

AGREEMENT FOR CONSULTING SERVICES

THIS AGREEMENT FOR CONSULTING SERVICES, made and entered into on this the 9th day of September, 2014, by and between **COBB COUNTY**, a political subdivision of the State of Georgia, hereinafter referred to as "County", and **HEERY International, Inc.**, a corporation licensed to do business in the State of Georgia, hereinafter referred to as "Consultant".

WITNESSETH:

WHEREAS, County desires to engage a qualified and experienced to provide owner's representative services described below for the new Braves Ballpark ("Project");

WHEREAS, the Project will be owned by the Cobb-Marietta Coliseum and Exhibit Hall Authority (the "Authority") and Cobb County is responsible to cause the design and construction of the Project on the Authority's behalf;

WHEREAS, the Project Architect is Populous and the Project will be constructed by American Builder 2017, a Joint Venture of M.A. Mortenson Company, Brasfield & Gorrie, Barton Malow Company, and New South Construction;

WHEREAS, the County has entered into a Construction Administration Agreement with Braves Construction Company ("BCC"), an affiliate of Atlanta National League Baseball Club, Inc, pursuant to which BCC is obligated to cause the design and construction of the Project on behalf of Cobb County;

WHEREAS, BCC, in turn, has engaged Jones Lang LaSalle to act as BCC's program manager for the Project and BCC shall have management responsibility for and control over (i) the Stadium Site, (ii) the means, methods, sequences and procedures with respect to the construction of the Stadium Project, and (iii) the security of the Stadium Project;

WHEREAS, the Consultant will serve as the County owner's representative/project manager for the Project, including facilitation of communication between Cobb County and the various Project stakeholders; and

WHEREAS, Consultant has represented to County that it is qualified and experienced to perform the services.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00), the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and Consultant agree as follows:

I. DEFINITIONS

The following terms used in this Agreement will have the meaning set forth below:

A. The term "Board of Commissioners" means the governing body of Cobb County, Georgia.

B. The term “County” means Cobb County, Georgia, (which acts through its Board of Commissioners).

C. The term “Consultant” means HEERY, through its employees, Glenn Jardine and John Palmer.

D. The term “Agreement” means the this Agreement for Consulting Services for the delivery of services by Consultant and any Additional Services (defined below) agreed to in writing by both parties.

E. The term “County Representative” means the County employee who has been designated by the Board of Commissioners to manage this Agreement and serve as the County’s point of contact on matters relating to the Project. The Board of Commissioners has designated David Hankerson, County Manager, as the County Representative.

F. The term “Scope of Work” means the description of work to be accomplished by the Consultant under this Agreement, including the services set forth in **Exhibit “A”**, and all work reasonably inferable from the specific description, and any Additional Services under the Agreement Documents.

G. The term “Task Order” means a description of work/services to be performed by Consultant in a specified period of time which includes the projected man hours to be expended by the Consultant, hourly rate for the employee to perform services as set forth in **Exhibit “B”** and a dollar amount to be expended on those tasks. The County may, in its sole discretion, issue multiple task orders to Consultant for services. The County Representative shall authorize each Task Order. The total of all Task Orders authorized by the County Representative shall not exceed One Million Five Hundred Thousand Dollars And No/Cents (\$1,500,000.00).

II. DESCRIPTION OF PROJECT

a. Basic Services

The services to be furnished by the Consultant, shall be all those services described in the Scope of Work, as set forth in Section I. F. of this Agreement and as specifically set forth in **Exhibit “A”**, including any supporting services, as provided in the Agreement Documents. Consultant, through its employees, Glenn Jardine, John Palmer and Rick Davis (and others as required and authorized by the Project Task Order(s)), shall provide such services that are reasonably necessary to accomplish the Scope of Work and those services shall be performed within the compensation set forth in this Agreement. The Consultant will obtain written approval to proceed with delivering the services contained in the Scope of Work through Task Orders negotiated and approved by the County Representative.

b. Additional Services

It is the intent of County and Consultant that all basic Services to be provided by the Consultant are set forth or reasonably inferable from the Agreement Documents. The parties agree, however, that not all work to be performed by Consultant can be defined in detail at the time this Agreement is executed, and that additional work related to Project and not covered in **Exhibit “A”** may be needed during performance of this Agreement. In such event, the Consultant may be requested by County, and Consultant may agree, to perform additional services or tasks related to the Project, which are specific to existing conditions or

circumstances (collectively “Additional Services”). Any Additional Services to be performed that are outside the Scope of Work described in or reasonably inferable from the Agreement Documents shall be negotiated with the County Representative and to the extent such Additional Services can be performed within the existing approved compensation amount of One Million Five Hundred Thousand Dollars And No/Cents (\$1,500,000.00), the County Representative may authorize such Additional Services. If the needed Additional Service cannot be provided within the approved compensation provided in this Agreement, then the Additional Services and additional compensation shall be approved by the Board of Commissioners. Unless modified in writing by both parties, compensation of Consultant shall not exceed the approved compensation amount specifically set forth herein. No additional services shall be performed until written authorization is received from County Representative.

c. Modifications

The County and the Consultant have negotiated the anticipated man hours required to perform the Scope of Work that is, in part, based on the timely and professional performance of BCC, BCC’s Program Manager, Jones Lang LaSalle, and American Builders. The County may, at any time during the term of this Agreement, make changes within the general scope of the Agreement and its technical provisions. If any such change causes any increase or decrease in Consultant’s cost of performing any part of the Agreement, an equitable adjustment shall be made in the Agreement price, or in the man hours required for performance, or in both, and a written amendment of such adjustment shall be made. Any claim by Consultant for an equitable adjustment shall be made in writing and prior to proceeding with the services. Nothing in this clause shall excuse Consultant from proceeding with performance of this Agreement in accordance with its original terms and conditions and any approved changes.

III. SCOPE OF COUNTY SERVICES

The County Representative shall have complete authority to transmit instructions, receive information, and interpret and define County’s policies and definitive documents related to the Project. Consultant shall be entitled to rely on representations made by the County Representative unless otherwise directed in writing by County. All correspondence, data, information, and reports shall be directed to the County Representative to provide for proper distribution to the parties concerned.

The Consultant shall meet with the County Representative either in person or via telephone on an as needed basis as required to timely complete the Scope of Services. The County Representative will expedite any necessary decisions by County which may affect the performance of the Scope of Services by the Consultant, but the Consultant shall not make use of the County Representative services on trivial or minor matters normally to be decided by the Consultant.

IV. AUTHORIZATION, PROGRESS, AND COMPLETION

The Project schedule is from September 9, 2014 through Braves Opening Day anticipated to be in April, 2017. In signing this Agreement, County grants Consultant specific authorization to perform the types of services as listed and further described in **Exhibit “A”** and as assigned in approved Task Orders. Interim milestones and work product submittal dates shall be mutually agreed upon by County Representative and Consultant upon initiation of the Work. This schedule may be modified in writing by the Consultant and the County in writing. TIME IS OF THE ESSENCE for the services to be completed hereunder.

V. AGREEMENT TERM/SURVIVAL

The term of this Agreement shall be approximately 31 months, beginning on the 9th day of September 2014. Notwithstanding the stated term, those provisions that expressly state that they survive, or that would by necessity survive, the expiration or earlier termination of this agreement shall so survive.

VI. COMPENSATION

The County shall compensate the Consultant for the satisfactory and timely performance of the Basic Services and such Additional Services which have been requested or authorized in writing by the County under the terms of this Agreement, and specifically as set forth in the Task Orders approved hereto. The County will pay the Consultant a fee for the Basic Services performed under this Agreement, in accordance with the hourly rate fee schedule included in **Exhibit "A"**, subject to a negotiated and agreed upon "cost not to exceed" amount of One Million Five Hundred Thousand Dollars And No/Cents (\$1,500,000.00). The County will pay to Consultant the fees for any requested Additional Services in the amounts for each Additional Service only as negotiated and authorized in writing. The Agreement compensation includes reasonable expenses incurred by Consultant in performing the services pursuant to this Agreement, including expenses for travel, other transportation, accommodations, meals, long distance communications, postage, delivery reproductions and other costs as required to complete the Scope of Services contained in **Exhibit "A"**. It is agreed the compensation herein specified includes all costs, direct and indirect, needed to perform the Services necessary to accomplish the Project. The Consultant represents that such amount is sufficient to perform all the services set forth in and contemplated by the Consultant's proposal and this Agreement.

Furthermore, the County acknowledges that any funds not expended under an individual Project Task Order shall remain available for future task orders provided that the sum of all expended funds billed against a given Task Order do not exceed the total not to exceed Agreement Amount set forth in Section VI hereof.

The Consultant shall, on a monthly basis, submit in a form acceptable to the County an invoice for payment of services upon completion, accompanied by all supporting documentation required by the Agreement documents or requested by County to process the invoice. Each invoice also shall be accompanied by a Task Order progress report describing the services rendered, the percentage of the total Work accomplished for each Task Order, any deliverable that is due with each phase, and any issues that have been encountered or are foreseeable that could impact completion of the Work..

The County shall have the right to reject payment of any invoice or part thereof if not properly supported, or if the costs or portion of the costs requested, as determined solely by the County, are in excess of the actual effort by the Consultant or the services or products are unacceptable or not in conformity with this Agreement as determined by the County. The County shall pay each such invoice or portion thereof as approved, provided that the approval or payment of any such invoice shall not be considered to be evidence of performance by the Consultant to the point indicated by such invoice, or of receipt of acceptance by the County of the services covered by such invoice.

It is understood and agreed that the total Agreement compensation amount of One Million Five Hundred Thousand Dollars And No/Cents (\$1,500,000.00) is the maximum amount approved and budgeted by the County and payable under this Agreement for the Project Scope of Services, unless expressly modified by written agreement of the parties. The Consultant will monitor the progress of the Work in relation to the Agreement compensation amount and will apprise the County of any substantive deviations or anticipated

problems in complying with the budget and timeframe set forth in this Agreement.

The terms of this section and the terms of the entire Agreement are intended to supersede all provisions of the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1 through 13-11-11, except to the extent preempted by applicable federal law.

VII. REPRESENTATIONS OF CONSULTANT

Consultant acknowledges and represents to County that:

A. it has the necessary experience and skills or has secured or will secure, at its own expense, all personnel with such experience and skills necessary to complete this Agreement. The Consultant shall employ only persons duly qualified in the appropriate area of expertise to be in charge of supervision and control of the Work. The Consultant shall endorse all reports, Agreement plans, and survey data, as applicable;

B. it shall not employ any person or persons in the employ of, or having any contractual relationship with, the County for any Work required by the terms of this Agreement without the written permission of the County. The primary liaison with the County will be the County Representative;

C. it is employed to render a professional service only, and any payments made to Consultant are compensation solely for such services rendered and recommendations made in carrying out the work. Consultant shall follow the standard of care applicable to the practice of the engineering profession to make findings, provide opinions, make factual presentations, and provide professional advice and recommendations;

D. during duration of Project, Consultant shall confer with County Representative for the purpose of resolving discrepancies and conflicts;

E. it shall visit and become familiar with the Project site and shall become acquainted with local conditions involved in carrying out this Agreement. The Consultant may request that the County Representative or a designated representative of the County Representative be present for a scheduled site visit.

F. it shall be responsible for gathering all available data and information pertinent to the performance of the services for the Project, including such information held by JLL and the County;

G. it shall become familiar with all requirements of the County and the County Project Manager/Owner's Representative under the Braves Definitive Documents.

H. it shall comply with all applicable federal, state and local laws and regulations relating directly or indirectly to the Project, and the performance of the services hereunder.

VIII. INDEPENDENT AGREEMENTOR STATUS / RESPONSIBILITY

The parties agree that an independent contractor relationship is created by this Agreement. The County is interested only in the results to be achieved, and the conduct and the control of the Work will lie solely with the Consultant. Consultant assumes all responsibility for the provision of tools and equipment

used in, and the method of, the performance of this Agreement. Nothing contained in this Agreement shall be construed to constitute the Consultant or any of its employees, servants, agreements, or subcontractors as an employee, servant, or agent of the County for any purpose. The Consultant shall be fully responsible for all acts and omissions of its employees, subcontractors and their suppliers, and specifically shall be responsible for sufficient supervision and inspection to ensure compliance in every respect with the Agreement requirements. There shall be no contractual relationship between any subcontractor or supplier and the County by virtue of the Agreement with the Consultant. The Consultant shall not be considered an agent or employee of the County. The County will not withhold income or other taxes on the fees paid to the Consultant under this Agreement and Consultant shall be solely responsible for the payment of all such taxes. The Consultant is not entitled to any of the benefits that the County provides for the County's employees. It is understood that the County does not agree to use Consultant exclusively for the services to be performed under this agreement. It is further understood that the Consultant may Agreement for similar services to be performed for other entities while under Agreement with the County.

The Consultant shall disclose in writing to the County Representative any contractual relationship between the Consultant and ANLBC, BCC, JLL, American Builders and any Project subcontractor, vendor or supplier. Consultant shall also notify the County Representative of any conflict of interest or the appearance of any conflict of interest that the Consultant may have.

IX. ACCURACY OF WORK

The Consultant shall be responsible for the accuracy of the work it creates and shall correct its errors and omissions without additional compensation under this Agreement. Acceptance of the work by the County will not relieve the Consultant of the responsibility for subsequent correction of any errors and the clarification of any ambiguities at its own expense. At any time during the term of this Agreement or during any phase of work performed by others based on data secured by the Consultant under this Agreement whether during the term or outside the term of this Agreement, the Consultant shall confer with the County for the purpose of interpreting the information obtained and to correct any errors or omissions made by it. The Consultant shall prepare any plans or data required by the County to correct its errors or omissions. The above consultation, clarification, or correction shall be made without added compensation to the Consultant. The Consultant shall give immediate attention to these changes so there will be a minimum of delay to others.

X. CONFIDENTIALITY

The Consultant agrees that the final deliverables prepared by or for the Consultant as provided in this Agreement shall be solely owned by the County. Notwithstanding the foregoing sentence, Consultant shall have the right to use final deliverables for Consultant for marketing and business development use. No other subcontractor or vendors shall have the right to use or incorporate Project final deliverables in any way without prior written permission from Consultant and the County.

Consultant shall promptly notify County of any request for such information in any court proceeding or under the Georgia Open Record Act. Upon completion of this Agreement or earlier termination thereof, all final deliverables prepared by or for the Consultant related to this Agreement shall become the sole property of the County and be delivered promptly to the County Representative.

Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the Work conducted under this Agreement shall not be presented publicly or

published without prior approval in writing of the County.

XI. INDEMNIFICATION

The Consultant covenants and agrees to take and assume all responsibility for the Work rendered in connection with this Agreement. The Consultant shall bear all losses and damages directly or indirectly resulting to it on account of the performance or character of the Work rendered pursuant to this Agreement. To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the County and the County's elected and appointed officials, officers, boards, commissions, employees, representatives, Consultants, servants, agents and volunteers (individually an "Indemnified Party" and collectively the "Indemnified Parties") from and against any and all claims, suits, actions, judgments, injuries, damages, losses, expenses, and liability of any kind whatsoever, including but not limited to attorneys' fees and other legal expenses, ("Liabilities") to the proportionate extent attributable to (a) willful, negligent or tortuous conduct arising out of the Work, performance of contracted services, or operations by Consultant, any subcontractor, anyone directly or indirectly employed by the Consultant or subcontractors or anyone for whose acts the Consultant or subcontractors may be liable, regardless of whether or not the negligent act or omission is caused in part by a party indemnified hereunder; (b) negligent violation of any statute, ordinance, administrative order, rule, regulation or order of any governmental body or any order or decree of any court or other tribunal applicable to its services on the Project contemplated herein including, but not limited to, all state and federal laws or regulations related to environmental and motor vehicle, Title VI of the Civil Rights Act, Title VII of the Civil Rights Act, American with Disabilities Act, labor laws and regulations and other laws and regulations arising out of or in any way related to the Consultant's work under this Agreement; and (c) infringement of any patent, trademark, or intellectual property right, or violation of any state or federal patent, trademark, or intellectual property law. This indemnity obligation does not include Liabilities caused by or resulting from the negligence of an Indemnified Party. Such obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to the party or person described in this Article 11. These indemnities shall not be limited by reason of the listing of any insurance coverage.

In any and all claims against an Indemnified Party or Indemnified Parties by an employee of the Consultant, its subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article 11 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Consultant, or its subcontractors, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. This obligation to indemnify, defend and hold harmless the Indemnified Party and Indemnified Parties shall survive the expiration or termination of this Agreement provided that the claims are based upon or arise out of acts or omissions that occurred during the performance of this Agreement.

XII. INSURANCE

A. Requirement:

Consultant shall procure and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with performance of the Work hereunder by the Consultant, its agents, representatives, employees, or subcontractors.

B. Minimum Limits of Insurance:

Consultant shall maintain insurance policies with coverage and limits no less than:

1. Commercial General Liability: \$1,000,000 combined single limit per occurrence for comprehensive coverage including bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom, damage for premises/operations, products/completed operations, independent Consultants and contractual liability (specifically covering the indemnity), broad-from property damage, and underground, explosion and collapse hazard. This coverage may be achieved by using an excess or umbrella policy. The policy or policies must be on “an occurrence” basis (“claims made” coverage is not acceptable).

2. Commercial Automobile Liability (owned, non-owned and hired): \$1,000,000 combined single limit per occurrence and for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the State of Georgia and Employers Liability of \$1,000,000 per occurrence or disease.

4. Professional Liability (Errors and Omissions) Coverage: \$2,500,000 combined single limit per occurrence is required, in the event Consultant is performing design, engineering or other professional services.

5. Commercial Umbrella or Excess Liability Coverage: \$5,000,000 in liability excess coverage per occurrence above the Agreements stated minimum coverage limits for Commercial General Liability, Commercial Automobile Liability, and the Workers' Compensation and Employers Liability policies of insurance. This may be satisfied by having the underlying liability limits that equal or exceed the combined amount of the underlying liability limits and umbrella coverage.

6. The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its subcontractors or insurance carriers providing the coverage described herein for responsibility for loss or direct physical loss, damage or destruction occurring prior to final acceptance of the Work.

C. Deductibles and Self-Insured Retention

Any deductibles or self-insurance retentions must be declared to and approved by County so that County may ensure the financial solvency of the Consultant. At the option of County, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, and employees; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Consultant shall pay all deductibles and be liable for all claims, losses and damages for which it self-insures.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

i. General Liability, Automobile Liability, and Umbrella/Excess Insurance

(a) Additional Insured Requirement. Cobb County, its elected and appointed officials, officers, boards, commissions, officers, employees, representatives, servants, volunteers and agents (hereinafter referred to as “Insured Party” or “Insured Parties”) are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant, premises owned, leased, or used by the Consultant; and automobiles owned, leased, hired, or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the Insured Parties. Nothing contained in this section shall be construed to require the Consultant to provide liability insurance coverage to the any Insured Party for claims asserted against such Insured Party for its sole negligence.

(b) Primary Insurance Requirement. The Consultant's insurance coverage shall be primary and noncontributing insurance as respects to any other insurance or self-insurance available to the Insured Parties. Any insurance or self-insurance maintained by the Insured Parties shall be in excess of the Consultant's insurance and shall not contribute with it.

(c) Reporting Requirement. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Insured Parties.

(d) Separate Coverage. Coverage shall state that the Consultant's insurance shall apply separately to each Insured Party against whom claim is made or suit is brought.

(e) Defense Costs/Cross Liability. Coverage shall be provided on a “pay on behalf” basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

E. Workers' Compensation and Employers Liability Coverage

The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance protecting against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work by the Consultant, its agents, representatives, employees or subcontractors. The insurer shall agree to waive all rights of subrogation against County, and its officers, officials, employees and volunteers for losses arising from the work performed by the Consultant for County.

F. Waiver of Subrogation

The insurers shall agree under each policy of insurance required by this Agreement to waive all rights of subrogation against the Insured Parties for losses arising from work performed by the Consultant for County.

G. All Coverages

i. Notice Requirement.

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to County, in care of the David Hankerson, Cobb County Manager, 100 Cherokee Street, Suite 300, Marietta, Georgia 30090. The County reserves the right to accept alternate notice terms and provisions provided they meet the minimum requirements under Georgia law.

(ii) Acceptability.

The insurance to be maintained by Consultant must be issued by a company licensed or approved by the Insurance Commissioner to transact business in the State of Georgia. Such insurance shall be placed with insurers with a Best's Policyholder's Rating of "A" or better and with a financial rating of Class VII or greater, or be otherwise acceptable to Cobb County. All policies shall be subject to approval by Cobb County Attorney's Office as to form and content.

(iii) Failure of Insurers. The Consultant shall be responsible for any delay resulting from the failure of any insurer to furnish proof of coverage in the prescribed form.

H. Verification of Coverage

Consultant shall furnish County with certificates of insurance and endorsements to the policies evidencing all coverages required by this Agreement. Additionally, the declarations page for each insurance policy listed on the certificate of insurance shall be submitted to County. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates, endorsements and declaration page shall be furnished at or prior to the time the time this Agreement is submitted to County for execution, and must be received and approved by County before any work commences. County reserves the right to require complete, certified copies of all required insurance policies at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced prior to the expiration of the coverage.

I. Subcontractors

Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the Insured Parties as additional insureds.

XIII. SUBAGREEMENTS

Consultant shall not subcontract any portion of the work to be performed under this Agreement without the prior written consent of the County Representative. Consultant shall be responsible for the work products and actions of all such subcontractors approved by the County Representative.

XIV. EXAMINATION AND RETENTION OF RECORDS

Consultant shall maintain all books, records, documents, accounting ledgers, data bases, and similar materials relating to work performed for County under this Agreement on file for at least three (3) years following the date of final payment to the Consultant by County. All records stored on a computer database

must be of a format compatible with the County's database. Any duly authorized representative(s) of County shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during usual and customary business hours. Consultant shall provide the County's representative(s) such access and inspection. Further, any duly authorized representative(s) of the County shall be permitted to observe and inspect any or all of Consultant's facilities and activities during usual and customary business hours for the purposes of evaluating and judging the nature and extent of Consultant's compliance with the provision of this Agreement. In such instances, County representative(s) shall not interfere with or disrupt such activities.

Consultant shall maintain, and the County and its representatives shall have the right to examine, all books, records, documents, accounting procedures and practices and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the Agreement. The materials described above as well as any relevant database and computer tapes or disks containing such information shall be made available at the County office or at the offices of the contractor at all reasonable times for inspection, audit, and reproduction during the term of the Consultant, and for three years from the final date of settlement or payment under the Agreement.

XV. MATERIAL CONDITION

Each term of this Agreement is material. A breach by Consultant of any one of the terms of this Agreement shall be considered to be a material breach of the entire Agreement and shall be grounds for the termination of the Agreement by County or the exercise of any other remedies available at law or in equity.

XVI. SUSPENSION OF WORK

County may suspend, in writing, all or a portion of the work under this Agreement. Consultant may request that the work be suspended by notifying County, in writing, of circumstances that are interfering with the normal progress of work. Consultant may suspend work on Project in the event County does not pay invoices when due. The time for completion of the work shall be extended by the number of days work is suspended. If the period of suspension exceeds ninety (90) days, the terms of this Agreement are subject to re-negotiation, and both parties are granted the option to terminate work on the suspended portion of Project in accordance with Article XVII.

XVII. TERMINATION

A. For Convenience

County may terminate this Agreement at any time for any reason upon thirty (30) days prior written notice to Consultant. The effective date of termination shall be set forth in the notice. As the sole remedy for County's termination for convenience, Consultant shall be paid for any validated services performed under this Agreement up to the time of termination. Consultant shall not incur new obligations upon receipt of such notice and shall cancel as many outstanding obligations as possible.

B. For Cause

Either party may terminate this Agreement for cause should the other party default in the performance of any of the terms, covenants, obligations, or conditions of this Agreement.

C. Statutory Requirements

In compliance with the terms of O.C.G.A. §36-60-13, this Agreement shall be deemed to terminate absolutely and without further obligation on the part of County at the close (December 31) of the calendar year of its execution (“Initial Expiration Date”) and at the close (December 31) of each succeeding year for which it may be renewed, unless earlier terminated as provided in this Agreement, or renewed as provided herein. Notwithstanding this provision, and as permitted by statute, this Agreement will automatically be extended for consecutive one-year periods beyond the Initial Expiration Date on a year-to-year basis until the expiration of the Agreement on the Braves Opening Day 2017 unless either party notifies the other in writing of its intent not to extend this Agreement at least thirty (30) days prior to the date of termination set forth in such notice, or, for any one-year renewal term subsequent to the initial Expiration Date, at least thirty (30) days prior to the expiration of the then-current annual period. Further, this Agreement will terminate immediately and absolutely at such time as appropriated or otherwise unobligated funds are no longer available to satisfy the obligation of the County. This Agreement does not create a debt of the County for the payment of any sum beyond the calendar year of execution or in the event of renewal, beyond the calendar year of such renewal.

XVIII. DEFAULT

For the purposes of this Agreement the term “Default” shall mean: (a) a failure to fulfill in a timely and proper manner a party’s obligations under this Agreement; (b) a violation of any of the material provisions, agreements, representations or covenants of this Agreement or any applicable County, State, or Federal laws, which do not fall within the force majeure provisions of this Agreement; (c) the Consultant becoming insolvent or unable to pay its debts as they mature, or making an assignment for the benefit of creditors, or filing a bankruptcy petition under the United States Bankruptcy Code or being the subject of a judgment or order for payment of money no longer subject to appeal or which judgment or order, in the opinion of the County, would be fruitless to appeal, which exceeds \$100,000 in amount and (i) such judgment or order shall continue un-discharged or unpaid for a period of thirty (30) days and (ii) an insurer acceptable to the County has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance or (iii) the County is otherwise reasonably satisfied that such judgment or order is not likely to be satisfied or complied with within sixty (60) days of its issuance.

In the event of default under this Agreement, the non-defaulting party shall send written notice to the other party setting forth the specific instances of the default and providing the defaulting party with at least ten (10) days to cure or otherwise remedy the default to the reasonable satisfaction of the non-defaulting party. If the default is not remedied during the stated cure period, then the non-defaulting party may, at its election: (a) in writing terminate the Agreement in whole or in part; (b) cure such default itself and charge the defaulting party for the costs of curing the default against any sums due or which become due to the defaulting party under this Agreement; and/or (b) pursue any other remedy then available, at law or in equity, to the non-defaulting party for such default.

XIX. FORCE MAJEURE

Except with respect to any obligation or covenant regarding the payment of any sums due and payable under this Agreement, County and Consultant shall each be excused for the period of any delay and shall not be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Agreement when prevented from doing so by cause or causes beyond their reasonable

control, which shall include, labor disputes, civil commotion, governmental regulations or controls, fire or other casualty, or acts of God.

XX. GOVERNING LAW AND VENUE

This Agreement shall be governed by, and construed in accordance with, the laws of the State of Georgia. The courts of Georgia, located in Cobb County, Georgia, shall have exclusive jurisdiction to hear any claim between the Consultant and the County in connection with the Agreement, and Consultant submits to the jurisdiction and venue of such courts. Prior to filing any claim or action related to this Agreement, the parties may, but shall not be obligated to; submit such claim or action to non-binding mediation before a mediator mutually agreeable to the parties. The parties shall share equally in the costs of mediation.

XXI. ASSIGNMENT

This Agreement is binding on the heirs, successors, and permitted assigns of the parties hereto. This Agreement may not be assigned by County or Consultant without the prior, written consent of the other party.

XXII. INTEGRATION

This Agreement represents the entire understanding of County and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

XXIII. SEVERABILITY

If any paragraph, section, provision, sentence, clause or portion of this Agreement is determined to be illegal, invalid or unenforceable, such determination shall in no way affect the legality, validity or enforceability of any other paragraph, section, provision, sentence, clause or portion of this Agreement and any such affected portion or provision shall be modified, amended or deleted to the extent possible and permissible to give the fullest effect to the purposes of the parties and to this Agreement, and the parties hereby declare that they would have agreed to the remaining parts of this Agreement if they had known that such provisions or portions hereof would be determined to be illegal, invalid or unenforceable.

XXIV. WAIVER

No course of dealing between the parties or any delay on the part of a party to exercise any right it may have under this Agreement shall operate as a waiver of any rights hereunder, nor shall any waiver of any prior default operate as a waiver of any subsequent default; and no express waiver shall affect any term or condition other than the one specified in such waiver, and that one only for the time and manner specifically stated.

XXV. NO STRICT CONSTRUCTION

The parties hereto have participated jointly in the negotiation and/or drafting of this Agreement. In

the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by County and Consultant and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

XXVI. CONFLICT OF INTEREST

A. Consultant certifies that to the best of his knowledge no circumstances exist which will cause a conflict of interest in performing the services required by this Agreement, that no employee of County, nor any member thereof, nor any public agency or official affected by this Agreement, has any pecuniary interest in the business of Consultant or his subcontractor(s) and that no person associated with Consultant or his subcontractor(s) has any interest that would conflict in any manner or degree with the performance of the Agreement.

Should Consultant become aware of any circumstances which may cause a conflict of interest during the term of this Agreement, Consultant shall immediately notify County. If County determines that a conflict of interest exists, County may require that Consultant take action to remedy the conflict of interest or terminate the Agreement without liability. County shall have the right to recover any fees paid for services rendered by Consultant which were performed while a conflict of interest existed if Consultant had knowledge of the conflict of interest and did not notify County within one week of becoming aware of the existence of the conflict of interest.

B. Consultant warrants he and his subcontractor(s) have not employed or retained any company or person other than a bona fide employee working solely for Consultant or his subcontractor(s) to solicit or secure this Agreement and that he and his subcontractor(s) have not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for Consultant or his subcontractor(s) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of this Agreement. For any breach or violation of this provision, County shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment, or consideration.

C. Consultant shall include the terms and conditions of Paragraphs A and B of this Article in all subcontractor agreements for work to be performed under this Agreement.

XXVII. GEORGIA SECURITY & IMMIGRATION COMPLIANCE ACT

A. Immigration Compliance. The County and Consultant agree that compliance with the requirements of O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 of the Rules of the Georgia Department of Labor are conditions of this Agreement for the physical performance of services.

Physical Performance of Services – includes any performance of labor or services for a public employer using a bidding process or by Agreement wherein the labor or services exceed \$2,499.99.

B. The Consultant represents that it employs:

- 500 or more employees;
- 100 or more employees; or
- fewer than 100 employees

(Consultant must initial appropriate category).

C. The Consultant further agrees and represents that its compliance with the requirements of O.C.G.A. §13-10-91 and DOL Rule 300-10-1-.02 is attested to on the executed Consultant Affidavit and Agreement attached hereto as **Exhibit “C-1”**.

D. The Consultant further agrees and represents that:

i. The Consultant as “Contractor” (and any subcontractors, regardless of tier) shall fully comply with the requirements for completing and submitting the “Immigration Compliance Certification” attached hereto as **Exhibit “D”** and that such certification shall be received by the County prior to the commencement of any work under the Contract or subcontract;

ii. The Contractor (or any subcontractor, regardless of tier) shall notify the County within five (5) business days of entering into a Contract or other contract for hire with any subcontractor(s), regardless of tier;

iii. The Contractor shall be responsible for obtaining and providing to the County the “Subcontractor Affidavit & Contract” and “Immigration Compliance Certification” attached to as **Exhibit C-1** and **Exhibit D** from each subcontractor, regardless of tier, employed or retained for work under the Contract prior to the commencement of any work under the Contract or any subcontract;

iv. County reserves the right to dismiss, or require the dismissal of, any Contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

v. Any Contractor and/or subcontractor retaining any other subcontractor to perform services under the Contract shall provide legal notice to any subcontractor of the requirements of County for immigration compliance and further provide notice that County reserves the right to dismiss, or require the dismissal of, any Contractor or subcontractor for failing to provide the required affidavit or certification and/or for failure to comply with the statutory requirements of O.C.G.A. § 13-10-91 and/or for providing false or misleading information upon the required affidavit(s) or certification(s);

vi. Failure to comply with any of the requirements and procedures of the County (i.e., failure to timely supply required affidavits or compliance certification documents; failure to utilize federal work authorization procedures; failure to permit or facilitate audits or reviews of records by county or state officials upon request; and/or failure to continue to meet any of the statutory or county obligations during the life of the Contract) shall constitute a material breach of the Contract and shall entitle the County to dismiss any general Contractor or to require the dismissal of any subcontractor or sub/subcontractor (irrespective of tier) for failing to fully comply with these requirements;

vii. Upon notice of a material breach of these provisions, the Contractor (or subcontractor, regardless of tier) shall be entitled to cure the breach within ten (10) days and provide evidence of such cure. Should the breach not be cured, the County shall be entitled to all available remedies, including termination of the Contract, the requirement that a subcontractor be dismissed from performing work under the Contract, and any and all damages permissible by law.

E. Immigration Compliance Certification: Prior to commencing work under any Contract for the physical performance of services, the Contractor shall complete the “IMMIGRATION COMPLIANCE CERTIFICATION” form attached hereto and submit the same to the County.

Prior to allowing any other subcontractor to perform work under the Contract, the Contractor shall obtain a completed “IMMIGRATION COMPLIANCE CERTIFICATION” from each subcontractor (regardless of tier) and submit the same to the County.

IN WITNESS WHEREOF, this instrument is executed in five (5) counter parts, each one of which shall be deemed an original.

Date of BOC Approval:

**CONSULTANT:
HEERY INTERNATIONAL, INC.**

**COUNTY:
COBB COUNTY, GEORGIA**

By: _____

By: _____

Timothy D. Lee, Chairman
Board of Commissioners

Richard B. Driggs, President

Attest: _____

County Clerk

Title

(Seal)

Attest:

By: _____

Secretary

(Seal)

Approved as to form:

County Attorney’s Office

EXHIBIT A
SCOPE OF SERVICES

HEERY will represent and protect the County's interests and provide the following services:

- construction oversight and management services related to County's responsibilities for the project;
- review of design phase and construction documents and represent County at design meeting, as needed;
- review of final construction plans and recommendation on County's approval of material design elements;
- review of a Guaranteed Maximum Price needed for BOC approval;
- review and approval of all pay applications;
- on-site observation of the work;
- coordination among the various stakeholders involved in the work;
- monitoring of the progress of the work on behalf of Cobb County;
- represent the County at construction review and progress meetings;
- confirm compliance with all County contractual requirements;
- monitor conformance to all applicable County design, procurement, construction, and policy requirements; and
- any other duties as requested and agreed by the parties.

EXHIBIT B COMPENSATION

The Parties agree that compensation and payment will be paid to the Consultant for each Project Task Order approved in writing by the Parties. The sum total of all approved Project Task Orders shall not exceed the maximum not to exceed amount of the Agreement Amount as set forth in Section VI hereof. Any funds not expended under an individual Project Task Order shall remain available for future task orders provided that the sum of all expended funds do not exceed the total not to exceed Agreement Amount set forth in Section VI hereof.

Each approved Project Task Order shall contain the full and complete compensation for all work, materials, and services to be furnished under the terms of the Project Task Order and this Agreement. The amount paid for work under a Project Task Order shall be calculated as the product of the number of staff hours expended and the applicable hourly billing rate and shall be supported by Heery timesheets. The fee for each Project Task Order shall not be exceeded unless the Parties (County and Heery) agree, in writing, to amend the scope, character, or complexity of the services from those originally negotiated for the Project Task Order and alter the number of man hours required for completion.

It is possible that some task orders will require a high degree of flexibility or specialized knowledge and thus may require the involvement of personnel other than those listed herein. For these task orders, both parties agree in advance to utilize a time spent methodology whereby Heery would invoice for John Palmer at a fixed billing rate of \$ \$247 per hour, Glenn Jardine at a fixed billing rate of \$180 per hour, and Ricky Davis at a fixed billing rate of \$144 per hour. The aforementioned billing rates for John, Glenn and Rick will be held through April, 2017. All other Heery staff or sub-consultants will be invoiced based on a 2.4 times raw salary multiplier.

All hourly rates are inclusive of all normal and customary charges be they statutory or otherwise associated with providing professional services as a local purveyor of same in Cobb County, including but not limited to home office support, phone, local parking, local travel on the County's behalf, etc. Not included in the hourly rates are large scale document printing; long distance travel, lodging and subsistence, including but not limited to Architects Office or offsite fabrication / manufacturing facilities in order to confirm Q/A and delivery of product and/or services. Costs not included in the hourly rates will be shown in the task order as a reimbursable cost and shall only be incurred upon written approval from the County

The Project Task Order shall state the rate that is being approved. Heery agrees that billing for any individual will be limited to a maximum of 40 hours per week.

**EXHIBIT C-1
CONSULTANT AFFIDAVIT & AGREEMENT**

By executing this affidavit, the undersigned Consultant verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is Contracting with Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program [an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)]. The undersigned Consultant further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the Contract period.

The undersigned further agrees that should it employ or Contract with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the Contract with Cobb County, Georgia, the contactor or subcontractor will:

- (1) Notify the County within five business days of entering into a Contract or contract for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit. (EXHIBIT F-1) prior to the commencement of any work under the Contract/contract;;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (Exhibit F-2) prior to the commencement of any work under the Contract/contract;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any Consultant or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance for a period of five (5) years and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Allow the audit or review of records of compliance by the County upon request.

122332
EEV (E-Verify) Program User ID Number

BY: Authorized Officer or Agent
(Consultant Name)

HEERY INTERNATIONAL, INC.
Consultant Business Name

Printed Name

Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 20__

Notary Public

Commission Expires: _____

Effective 10-23-2013

EXHIBIT C-2
SUBAGREEMENTOR AFFIDAVIT & AGREEMENT

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of Cobb County, Georgia, has registered with, is authorized to use, and is participating in a federal work authorization program [an electronic verification of work authorization program operated by the U.S. Department of Homeland Security or any equivalent federal work authorization program operated by the U.S. Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA)]. The undersigned subcontractor further attests that it will continue to use the federal Employment Eligibility Verification (EEV) work authorization program throughout the Agreement period.

The undersigned further agrees that should it employ or Agreement with any subcontractor(s) or should its subcontractor(s) employ other subcontractor(s) for the physical performance of services pursuant to the Agreement with Cobb County, Georgia, the contactor or subcontractor will:

- (1) Notify the County within five business days of entering into a Agreement or agreement for hire with any subcontractor(s);
- (2) Secure from any subcontractor(s) and/or their subcontractor(s) verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit (EXHIBIT F-1) prior to the commencement of any work under the Agreement/agreement;;
- (3) Secure from any subcontractor(s) and/or their subcontractor(s) a completed Immigration Compliance Certification (Exhibit C-2) prior to the commencement of any work under the Agreement/agreement;
- (4) Provide the subcontractor(s) with legal notice that Cobb County, Georgia, reserves the right to dismiss, or require the dismissal of, any Consultant or subcontractor for failing to provide the affidavit and/or for failure to comply with the requirements referenced in the affidavit;
- (5) Maintain records of such compliance for a period of five (5) years and provide a copy of each such verification to Cobb County, Georgia, at the time the subcontractor(s) is retained to perform such services or upon any request from Cobb County, Georgia; and
- (6) Allow the audit or review of records of compliance by the County upon request.

122332
EEV (E-Verify) Program User ID Number

BY: Authorized Officer or Agent
(Consultant Name)

HEERY INTENATIONAL, INC. _____
Subcontractor Business Name

Printed Name

Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 20__

Notary Public

Commission Expires: _____

Effective 10-23-2013

EXHIBIT D
EMPLOYER IMMIGRATION COMPLIANCE CERTIFICATION

(To be completed by Consultant and all subcontractors prior to Agreement initiation, every six months after commencement of work, and at any time there is a change in personnel assigned to the Project.)

I certify to the Cobb County Board of Commissioners that the following employees will be assigned to:

NEW BRAVES STADIUM

(Project Name/Program Number)

John Palmer

Rick Davis

<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>

I further certify to Cobb County, Georgia the following:

- The E-Verify program was used to verify the employment eligibility of each of the above-listed employees hired after the effective date of our Agreement to use the program;
- We have not received a Final No confirmation response from E-Verify for any of the employees listed;
- If we receive a Final No confirmation response from E-Verify for any of the employees listed above, we will immediately terminate that employee's involvement with the Project;
- I have confirmed that we have an I-9 on file for every employee listed above and that to the best of my knowledge all the I-9's are accurate;
- To the best of my knowledge and belief, all of the employees on the above list are legally authorized to work in the United States;
- If any other employee is assigned to this Cobb County project, a certification will be provided for said employee prior to the employee commencing work on the Project.

To the best of my knowledge and belief, the above certification is true, accurate and complete.

Sworn to by:

Employer Name & Address:

Signature of Officer

Printed Name/Title

Date

SWORN AND SUBSCRIBED BEFORE ME
ON THIS THE ____ DAY OF _____, 20__

Notary Public

Commission Expires: _____

EFFECTIVE 10-23-2013