



4800 Ashford Dunwoody Road  
 Dunwoody, Georgia 30338  
 dunwoodyga.gov | 678.382.6700

## MEMORANDUM

**To:** Mayor and City Council

**From:** Cody Dallas, Senior Stormwater Engineer

**Date:** January 13, 2025

**Subject:** **Approval of 319(h) Grant Agreement with the Georgia Environmental Protection Division for the Dunwoody Nature Center Stream and Wetland Improvements Project**

### **ACTION**

Authorize the Mayor, City Manager, or designee to execute a grant agreement with the Georgia Environmental Protection Division (EPD) to receive state funding for construction of the Dunwoody Nature Center Stream and Wetland Improvements project (the "Project"), pending final approval by the City attorney.

### **SUMMARY**

The city has secured \$600,000 from the EPD through grants authorized under Section 319 of the Federal Water Pollution Control Act Amendments of 1987. The city has committed \$1,218,623 from City Stormwater Utility Fund Reserves for construction of the Project. In order to access the grant funds, the city is required to enter into a grant agreement with the EPD.

### **DETAILS**

On July 9th, 2024, the Project was approved for funding assistance through the EPD's 319(h) grant program. On October 15<sup>th</sup>, 2024, Council approved the contract amount of \$1,727,523 for Steele and Associates, Inc. to construct the Project.

The scope of this Project includes stabilization of eroding banks and channels along Wildcat Creek, enhancing the existing riparian wetland and restoring hydric soil functions, removing invasive species, planting native vegetation, improving accessibility through the Dunwoody Nature Center through construction of an elevated boardwalk, and providing spaces for educational programs.

The grant agreement would become effective upon final approval by the City attorney.

### **RECOMMENDED ACTION**

Authorize the Mayor, City Manager, or designee to execute a grant agreement with the Georgia Environmental Protection Division (EPD) to receive state funding for construction of the Dunwoody Nature Center Stream and Wetland Improvements project (the "Project"), pending final approval by the City attorney.

STATE OF GEORGIA  
COUNTY OF FULTON

CONTRACT BETWEEN

THE GEORGIA ENVIRONMENTAL PROTECTION DIVISION

AND

CITY OF DUNWOODY

FOR

DUNWOODY NATURE CENTER STREAM AND WETLAND IMPROVEMENTS

This contract ("Contract") is made and entered into as of the date of the last signature hereunder ~~for "the day of~~ 20XX if backdating (hereinafter called "Effective Date"), by and between the Georgia Environmental Protection Division; (hereinafter called "Division"), and City of Dunwoody (hereinafter called "Contractor"). The persons executing this Contract on behalf of the Contractor have authority to bind the Contractor to the terms of this Contract. The Director of the Division is authorized by law to execute this Contract.

WHEREAS, the Division desires to engage the Contractor to render certain services hereafter described in connection with an undertaking (hereinafter referred to as the "Project") which will be financed through grants authorized under Section 319 of the Federal Water Pollution Control Act Amendments of 1987 and administered by the Division; and

WHEREAS, Contractor desires to perform such services for the Project.

NOW, THEREFORE, in consideration of the valuable and mutual benefits flowing to each party as described below, the parties hereto mutually agree as follows:

1. **Employment of Contractor.** The Division hereby agrees to engage the Contractor and the Contractor hereby agrees to perform these services hereinafter as set forth in fulfillment of this Contract.
2. **Scope of Work.** In performance of the Project, the Contractor shall conduct the work described in the scope of work identified in the attached Appendix A, hereby made a part of this Contract by reference.
3. **Term; Time of Performance.** The term ("Term") of this Contract shall commence upon the Effective Date and shall terminate upon the earlier of: i) the completion of the tasks identified in Appendix A: Scope of Work; or ii) July|31<sup>st</sup>, 2026 (hereinafter referred to as "Termination Date"), unless sooner terminated by the Division or renewed by the Division in accordance with the provisions of this Contract. The services of the Contractor are to commence as soon as practicable after the Effective Date and shall be undertaken in accordance with the timeline for completion of tasks included in the attached Appendix B: Project Schedule, hereby made a part of this Contract by reference.
4. **Compensation.** Division agrees to pay Contractor compensation for the services performed

**Commented [JE1]:** Expiration date based off a November 4, 2024 start date and the 20 month timeline in the applicant's project schedule.

under this Contract not to exceed ~~SIX HUNDRED THOUSAND dollars, \$600,000~~Six Hundred Thousand Dollars and Zero/100s (\$600,000.00). Said compensation shall be paid in accordance with the budget described in the Scope of Work. Any changes to the amount of compensation to be provided by the Division to Contractor shall be made in a writing executed in accordance with the terms of Paragraph 23.

5. **In Kind Match.** The Contractor will contribute a minimum of the equivalent of 65% of the total Pproject cost, in services or cash contributions, toward the performance of services described in Appendix A: Scope of Work.
6. **Method of Payment.** Division will pay Contractor for work performed under this Contract not to exceed the compensation described in Paragraph 4, and in accordance with the terms described in this Paragraph:
  - a. Payment will only be made for the services described in Appendix A: Scope of Work; and
  - b. Contractor shall be paid quarterly unless a request for ADVANCE has been submitted with verifying documentation (see subparagraph c of this Paragraph 6). No later than the 15<sup>th</sup> day of the month following close of the immediately preceding quarter, Contractor shall submit to the Division contact specified in Paragraph ~~36-34~~ an invoice for services rendered in that immediate preceding quarter, accompanied by a progress report describing the services performed and identifying the related items or tasks in the Scope of Work, specifying that the services have been performed in accordance with this Contract, and accompanied by any documentation, outputs, deliverables, or close-out reports; and
  - c. The Contractor shall certify in writing the accuracy of each invoice. All invoices from the Contractor should show detailed line items referencing the costs of labor, materials, property, equipment, installation, services, incidentals, etc. All invoices should be signed and dated by authorized personnel as evidence of review and approval prior to submission to the Division for reimbursement or ADVANCE payment; and
  - d. The Division will review and approve or deny invoices within 30 days of receipt. Payment shall be made upon determination by the Division that Scope of Work items required by the Contract, including deliverables and reporting requirements of various categories and kinds of information for the period, are reasonably sufficient. Any invoice not approved by the Division shall not be paid; and
  - e. Payment of the final 10 percent (10%) shall not be due and payable until all Scope of Work items are completed and the Division has accepted and approved the final products, reports, and invoices.
7. **Credit.** Notwithstanding any other provision of this Contract, the Contractor acknowledges that the Division, as an agency of the State of Georgia, is prohibited from pledging the State's credit.
8. **Funding.** The Contractor acknowledges that this Contract is funded with a grant from the U.S. Environmental Protection Agency ("USEPA"). In the event that the Division determines that the source of payment no longer exists or is insufficient with respect to the Services, the Division shall terminate this Contract in accordance with the provisions of Paragraph 13.
  - a. In the event of such termination, the Division shall remain obligated to pay for Services performed and accepted by the Division prior to such termination. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and

reports prepared by the Contractor under this Contract shall become the property of the Division. Any use of incomplete documents shall be at the sole risk of the Division. The determination of the Division of the events stated above shall be conclusive.

- b. The Division shall provide notice in writing to Contractor as soon as practicable after the Division determines that the source of payment no longer exists or is insufficient with respect to the services.

~~9. **Fair Share.** This Contract is being funded with a grant from the USEPA. It is the policy of the USEPA to ensure to the fullest extent possible that at least a negotiated "Fair Share" percentage of federal funds awarded to prime and subcontractors in support of USEPA programs be made available to Disadvantaged Business Enterprises ("DBE").~~

- ~~a. The Contractor agrees to ensure to the fullest extent possible that at least 4% Minority Business Enterprises (MBE) and 4% Women Business Enterprises (WBE) of federal funds for contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and historically black colleges and universities.~~
- ~~b. The Contractor agrees to include in its bid documents this 4% "Fair Share" percentage.~~
- ~~e. To evaluate compliance with the "Fair Share" policy, the Contractor agrees to comply with the following six affirmative steps as appropriate:
 
  - ~~i. Including qualified minority and women businesses on solicitation lists;~~
  - ~~ii. Assuring that minority and women's businesses are solicited whenever they are potential sources;~~
  - ~~iii. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of minority and women's businesses;~~
  - ~~iv. Establishing delivery schedules, where the requirements of the work permit, which will encourage the participation by minority and women's businesses;~~
  - ~~v. Using the services and assistance of the U.S. Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce;~~
  - ~~vi. Requiring each party to a subagreement to take the affirmative steps outlined in paragraphs (i) through (ii) of this section.~~~~
- ~~d. The Contractor must submit to the Division a certification that the six steps have been followed, along with documentation of the six steps that is sufficiently detailed to allow for satisfactory review and should document the efforts of solicitation taken such as; the name and address of MBE's/WBE's solicited, if advertised in newspaper show proof and indicate name of paper.~~
- ~~e. The Contractor is required to submit quarterly reports of total Contract expenditures to the Division, which includes a separate total for MBE/WBE utilization.~~

~~10.9. **Taxes.** The State is exempt from Federal Excise Taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The Division is exempt from State and Local Sales and Use Taxes on the services. Tax Exemption Certificates will be furnished upon request. Contractor or an authorized subcontractor shall provide the Division with a sworn verification regarding the filing of unemployment taxes or persons assigned by Contractor to perform Services, which verification is incorporated herein by reference.~~

~~11.10. **Certification Regarding Sales and Use Tax.** By executing the Contract, the~~

Contractor certifies it is either (a) registered with the State Department of Revenue, collects, and remits State sales and use taxes as required by Georgia law, including Chapter 8 of Title 48 of the Georgia Code; or (b) not a “retailer” as defined in O.C.G.A. Section 48-8-2. The Contractor also acknowledges that the Division may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Division or its representative filing for damages for breach of contract.

~~12.11.~~ **Termination of Contract for Cause.** If, through any cause other than force majeure, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the Division shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of such termination.

- a. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this Contract shall become the property of the Division, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in which funds were accrued or encumbered up to the actual date of termination.
- b. Notwithstanding the above, the Contractor shall not be relieved of liability to the Division for damages sustained by the Division by virtue of any breach of this Contract by the Contractor, and the Division may withhold any payments to the Contractor for the purpose of setoff until such time as the exact amount of damages due the Division from the Contractor is determined.

~~13.12.~~ **Termination of Contract for Convenience.** The Division may terminate this Contract at any time for good reason by giving at least thirty (30) days written notice to the Contractor of such termination and specifying the effective date.

- a. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this Contract shall become the property of the Division, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in which funds were accrued or encumbered up to the actual date of termination.
- b. If this Contract is terminated as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made.

~~14.13.~~ **Release of Materials Pursuant to the Georgia Open Records Act.** All products, reports, information, data, etc., given to, derived from, prepared by, or assembled by the Contractor (the “Materials”) in the performance of this Contract shall be governed by the Georgia Open Records Act. Unless otherwise required by applicable law, the Contractor shall not release or deliver any Materials to the general public or to local officials pursuant to a written or oral request under the Georgia Open Records Act. Division expressly acknowledges and agrees that Contractor is an “agency” as defined in O.C.G.A. § 50-18-70 and is consequently subject to the Georgia Open Records Act. Contractor shall inform the Division in writing if it receives any requests for the Materials pursuant to the Georgia Open Records Act.

~~15~~.14. **Assignability.** Contractor shall not transfer or assign all or any of its right, title or interest in this Contract or delegate any of its duties or obligations hereunder without the prior written consent of the Division. The Division may transfer or assign all or any of its right, title or interest in this agreement to another agency or authority of the State of Georgia without written notice to Contractor.

~~16~~.15. **Interest of Contract.** The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance required under the Contract. It is specifically agreed and understood that for the purposes of this Contract, the Contractor shall be an independent contractor and nothing in this Contract shall be construed as creating a joint venture, partnership or employment relationship between the parties.

~~17~~.16. **Copyrights.** No reports, maps, or other documents produced or derived in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Contractor. Any such reports, maps and other documents shall constitute a “work made for hire” pursuant to the U.S. Copyright Act of 1976, as amended, and Contractor agrees that the Division is the original and sole owner of all rights, including without limitation copyright, in and to such reports, maps and other documents. If for any reason such reports, maps, and other documents are found not to be “works made for hire,” then Contractor hereby assigns to the Division all right, title and interest in and to such reports, maps and other documents without further consideration of any kind. Contractor agrees to execute all further documents and to take all reasonable further steps deemed advisable by the Division to secure and protect the Division’s rights as stated herein.

~~18~~.17. **Documents.** Provided that Contractor has been paid for the Services, the Division shall have the right to use the documents, maps, photographs, drawings and other materials (including but not limited to models, software or other digital work products) resulting from Contractor efforts on this Contract. Contractor acknowledges that, in accordance with the Contract, the Division is the original and sole owner of all rights in and to such documents, maps, photographs, drawings and other such materials including but not limited to models, software or other digital work products. Division acknowledges that the reuse of any such materials by Division on any extension of this project or any other project shall, with the exception of the obligations of Contractor, be at Division’s sole risk unless otherwise agreed to in writing by all parties. Contractor shall have the right to retain copies of all such materials.

~~19~~.18. **Identification of Documents and Projects.** All printed information, reports, maps, signage and other documents completed as a part of this Contract, other than documents exclusively for internal use within the Division, shall include the following:

- a. *“This cooperative project has been funded in part by the United States Environmental Protection Agency” or “This project has been funded by the United States Environmental Protection Agency,”* as appropriate.
- b. Indication of the day and month that the material was prepared.
- c. Credit to “The Georgia Environmental Protection Division.”
- d. For outreach components, the United States Environmental Protection Agency logo.

~~20~~.19. **Intellectual Property.** The Contractor agrees it will not use the name or any intellectual property, including but not limited to, the Division’s trademarks or logos in any manner, including commercial advertising or as a business reference, without the express prior written consent of the Division.

~~21~~.20. **Personnel.** The Contractor represents that it has, or will secure, all personnel required in performing the Services under this Contract. Such personnel shall not be

employees of or have any contractual relationship with the Division.

- a. All the Services required hereunder will be performed by the Contractor or under its supervision, and all the personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services.
- b. None of the work or Services covered by this Contract shall be subcontracted without the prior written approval of the Division contact specified in Paragraph [3634](#).
- c. The Division, or its authorized representatives, shall have the right to enter into the premises of Contractor and/or all subcontractors, or any places where duties under this Contract are being performed, to inspect, monitor, or otherwise evaluate the performance under this Agreement.

~~22-21.~~ **Right to Audit and Access to Records.** The Contractor shall maintain books, records and documents in accordance with generally accepted accounting principles and procedures and which sufficiently and properly document and calculate all charges billed to the Division throughout the term of the Contract for a period of at least five (5) years following the date of final payment or completion of any required audit, whichever is later. Records to be maintained include both financial records and service records. The Contractor shall permit the Auditor of the State of Georgia or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to the Contract, wherever such records may be located during normal business hours. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. If an audit discloses incorrect billings or improprieties, the Division reserves the right to charge the Contractor for the cost of the audit and appropriate reimbursement. Evidence of criminal conduct will be turned over to the proper authorities.

~~23-22.~~ **Entire Agreement; Modification.** This Contract represents the sole and complete understanding of the terms of the Contract between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements and understandings, oral or written, with respect thereto. No modification or amendment to this Contract will be binding on either party hereto unless such modification or amendment is reduced to a writing executed by both parties. Any changes in the scope and/or duration of this Contract shall be mutually agreed upon by and between the Division and the Contractor in a writing executed in accordance with this Paragraph.

~~24-23.~~ **Warranty.** The Contractor warrants to the Division that the Services will be performed in a workmanlike manner, consistent with that level of care and skill ordinarily exercised by other providers of similar services and with sound principles commonly used by similar professionals under similar circumstances at the time the Services are provided and further warrants that the work will be performed as intended and described in the Scope of Work.

- a. Contractor warrants that ~~he-it~~ has not employed or retained any company or person, other than a bona fide employee working solely for ~~him~~Contractor, to solicit or secure this Contract and that ~~he-Contractor~~ has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for ~~him~~Contractor, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this Contract.



~~25. **Indemnification.** The Contractor agrees to indemnify and hold harmless the State and State officers, employees, agents, and volunteers (collectively, "Indemnified Parties") from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments, including reasonable value of the time spent by the Attorney General's Office, related to or arising from:~~

- ~~a. Any negligent or wrongful act or omission of the Contractor or any employee, agent or subcontractor utilized or employed by the Contractor;~~
- ~~b. The negligence or fault of the Contractor in design, testing, development, manufacture, or otherwise with respect to the Services provided under the Agreement;~~
- ~~c. The Contractor's negligent performance or attempted performance of the Contract, including any employee, agent or subcontractor utilized or employed by the Contractor;~~
- ~~d. Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Georgia or the United States;~~
- ~~e. Any infringement of any copyright, trademark, patent, trade dress, or other intellectual property right, or~~
- ~~f. Any failure by the Contractor to adhere to the confidentiality provisions of this Contract.~~

~~26.24. **Indirect Damages.** Each party hereby waives its rights to recover from the other party any consequential, indirect, or incidental damages (including but not limited to, loss of use, income, profits, financing, or reputation), arising out of, or relating to, this [agreement of the performance of the services or both Contract](#).~~

~~27.25. **Use of Third Party Data.** The Division has requested that the Contractor obtain certain facts, information, data, assumptions, opinions and representations (collectively, "Items") from third parties as part of its scope of [Sservices](#). The Division understands and agrees that (i) the products of its [Sservices](#) that the Contractor provides (collectively, "Products") may be based in part or in whole on Items that have not been verified by the Contractor, (ii) the Contractor has no obligation or duty to verify the accuracy or completeness of the Items and (iii) the Contractor makes no representation(s) or warranty(ies), express or implied, with respect to the Items or the Products (other than the Products were prepared in accordance with the standard of care to which the [Ccontractor](#) is subject, as set forth elsewhere in this [Ccontract](#)), all of which representation(s) and warranty(ies) are hereby disclaimed, including, without limitation, the warranties of merchantability and fitness for a particular purpose. The Division hereby releases the Contractor from any and all claims, damages, losses, expenses and liabilities of every kind and nature whatsoever, including reasonable attorneys' fees and defense costs, arising out of the use of Items by the Contractor in performing its [sServices](#) under this [Ccontract](#), including, without limitation, the preparation and delivery of the Products to the Division.~~

~~28.26. **Compliance with the Georgia Security and Immigration Compliance Act.** Contractor Certifies that it will comply with O.C.G.A. § 13-10-91 relating to the verification of the status of newly hired employees as incorporated herein by reference.~~

~~29.27. **Federally-Mandated Certifications and Disclosures.**~~

~~a. **Lobbying**~~

- ~~i. Disclosure Regarding Lobbying: Contractor hereby warrants as a condition of this Contract that if it is an organization described in Section 501(c)(4) of the~~



Internal Revenue Code of 1986, it will not engage in lobbying activities prohibited by the Lobbying Disclosure Act of 1985.

- ii. Certification Regarding Lobbying: Contractor certifies to the best of its knowledge and belief that:
  - 1. No Federal appropriated funds have been paid in full or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, then Contractor shall fully disclose same to the Division, and shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- b. **Drug Free Work Place:** Contractor certifies that, in accordance with the provisions of O.C.G.A. § 50-24-1, *et seq.*, a drug-free workplace will be provided to Contractor's employees during the performance of this contract; and it will secure from any subcontractor hired to work in a drug-free workplace the following written certification: "As part of any subcontracting agreement (Subcontractor's Name), certifies to 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 50-24-3."
- c. **Debarment, Suspension, and Other Responsibility Matters:**
  - i. The Contractor certifies that it and its principles:
    - 1. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
    - 2. Have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
    - 3. Are not presently indicted for or otherwise criminally or civilly charged by a government entity with commission of any of the above offenses.
    - 4. Have not within a three-year period preceding this contract had one or more public transactions terminated for cause or default [on the part of](#)

Contractor.

- ii. Where the Contractor is unable to certify to any of the statements in this certification, such Contractor shall attach an explanation to this contract.
- d. **Equal Employment Opportunity:** The Contractor will not discriminate against any employee for employment because of race, color, religion, sex or national origin. The Contractor will comply with all sections of Executive Order 11246 - Equal Employment Opportunity.
- e. **Audit Requirement:** A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F, Part 200, Chapter II of Subtitle A, Title 2, Code of Federal Regulations.

30.28. **General Federal Grant Conditions.** All covenants, agreements and stipulations in Part 200 Chapter II of Subtitle A, Title 2, Code of Federal Regulations, are incorporated herein by reference. The parties acknowledge those general grant conditions and intend that all those covenants, agreements, and stipulations between the U.S. Environmental Protection Agency and the Division, ~~with the exception of the provision for compliance with the Davis-Bacon Act,~~ are applicable to and enforceable against the Contractor. Allowable costs will be determined in accordance with the cost principles in the hereto referenced Code of Federal Regulations.

- a. The Contractor will assure the continued proper operation and maintenance of all nonpoint source management practices that have been implemented for projects funded under this agreement. Such practices shall be operated and maintained for the expected lifespan of the specific practice and in accordance with commonly accepted standards. The Contractor shall include a provision in every applicable sub-agreement (contract) awarded under this grant requiring that the management practices for the project be properly operated and maintained.
  - 1. Existing state processes for conducting assessments and ensuring compliance with CWA §§ 401 and 404, where applicable.
  - 2. Existing state processes for conducting assessments and other compliance activities under the Archaeological and Paleontological Resources Protection Act and the National Historical Preservation Act and/or Native American Graves Protection and Repatriation Act.
  - 3. CWA §513 applies the Davis-Bacon and Related Act (Davis Bacon) requirements to "treatment works" projects that receive grants under the CWA. CWA §212 defines construction and treatment works for grants under Title II and the §212 definition can be used as a guide for determining whether a project is a treatment works for purposes of §319(h) grants. If the project meets the definition and if the contract expense is greater than \$2,000, Davis Bacon would apply. The Department of Labor has resources and a hotline to understand how to comply with Davis Bacon, including its updated Davis Bacon regulations, effective October 23, 2023.
  - 4. All recipients, including states, must comply with USEPA's disadvantaged business enterprise (DBE) requirements at 40 CFR part 33, which supplement 2 CFR 200.321. These requirements include, among other requirements, that a recipient must make good faith efforts to contract with DBEs whenever procuring construction, equipment,

services, and supplies under an USEPA financial assistance agreement. See 40 CFR 33.301. For additional information on this and other procurement requirements, see USEPA's Best Practice Guide for Procuring Services, Supplies, and Equipment Under USEPA Assistance Agreements.

4.5 The Build America Buy America (BABA) Act provisions of the IIJA (P.L. 117-58, §§70911-70917) state that "none of the funds made available for a Federal financial assistance program for infrastructure...may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." See §70914(a). The Buy America preference requirement applies to an entire infrastructure project, even if it is funded by both Federal and non-Federal funds. For more information about BABA's applicability and the waiver process, see 2 CFR part 184, effective October 23, 2023; USEPA's BABA website; and the Office of Management and Budget, Made In America Office's BABA website.

a. ~~The Contractor agrees to ensure that all necessary permits (such as Clean Water Act § 404) are obtained prior to implementation of any grant funded activity that may fall under applicable federal, state or local laws. The Contractor project implementation plan must identify permits that may be needed to complete activities identified in Appendix A: Scope of Work. The Contractor must keep documentation regarding necessary permits in the project file.~~

b.a. ~~Build America, Buy America Act Disclosure. The Contractor acknowledges that the domestic sourcing requirements of the federal Build America, Buy America Act may apply to Contractor expenditures for which the funds described in Paragraph 4 of this Contract are obligated after expiration of the waiver granted by the United States Environmental Protection Agency.~~

29. **Israel.** The Contractor certifies that the Contractor 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.
30. **Applicable Law.** The parties agree that this agreement and all rights, privileges and responsibilities shall be interpreted and construed according to the laws of the State of Georgia.
31. **No Waiver.** The failure of ~~the Division~~either party at any time to require performance by the ~~Contractor~~other party of any provision hereof, shall in no way affect the right of ~~the Division~~either party thereafter to enforce that same provision or any part of the Contract, nor shall the failure of ~~the Division~~either party to enforce any breach of any provision hereof be taken or held to be a waiver of such provision, or as a waiver, modification or rescission of the Contract itself.
32. **Counterparts; Electronic Signature.** This Contract may be executed in two (2) counterparts each of which is deemed an original of equal dignity with the other and which is deemed on and the same instrument as the other. The Division and Contractor agree that any electronic signatures on this Contract hereto constitute original, valid signatures pursuant to the Uniform Electronic Transactions Act, O.C.G.A. § 10-1-21 *et seq.*
33. **Severability.** If any one or more of the provisions of this Contract are for any reason held by any court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provision, and this Contract will be construed as if such invalid, illegal, or unenforceable provision had never

been contained herein.

34. **Notice.** All notices, correspondence requests, demands, waives and other communications required or permitted to be given under this Contract shall be made in writing and shall be deemed to have been duly given if delivered by U.S. Mail, postage paid, sent by nationally recognized overnight courier, or by electronic-mail to the contacts as follows:

If to the Division:  
Jackie Encinas  
Grants Administrator  
Georgia EPD Watershed Protection Branch  
Nonpoint Source Program Grants Unit  
2 Martin Luther King, Jr. Drive  
Suite 1470A, East Tower  
Atlanta, GA 30334  
470-524-0620  
jacqueline.encinas@dnr.ga.gov

If to Contractor:  
Cody Dallas  
EIT  
City of Dunwoody  
4800 Ashford Dunwoody Road  
Dunwoody, GA 30338  
678-382-6862  
cody.dallas@dunwoodyga.gov

IN WITNESS WHEREOF the Division and the Contractor have executed this Contract on the day and year below written.

**The Environmental Protection Division of  
the Department of Natural Resources,  
State of Georgia**

**City of Dunwoody**

\_\_\_\_\_  
Jeffrey W. Cown  
Director

\_\_\_\_\_  
Eric Linton  
City Manager

Date:

Date: