. S. Citizenship and Immigration Services Bureau of the U.S. Department of Homeland Security, in conjunction with the Social Security Administration (SSA).

**CERTIFICATION OF NO EMPLOYEES (IF APPLICABLE)**

I certify that I am a contractor, subcontractor, or sub-subcontractor who has no employees and does not hire or intend to hire employees for purposes of satisfying or completing the terms and conditions of the Agreement and in lieu of the foregoing affidavits am instead providing a copy of my state issued driver's license or state issued identification card and a copy of the state issued driver's license or identification card of each independent contractor utilized in the satisfaction of part or all of the Agreement.

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

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Please attach a copy of a valid driver's license for party executing the vendor side of the City Contract and this Certification of No Employees.***