

Request for Proposal Construction Management At Risk Services for the A. Scott Emmons Water Reclamation Facility at the Little River

Newton County Water & Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

(770) 385-3923



www.ncwsa.us

November 27, 2018

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Section 1: Introduction

Summary

NCWSA (Newton County Water & Sewerage Authority), herein also referred to as the Owner, is requesting Proposals for Construction Management At Risk (CMAR) Services for the A. Scott Emmons WRF at the Little River (Project).

The Owner will fund a majority of the work with proceeds from GEFA Loan No. CW2019003 from the Georgia Environmental Finance Authority. As such, all work procured and performed must comply with applicable federal procurement and labor rules, including Disadvantaged Business Enterprise utilization, Equal Employment Opportunity, and the Davis Bacon Act.

The Project must incorporate iron and steel products produced in the United States (“American Iron and Steel Requirement”).

Solicitation

The legal authority for this solicitation is defined under Georgia Law (O.C.G.A. 36-91-2).

This Request for Proposals (RFP) for CMAR Services invites Proposals, from qualified firms according to the requirements set forth in this RFP, including the format and content guidelines specified.

Proposals will be reviewed and evaluated by the NCWSA selection team. The selection team will rank the Responses in the order of most advantageous to the NCWSA, taking into consideration the evaluation factors set forth in the RFP. The evaluation factors shall be the basis on which the final selection / award decision is made.

Upon completion of the evaluation process, NCWSA will contact all Proposers; those most qualified may be interviewed, or enter into discussions toward Project award.

The Owner shall have the authority to reject all proposals or any proposal that is nonresponsive or not responsible and to waive technicalities and informalities.

This RFP is subject to revision after the date of issuance by written addenda. Any such addenda will be distributed directly to acknowledged Proposers via email, with confirmation requested.

Obtaining Documents

The RFP and further information may be found on NCWSA’s Procurement webpage located at <https://ncwsa.us/departments/purchasing/>. After review of the RFP, the project documents may be downloaded after registration including payment of a non-refundable \$300.00 fee to offset reproduction, administrative, and technology costs. Please contact Ms. Lindsey Chambers, email: lc@ncwsa.us; or call (770) 385-3923.

Pre-Submittal Conference

A mandatory pre-submittal conference will be held on December 14, 2018; 10:00 a.m. at the Owner’s office in the Authority Board Room.

Open Records

All materials submitted in connection with this RFP will be public documents and subject to O.C.G.A. 50-18-71 (Georgia Open Records Act) and the open records policies of the NCWSA. Proprietary information or trade secrets must be noted as such.

Permits

The Owner has obtained the Permits included within this RFP. The Project Designer or Owner will obtain necessary Federal, State, Newton, Walton, and / or Morgan County, GA permits before the completion of Phase I Services. The CMAR will be required to obtain all building permits for Phase II Services.

Easements, Lands and Right-of-Way

The Owner has obtained all lands and easements on which the improvements described herein will be constructed.

Section 2: General Information

Contract Overview

NCWSA will construct a new wastewater treatment plant in the Little River watershed located in unincorporated eastern Newton County, near Social Circle, Georgia. The new facility, the A. Scott Emmons WRF at the Little River, is under design with desired commissioning by January 2022. The plant will be initially sized at 1.25 MGD, expressed as average daily flow (ADF). A Design Development Report prepared by the Project Designer has received concurrence from Georgia Environmental Protection Division and is included in Appendix A along with other relevant documents. Construction drawings are under development by the Project Designer and will be made available by digital download to Proposers interested in pursuing the work.

As the Owner is seeking State Revolving Loan funding in a very busy construction market, the Owner must ensure adequacy of funding and verify the final cost of the project before moving to the actual construction phase. We are aware of escalating bid prices for construction of this nature and want to better manage schedule, budget, and contingency as we move closer to construction. For this reason, the Owner seeks a CMAR expert experienced in constructability review, value engineering, conceptual cost estimating, accelerated procurement, alternative delivery and “hands-on” construction of new wastewater treatment facilities.

The CMAR will contract with the Owner to perform pre-construction or Phase I Services. If awarded Phase I Services, the CMAR will provide professional, pre-construction services of sufficient detail to develop a Guaranteed Maximum Price (GMP) for the Project. Later, Phase II Services, including construction and post-construction phase services, may be negotiated as amendments to the Agreement.

During Phase I Services, the selected CMAR will work collaboratively with the Project Designer in an open book process to clarify the final construction scope while developing the (GMP) for consideration by the Owner.

If the Owner and the CMAR are unable to agree on a GMP for Phase II Services, the Owner reserves the right to direct the Project Designer to finalize the construction documents suitable for public bidding of the project, or, to negotiate with the next highest ranked proposer.

Procurement Requirements

The CMAR will work on behalf of the Owner to perform Phase I Services and subsequent phases of the Project, if awarded. As such, the CMAR’s procurement and construction activities will be carried out in accordance with provisions of the State of Georgia’s Local Government Public Works Construction Law (O.C.G.A. § 36-91-20(c)). and the aforementioned State and Federal procurement requirements found within the Appendices.

Project Scope of Work

The Project Description and the anticipated scope of work for the selected CMAR will generally include the tasks listed in Construction Management Scope of Services, found in the Appendices. More detailed discussions will occur upon the selection and contract negotiation with the selected firm.

The scope of work of the CMAR will be performed in two or more phases under a single contract with contract amendments, as needed, for successive project phases. Phase I Services (the Pre-Construction Phase) will include design and constructability reviews, cost estimating and cost control (value engineering) services, project schedule development, procurement strategy development, and the

preparation and submission of an open-book GMP, including the firm cost of the work through construction commissioning, start-up and the warranty period.

Phase II Services, including the construction phase (and additional phases, as deemed appropriate), will include the CMAR's procurement, award, construction and construction management of principal and specialty trade contracts and subcontracts to provide construction, start-up, commissioning, operator training, performance testing, and warranty services necessary for the Project implementation.

Engineering Services

The Project Designer (Engineer of Record) for the Project is Georgia Water and Environmental Services, LLC., (GWES), retained by the Owner in 2017 to update and complete a previous design by Stantec, Inc., from circa 2012. GWES will serve as the Project Designer and provide all engineering, design, and construction phase engineering support services to the Owner throughout the duration of the Project. The Owner may elect to retain the services of an independent 3rd party as technical advisor during development of subsequent Phases.

Responsibilities of NCWSA

NCWSA, through our assigned project manager and assistants, will administer the services and work closely with the selected CMAR to fulfill our responsibilities in a timely manner. We may facilitate CMAR's efficient performance of services through employment of an independent Owner's Representative to assist with complex and labor intensive reviews. Our commitments include:

- Outlining project requirements
- Reviewing work products, deliverable and responses timely to the CMAR.
- Furnishing existing studies, drawings, utility locates, plans, specifications, shop drawings, data, and other information that will assist the CMAR in the Project(s).
- Funding the Project(s) and rendering timely compensation.
- Assisting in obtaining permits, as needed.

Project Construction Budget

The estimated construction budget for the project is \$18,000,000 to \$20,000,000 including but not limited to construction, start-up, and commissioning.

Section 3: Procurement Process

Acknowledgement of RFP

Interested Proposers should acknowledge with an email that it has received the RFP by the Acknowledgement date indicated in the Schedule. Identify and provide full contact information for the firm's primary point of contact for any future documents, notices, and addenda associated with this RFP.

Only those firms acknowledging receipt and registering with NCWSA will receive subsequent addendums.

The Owner will not be responsible for, nor pay, any cost associated with the preparation, submittal, presentation, or evaluation of Responses.

Pre-submittal Conference

A mandatory Pre-Submittal Conference for those emailing an Acknowledgement for the RFP will be held on the date in the Schedule at the NCWSA Board Room located at the Owner's office.

Communications

The Owner Contact will act as the sole point of contact for this RFP and will administer this procurement. All communications should be submitted by email, and specifically reference this RFP:

Owner Contact:

Mr. Wayne Haynie, P.E.
Chief Engineer
NCWSA
11325 Brown Bridge Road
Covington, GA 30016
Phone: (770) 385-3923
Email: wh@ncwsa.us

Please note that verbal communications with the Owner Contact or other individuals are not binding. With the exception of the Owner Contact or specified delegates, no contact with staff, Board Members, or any public official concerning the Project during the procurement process is allowed. Violation of this provision may result in disqualification of Proposer.

The Owner's Contact may designate alternate contacts in order to address specific inquiries.

Clarifications and Addenda

Proposers shall carefully review the requirements of this RFP. Requests for clarification from Proposers shall clearly indicate the section or statement in the RFP that requires additional information or clarification. Questions shall be emailed to the Owner Contact at the address indicated. Clarifications or modifications to this RFP will be made by written addenda, and will be distributed by the Owner to the Proposers acknowledging receipt of the RFP.

Addenda must be acknowledged in the space provided on the Acknowledgement Form contained in this RFP.

Schedule

The current procurement schedule is as follows:

Issue RFP:	November 26, 2018
Acknowledgement:	December 7, 2018, 5:00 p.m.
Pre-submittal Conference:	December 14, 2018; 10:00 a.m.
Submit Proposals:	February 1, 2019; 5:00 p.m.
Interviews (if needed):	February 11 – 15, 2019
Award:	March 20, 2019
Contract Negotiation:	March - April 2019
Notice To Proceed:	May 6, 2019

Section 4: Submittal Requirements

Submittal and Due Date

Publish and submit three (3) bound copies of the Response addressed to the Owner Contact by the "Submit Proposals" date and local time. Include a memory drive containing the identical digitally published version. Provide the submittals in a 3-ring binder with clearly labeled tabs and appendices.

Each Proposer assumes full responsibility for timely submittal of its Proposal at the required location.

The Proposer shall furnish and sign all information required by the RFP. An authorized agent of the company must sign on behalf of the firm.

Format

We invite you to persuade us with twenty (20) pages or less, conveying your letter of interest, qualifications, experience, and project approach for this opportunity.

Table of contents, section dividers, resumes, project descriptions, and appendices do not count toward the twenty-page limit. All other items should be located in the appendices. Limit the total page count to 60 or less, 8.5 X 11-inch equivalent, minimum 11-point font. Large figures such as 11 X 17-inch will count as one (1) page.

Content

Letter of Interest: Provide a one (1) page letter of interest describing how the Authority will benefit with your firm as its CMAR on this major expansion of our sewer system.

An Executive Summary is helpful but not required. We want to select a CMAR as our builder that will deliver a legacy project worthy of showing others in the future. Use the twenty (20) pages to demonstrate how your firm, as our Construction Manager, with your team, qualifications, experience, and proven delivery approach, exceeds our needs as we embark on our relatively sizeable capital improvements program.

Qualifications

Proposers should demonstrate a minimum of 5 years of firm and key team member experience in CMAR (or other collaborative project delivery methodology), and direct self-performance of water or wastewater treatment plants for municipal, public or private agencies.

As the Project may extend over several years, continuity with your firm's key members is critical. We would find it very helpful if the Project Manager for Phase I Services can remain as the Project Manager for subsequent Phases.

Experience

Describe the experience of the firm and team members on water and wastewater projects including the components and tasks described in the Scope of Services. Submit descriptions of reference projects to demonstrate relevant experience. The Owner will contact references cited in the relevant project descriptions.

A desirable candidate will have proven experience delivering projects in the CMAR or other alternative delivery category.

1. Experience: Within the past fifteen (15) years, the Proposer should have successfully managed / constructed a minimum of \$150 million in public works and infrastructure improvements funded by State Revolving Fund, SPLOST, Revenue Bonds, other government financing or combination thereof. Proposers should have a minimum of 15 years of progressive project management and construction experience in water and wastewater infrastructure projects.
2. Also, within the last 10 years, the Proposer will highlight five (5) relevant projects, at least three (3) of which were procured through alternative delivery including CMAR, Design-Build or Progressive Design-Build. Each project should have a contract value \$10 Million or greater and can be for new construction or upgrade. Each project must have included construction of cast-in-place concrete basins, installation of major process equipment, solids handling, administration

and / or laboratory buildings, and supporting piping, pumping stations, electrical and control systems.

3. Due to the complexity of the site and the schedule needs of our industrial customers adjacent to the project site, the Owner requests that the CMAR staff and self-perform a substantial portion of the Project. The firm's history of self-performance should be described in the project descriptions.

Although we are interested in alternative delivery experience, for traditional design-bid-build, list the bid price, and the total cost of the project at completion.

The five (5) relevant project descriptions shall contain the following information:

- Owner
- Owner contact information (including email address)
- Description of procurement method
- Contract value
- Year completed
- Description of the project demonstrating relevance to the Authority's needs
- Details on the pre-construction and construction phase services provided
- Percentage of your firm's self-performance
- The GMP or final construction cost

Project Descriptions may be located in the Appendix.

Safety

Provide a description of the Proposer's corporate safety program including key industry statistics or records indicating categories of accidents and their incidence or frequency rates for the past five years.

The following safety records shall be provided.

- The experience modification rate (EMR) calculated by the National Council on Compensation Insurance or similar rating bureau.
- The days-away-from-work injury incidence rate. A day-away-from-work injury is an injury that prevents an employee from returning to his or her next regularly-scheduled shift.

Project Approach

Demonstrate your firm's understanding and approach including:

- Staffing and self-performing of a minimum of 50% of construction labor as measured in dollars.
- Confirming project requirements and the firm's responsibilities.
- Determining the sequence and durations of required activities.
- Working collaboratively with the Project Designer and Owner to develop the GMP.
- Identifying and resolving constructability issues during Phase I and Phase II Services.
- Estimating costs and implementing control procedures for Phase I and II Services.
- Complying with O.C.G.A. 36-91-20(c), and Federal procurement requirements.
- Ensuring health and safety of project team.
- Assuring quality throughout each phase of the project
- Employing technology for project management, administrative, and cost control
- Managing changes to the project.
- Resolving potential conflicts between your firm and others.

- Updating project schedule and workforce plan.
- Innovating to improve productivity at the remote site.
- Assuring continued operation of our existing Influent Pumping Station.
- Maintaining all-weather access along our 2-mile access road.
- Integrating, commissioning and delivering all systems into a legacy type facility for NCWSA.
- Training staff and providing state-of-the-art Operations and Maintenance media.

Resumes

Include resumes for key team members in the Appendix. Resumes should be one (1)-page maximum length per key team member.

Cost Proposal

Provide the firm's cost proposal for providing Phase I Services – Development of the GMP along with the Builder's Fee in the format contained in the Appendix.

The cost proposal will contain the Proposer's fee including its time for coordination with the Project Designer, labor, services, facilities and expenses for developing the final GMP for construction of the Project. Provide a schedule of values containing the proposed Scope of Services and how the Proposer would invoice the fee for Phase I Services, (i.e., % complete, lump sum, etc.)

The proposed Builders Fee will be based on the General Conditions and Cost-Of-Work matrix provided.

Section 5: Evaluation and Selection

Evaluation Factors

A selection committee comprised of the Owner's team will evaluate and rank Proposals that best satisfy the Project requirements. The selection committee will apply the evaluation factors described below.

Evaluation Criteria	Value
Team and Qualifications	20
Experience	20
Safety Record	10
Project Management Approach	20
Cost Proposal	15
Self-Performance Capability	10
Value Added Services	5

Selection Process

The Owner will make an award to the responsible and responsive firm whose Response is determined in writing to be the most advantageous to the Authority, taking into consideration the evaluation factors set forth in the RFP.

After evaluation and recommendations for selection, the Owner will notify Proposers. NCWSA may or may not schedule interviews at this point with one or more of the Proposers. The top ranked Proposer will be either selected for contract award for Phase I Services, or offered the opportunity to negotiate the final terms of the agreement. If the Owner determines that the top-ranked Proposer's proposed final

terms are not advantageous to the Owner, the Owner may choose to either select or negotiate with the next-highest ranked Proposer.

Section 6: Appendices

Forms and Affidavits

Include the items described in the Appendices and return them in the Proposal Appendices, including:

- Firm's comments, if any, on the proposed agreement.
- Sample Certificate of Insurance meeting requirements requested in proposed agreement.
- Addendum Acknowledgement
- Cost Proposal
- CMAR's Affidavit (E-Verify)
- Sub-Contractor's Affidavit
- SAVE Affidavit
- W-9

Appendix A – Project Description and Scope of Services

Project Description

The intent of the Project Description is to describe the components for which the CMAR will be responsible. The Owner desires to complete all of the defined project under an agreement with the CMAR.

The existing 101-acre site (Figure B-1) is, for the most part, undisturbed. The site does contain an existing regional pumping station, referred to as the influent pumping station (IPS) constructed in 2012 as part of a wastewater transmission project known as the East Newton or Yellow River Sewer Conveyance System. It is so named because it receives local wastewater flows from the Stanton Springs Technology Park and pumps them through a series of pumping stations to NCWSA's Yellow River WWTP located approximately 14 miles away, near Porterdale, GA. The IPS will continue in this role until such time as the WRF is commissioned, although we will retain the bypass ability in case of emergency. The IPS currently receives approximately 0.500 MGD from its industrial customer, Shire, PLC, a pharmaceutical manufacturer located in the Stanton Springs Technology Park.

The Plans call for construction of the A. Scott Emmons WRF at an initial capacity of 1.25 MGD, ADF, referred to as Phase I. The Design Development Report, receiving EPD concurrence from Georgia EPD in October 2018, is found in Appendix A and outlines the planned improvements in more detail. A brief outline description of the improvements follows.

Phase I of the plant construction will utilize SBR treatment technology for biological nutrient removal. The treatment process will nitrify, denitrify and provide biological phosphorus removal to achieve effluent limits required in the waste load allocation. The NPDES discharge will be applied for as construction nears completion. Treated effluent will be discharged to a small tributary of Little River.

We anticipate future industry in the Stanton Springs Technology Park may have interests in reuse quality water; for this reason, the facility will include features to allow development of a reuse system in addition to the effluent discharge to the Little River. Other process units and features include:

- Influent screening
- Grit removal facilities,
- Parallel SBR basins,
- Post SBR flow equalization,
- Effluent filtration,
- UV disinfection,
- Effluent re-aeration, and
- Solids handling.
- Digester Basins

Other structures, buildings and site improvements include:

- Mass grading and site development
- Administration / Control Building / Laboratory
- Process Building
- Access Road

Construction Manager's Scope of Services

Construction manager will essentially serve as an extension of the Owner to implement the Project. This Scope of Work is intended to provide a general summary of the tasks expected of the CMAR for the Project. A detailed scope of work will be further developed and refined by the selected CMAR and included in the Agreement to be executed between the Owner and the CMAR.

I. Phase I Services:

A. Pre-Construction Phase:

1. Prepare a Construction Management Plan for the project that considers the Owner's schedule, budget, and design requirements for the project, including alternatives for sequencing and managing the project.
2. Prepare and maintain a project schedule in collaboration with the Project Designer detailing design, permitting and construction phase milestone activities. The schedule should include all pre-construction, procurement, construction, and post-construction activities and will be refined as the project design progresses. The critical path should be defined on the schedule and include estimated start and end dates for each activity. Include time requirements for sequences and durations, milestones dates for receipt and approval of design documents, receipt of regulatory approvals and permits, preparation and processing of shop drawings and samples, delivery schedule of materials or equipment requiring long-lead time procurement, project procurement schedule, and installation and construction completion.
3. Provide a third party project controls platform or similar project server that will be used to store and exchange information between the Owner, Project Designer, and CMAR. This web-based platform should be used throughout all contracted Phases of the Project including Pre-construction, Construction, Start-up and Commissioning.
4. Review project design documents (drawings, specifications) at key project milestones (90%) and provide recommendations with respect to constructability, sequence of construction, maintenance of plant operations, construction duration, materials of construction, procurement strategy, and other factors that may influence project costs, performance, or quality.
5. Provide Value Engineering recommendations to Owner and Project Designer, including cost and constructability evaluations of alternate materials and systems that meet the Project Designer's intent.
6. Reimburse Project Designer for any and all changes and revisions to the Construction Drawings and Technical Specifications resulting from Items 4 and 5. Reimbursement shall be made from the Owner's Allowance contained in the Phase I Services Cost Proposal.
7. Support the Owner's efforts to procure key process equipment integral to the Project Design. This effort would entail negotiating firm quotations and preparing for issue of Purchase Orders on long lead-time equipment.
8. Prepare and maintain a cost model defining the estimate of the construction cost including a report identifying variances from the project budget and prior submittals. The cost model should include a work breakdown structure of sufficient detail to be reviewed and approved by the Owner. Variances between the cost model and the Owner's estimated construction cost will be identified and recommendations for reconciling the variances will be prepared by the CMAR.
9. Regularly attend monthly meetings with the Owner and Project Designer before construction. Provide updates to Project Schedule and Construction Management Plan.

10. Prepare a Permitting Plan that identifies all construction-related permits that must be obtained by the CMAR as well as those permits that are the responsibility of the Owner.
11. Provide updates regarding the status of permits at each design milestone review meeting and identify timelines on project schedule.
12. Prepare a Procurement Plan meeting the requirements of applicable procurement policies to obtain bids and firm quotations from equipment vendors, suppliers and subcontractors for construction of the work. The Plan will identify assessment tools and scoring criteria for selection, participation goals, recommended bid packages, and the process for integrating Owner-selected and pre- negotiated equipment, if any, into the Project. The plan will identify long-lead items, and other items that may affect the project schedule.
13. Establish Project Safety Plan and Protocols. Conduct workshops with the Owner, Project Designer and other associated parties to instill a safe Project Site well before ground-breaking.
14. Prepare Start-up and Sequencing Plan that identifies an approach for implementing new processes and managing existing water production during construction and start- up. Incorporate these plans into the project schedule and cost models.

B. Preparation of Guaranteed Maximum Price (GMP)

1. Prepare a (GMP) proposal package including labor, materials, bids and firm quotations from equipment suppliers, subcontractors, allowances, general conditions, fee, contingency, and all assumptions using the Final design package prepared by the Project Designer.
2. Participate in GMP negotiations with the Owner.
3. Develop Final Guaranteed Maximum Price proposal document.

II. Phase II Services – Procurement, and Construction:

A. Advertisement and Bidding:

1. Arrange bid packages and solicit bids in accordance with the Procurement Plan.
2. Identify bidders and manage production and distribution of bid documents.
3. Schedule and conduct pre-bid conferences in conjunction with the Project Designer.
4. Monitor bidder activity.
5. Issue clarifications and required addenda to bidders.
6. Publicly open, review and analyze bids, in conjunction with the Owner and Project Designer.
7. Prepare estimates of the additional costs and impacts to the GMP and project schedule attributable to the addenda, if any.

B. Construction Phase Services

1. Issue Notice of Award and execute subcontractor agreements with selected responsive, responsible bidders.
2. Provide and maintain on-site staff for all required construction management, administration, and self-performance functions.

3. Establish and maintain coordinating procedures between all parties.
4. Develop and maintain a detailed schedule including delivery, approvals, inspection, testing, construction and occupancy.
5. Conduct and record project meetings with all subcontractors, Owner, Project Designer, and other members of the Project Team. CMAR shall assume bi-weekly meetings.
6. Maintain a system for the expedient review and processing of requests for information, shop drawings, material and equipment samples, product data, change orders, schedule adjustments, substitutes, pay requests, and logs.
7. Maintain records and submit bi-weekly reports and formal monthly reports to the Project Designer and Owner.
8. Establish and maintain a program to monitor the quality of construction and ensure conformity to plans.
9. Establish and maintain a health and safety program.
10. Develop a system and provide cost control through progress payment review and verifications according to the approved schedule and contract amounts.
11. Develop and maintain record drawings for the duration of the Project.
12. Coordinate factory witness testing and final acceptance testing required by the Project Designer.
13. Coordinate and execute the phased Sequencing and Start-Up Plan that meets minimum regulatory requirements of the Owner's facilities, including managing current wastewater flows.
14. Coordinate post-completion activities, including the assembly of guarantees, manuals, closeout documents, training, regulatory approvals and the Owner's final acceptance.
15. Coordinate and monitor the resolution of remaining "punch-list" items to the satisfaction of the Project Designer and the Owner.
16. Coordinate and document systems commissioning activities.
17. Coordinate the compilation of vendor Operations and Maintenance Manuals for transmittal to the Project Designer.

C. Project Closeout / Warranty:

1. Coordinate furniture, furnishings and equipment deliveries and installation.
2. Submit record drawings with "as-constructed" survey in digital format for approval by the Project Designer and the Owner.
3. Assist in transition to operation by the Owner.
4. Receive, record and address all Warranty issues.
5. Resolve all Warranty issues in accordance with the terms of the Contract and to the satisfaction of the Project Designer and the Owner.

Appendix B – Project Permitting and Design Documents

- Waste Load Allocation
- Environmental Information Document (Provided upon registration)
- Design Development Report (Provided upon registration)
- Geotechnical and Subsurface Investigation (Provided upon registration)
- Project Manual and Technical Specifications – Not Released for Construction (TBA, Addendum No. 1)
- Access Road, Phase II Construction Drawings – Not Released for Construction (TBA, Addendum No. 1)



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

Watershed Protection Branch

2 Martin Luther King, Jr. Drive
Suite 1152, East Tower
Atlanta, Georgia 30334
404-463-1511

DEC 18 2017

Mr. Scott Emmons, Director of Engineering
Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

RE: Wasteload Allocation (WLA) Request
New Discharge to Little River
EPD # 2017-171
(Newton County)

Dear Mr. Emmons:

The Watershed Planning and Monitoring Program (WPMP) has completed its evaluation of the WLA request for a discharge of 1.25, 2.5, and 3.75 MGD of treated domestic wastewater into the Little River in the Oconee River Basin.

The following wasteload allocation is for planning purposes only and is valid for one year from the date of this letter unless a written extension is requested and granted.

Recommended effluent permit limits for discharge to Little River:

Constituent/Parameter ⁽¹⁾	Limits		
Effluent Flow Rate (MGD)	1.25	2.5	3.75
Five-Day Biochemical Oxygen Demand (mg/L)	5.0	5.0	5.0
Ammonia, as N (mg/L)	1.5	1.0	0.8
Dissolved Oxygen, Minimum (mg/L)	6.0	6.0	6.0
Total Suspended Solids (mg/L)	20	20	20
Fecal Coliform Bacteria (count/100mL, geometric mean)	200	200	200
Total Residual Chlorine (daily maximum) (mg/L) ⁽²⁾	0.019	0.015	0.014
Total Phosphorus, as P (mg/L)	0.43	0.21	0.14
pH, minimum & maximum (standards units)	6.0-8.5	6.0-8.5	6.0-8.5

⁽¹⁾ Values are maximum monthly averages except as noted.

⁽²⁾ If the facility uses ultra-violet light or ozone system to treat fecal coliform, the TRC limit does not apply.

Recommended effluent permit limits: (continued)

Constituent/Parameter ⁽¹⁾	Limits
Effluent Flow Rate (MGD)	1.25, 2.5, 3.75
Ortho-Phosphate, as P (mg/L)	Monitor
Nitrate-Nitrite, as N (mg/L)	Monitor
Total Kjeldahl Nitrogen, as N (mg/L)	Monitor
Organic Nitrogen, as N (mg/L)	Monitor

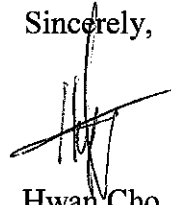
(1) Values are maximum monthly averages except as noted.

Instream monitoring of dissolved oxygen, pH, temperature, and conductivity are required in the Little River at Highway 278 and Sewell Road once per week.

The City must evaluate if their approved Watershed Protection Plan covers the expanded service area. If this is not the case, the Plan must be revised to include the new area.

If you have any questions, please do not hesitate to contact me at 404-463-0665 or hwan.cho@dnr.ga.gov.

Sincerely,



Hwan Cho
Municipal Permitting Unit
Wastewater Regulatory Program

cc: Mr. Burke Murph, P.E., Georgia Water & Environmental Services (burke@georgiawaterservices.com)
Mr. Josh Welte, P.E., EPD Water Quality Modeling Unit (josh.welte@dnr.ga.gov)



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

Watershed Protection Branch

2 Martin Luther King, Jr. Drive
Suite 1152, East Tower
Atlanta, Georgia 30334
404-463-1511

October 12, 2017

Mr. Scott Emmons, Director of Engineering
Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

RE: Little River
Water Reclamation Facility (WRF)
Anti-Degradation Analysis
New NPDES Permit
Newton County

Dear Mr. Emmons:

We have completed our review of the Anti-Degradation Analysis received on October 10, 2017. The project will include the construction of a new Little River WRF. The plant will discharge up to 1.25 MGD into the Little River in the Oconee Basin. We hereby concur with this document.

If you should have any questions, please do not hesitate to contact me at (404) 463-0665 or hwan.cho@dnr.ga.gov.

Sincerely,

Hwan Cho
Municipal Permitting Unit
Wastewater Regulatory Program

cc: Mr. Burke Murph, P.E., Georgia Water & Environmental Services (burke@georgiawaterservices.com)



GEORGIA

DEPARTMENT OF NATURAL RESOURCES

ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

Watershed Protection Branch

2 Martin Luther King, Jr. Drive
Suite 1152, East Tower
Atlanta, Georgia 30334
404-463-1511

DEC 18 2017

Mr. Scott Emmons, Director of Engineering
Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

RE: Little River WRF
New 1.25-MGD Discharge
Environmental Information Document
EPD # 2017-171
(Newton County)

Dear Mr. Emmons:

We have completed our review of the Environmental Information Document (EID) for the above-referenced project and have no comments. We hereby concur with the document.

Should you have any questions, do not hesitate to contact me at (404) 463-0665 or hwan.cho@dnr.ga.gov.

Sincerely,

Hwan Cho
Municipal Permitting Unit
Wastewater Regulatory Program

cc: Mr. Burke Murph, Georgia Water & Environmental Services (burke@georgiawaterservices.com)



ENVIRONMENTAL PROTECTION DIVISION

Richard E. Dunn, Director

Watershed Protection Branch
2 Martin Luther King, Jr. Drive
Suite 1152, East Tower
Atlanta, Georgia 30334
404-463-1511

Mr. Chad Peden, Project Manager
Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

SEP 27 2018

RE: Little River WRF
New 1.25-MGD Discharge
Design Development Report (DDR)
EPD # 2017-171
(Newton County)

Dear Mr. Peden:

We have completed our review of the Design Development Report (DDR) for the above-referenced project. We hereby concur with the document.

A description of the project appears in the attachment. Please verify that the description is correct. Should you have any questions, do not hesitate to contact me at (404) 463-4936 or Yilin.Fan@dnr.ga.gov.

Sincerely,

Yilin Fan
Municipal Permitting Unit
Wastewater Regulatory Program

cc: Mr. Burke Murph, Georgia Water & Environmental Services (burke@georgiawaterservices.com)

ATTACHMENT – Project Description
Little River Water Reclamation Facility
New 1.25-MGD Discharge
Design Development Report (DDR)
EPD # 2017-171
(Newton County)

Summary:

This project is for a proposed wastewater treatment facility for Newton County with a capacity of 1.25 MGD and a discharge to Little River in Oconee River Basin.

Design Parameters:

The plant has been designed to meet the limits in the wasteload allocation transmitted to the City on December 18, 2017:

Parameters	Influent	Effluent
Average Effluent flow rate, MGD		1.25
Peak flow rate, MGD		2.0
Five-Day Biochemical Oxygen Demand	2,500 lb/d	5.0 mg/L
Total Suspended Solids	2,710 lb/d	20 mg/L
Ammonia (as N)	--	1.5 mg/L
Total Phosphorus (as P)	70 lb/d	0.43 mg/L
Fecal Coliform Bacteria, count/100 mL	--	200
Dissolved Oxygen, mg/L (Daily minimum)	--	6.0
pH, SU	--	6.0 – 8.5

Project Description:

Influent Pump Station (existing):

- Four pumps with the capacity of 4.5 MGD
- 0.75 feet coarse screening

Screening:

- One mechanical fine screen with ¼-inch spacing, 5.0 MGD capacity
- One manual screen with 5 mm spacing, 5.0 MGD capacity

Grit Removal:

- Grit removal is not provided at current phase

Biological Treatment (Sequencing Batch Reactors):

- Two 0.733-MG tanks (at maximum water level)
- Three blowers (two duty, one standby) providing 2,341 SCFM each
- One submersible 200-gpm capacity WAS pump per basin
- One 20-HP mixer per basin (2 total)
- One decanter per basin, 4630 GPM capacity

Chemical Feed System for Alkalinity Control (Sodium Hydroxide):

- Three 2.5 gal/hr chemical feed pumps (two duty, one standby)
- One 3,000-gallon storage tank

Chemical Feed System for Phosphorus Control (Acetic Acid System):

- Three 1.8 gal/hr chemical feed pumps (two duty, one standby)
- One 3,000-gallon storage tank

Chemical Feed System for Phosphorus Control (Alum System):

- Three 0.84 gal/hr chemical feed pumps (two duty, one standby)
- One 1,000-gallon storage tank

Post SBR-Flow Equalization:

- One 197,110-gallon tank

Filtration:

- Two Cloth Media filters, providing 645.6 ft² of filtration area total
- Average hydraulic loading @Q_{ADF}: 1.34 gpm/ft²

Ultraviolet Disinfection:

- 36 lamps providing 3.5 MGD capacity at peak flow
- Dose: 35 mWs/cm²
- UV Transmittance: 65% minimum

Post Aeration:

- One cascade aeration system, 9.97 ft total height

Solids Stabilization:

- One 0.25-MG storage tank
- Two blowers (one duty, one standby), 920 SCFM capacity each

Solids Dewatering:

- Two centrifuge feed pumps (one duty, one standby)
- One continuous feed centrifuge, 130 GPM capacity
- One polymer feed system

Effluent Flow Monitoring:

- Parshall flume, size to be provided with plans and specifications

Richard E. Dunn, Director

Watershed Protection Branch
2 Martin Luther King, Jr. Drive
Suite 1152, East Tower
Atlanta, Georgia 30334
404-463-1511

Mr. Kevin Clark, Executive Director
Georgia Environmental Finance Authority
233 Peachtree Street, N.E.
Harris Tower, Suite 900
Atlanta, GA 30303-1727

OCT 11 2018

RE: Environmental Certification Form
Newton County Water & Sewer Authority
East Newton Sewer Extension &
New 1.25-MGD Water Reclamation Facility
GEFA Loan No. CW-2019-003
EPD # 2018-141
Newton County

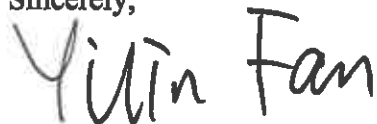
Dear Mr. Clark:

The Georgia Environmental Protection Division (EPD) has reviewed the above-referenced project, which proposes funding through the Georgia Environmental Finance Authority (GEFA).

Based on the preliminary description, the project appears environmentally acceptable as noted on the attached Environmental Certification Form.

If you should have any questions, please do not hesitate to contact me at 404-463-4936 or yilin.fan@dnr.ga.gov.

Sincerely,




Yilin Fan
Municipal Permitting Unit
Wastewater Regulatory Program

Attachment: Environmental Certification Form

cc: Ms. Sarah Oken, GEFA (soken@gefa.ga.gov)
Ms. Amanda Carroll, GEFA (acarroll@gefa.ga.gov)
Mr. Burke Murph, Georgia Water & Environmental Services (burke@georgiawaterservices.com)
Mr. Mike Hopkins, Newton County Water & Sewer Authority (mah@ncwsa.us)

**GEORGIA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION
WATERSHED PROTECTION BRANCH
Environmental Certification**

	GEFA PROJECT	CW2019003	APPLICANT	Newton County Water & Sewer Authority	COUNTY	Newton
PROJECT DESCRIPTION		<p>This project includes expansion of the Newton County Water & Sewerage Authority's sewer system. The project also includes construction of a new 1.25 MGD water reclamation facility as well as conversion of approximately 12,900 LF of existing force main to gravity sewer main, and construction of approximately 12,900 LF of a parallel 12" force main and 8,500 LF of new gravity sewer main.</p>				

PROGRAM REVIEW

Wastewater Regulatory Program

I. ENVIRONMENTAL ACCEPTABILITY

- | | | |
|--|---|-----------------------------|
| (1) Concurs with the project: | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (2) Concurrence is conditional based on: | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (a) The local government certifying that adequate capacity will be available before the project is connected to the existing system; | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (b) Issuance and/or compliance with all required EPD permits; | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (c) Other (See Comments Below). | | |
| (3) Cannot be certified at this time (See Comments Below). | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

II. PROJECT READINESS (Indicate most recent action)

- | | | | |
|--|--|---|-----------------------------|
| (1) Preliminary Design Report submitted. | Date: <input style="width: 150px;" type="text"/> | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (2) Design Development Report submitted. | Date: <input style="width: 150px;" type="text"/> | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (3) Design Development Report concurrence. | Date: 9/27/2018 | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (4) Plans and Specifications submitted. | Date: <input style="width: 150px;" type="text"/> | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (5) Plans and Specifications approved. | Date: <input style="width: 150px;" type="text"/> | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

III. FINANCIAL REVIEW

- | | | | |
|--|------------------|---|-----------------------------|
| (1) Total Project Cost: | \$ 25,000,000.00 | | |
| (2) Project Cost estimates appear acceptable based on Basis of Design. | | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| (3) Project Cost estimates should be reevaluated (See Comments Below). | | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

IV. COMMENTS:

The environmental review process has not been completed. The request for an environmental assessment of the project may be submitted through the Georgia EPD Online System (GEOS) at this time.

Plans and specifications, stamped by a professional engineer register in the State of Georgia, must be submitted to EPD for review and approval following completion of the environmental review process.

Reviewed by Wastewater Regulatory Program

Yilin Fan

Date

10/10/18

Figure B-1 – Boundary Survey

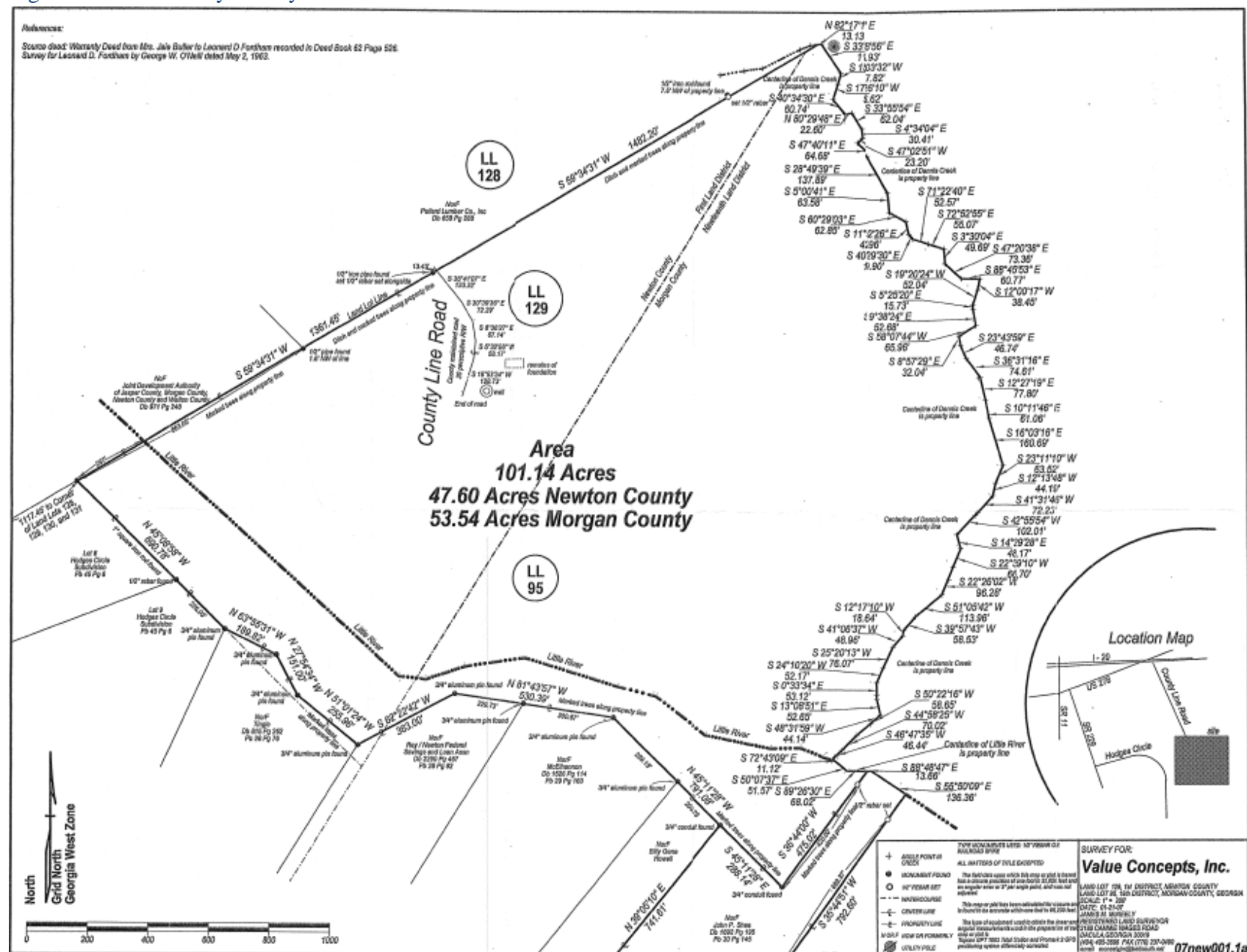


Figure B-2 – Not Released for Construction (Drawings provided upon registration)

A. SCOTT EMMONS WATER RECLAMATION FACILITY AT THE LITTLE RIVER FOR NEWTON COUNTY WATER AND SEWERAGE AUTHORITY

11325 Brown Bridge Road, Covington, GA 30016
Phone: (770) 787-1375, 24 Hr. Contact: Chad Peden, PE
GEFA Loan Number: CW2019003



NOT FOR CONSTRUCTION
FOR REVIEW PURPOSES ONLY



PROJECT LOCATION: LATITUDE: 33.5667287°, LONGITUDE: -83.6918031°
TOTAL DISTURBED AREA = 216.6 AC

VICINITY MAP
SCALE: N.T.S.



**GEORGIA WATER &
ENVIRONMENTAL
SERVICES, LLC**

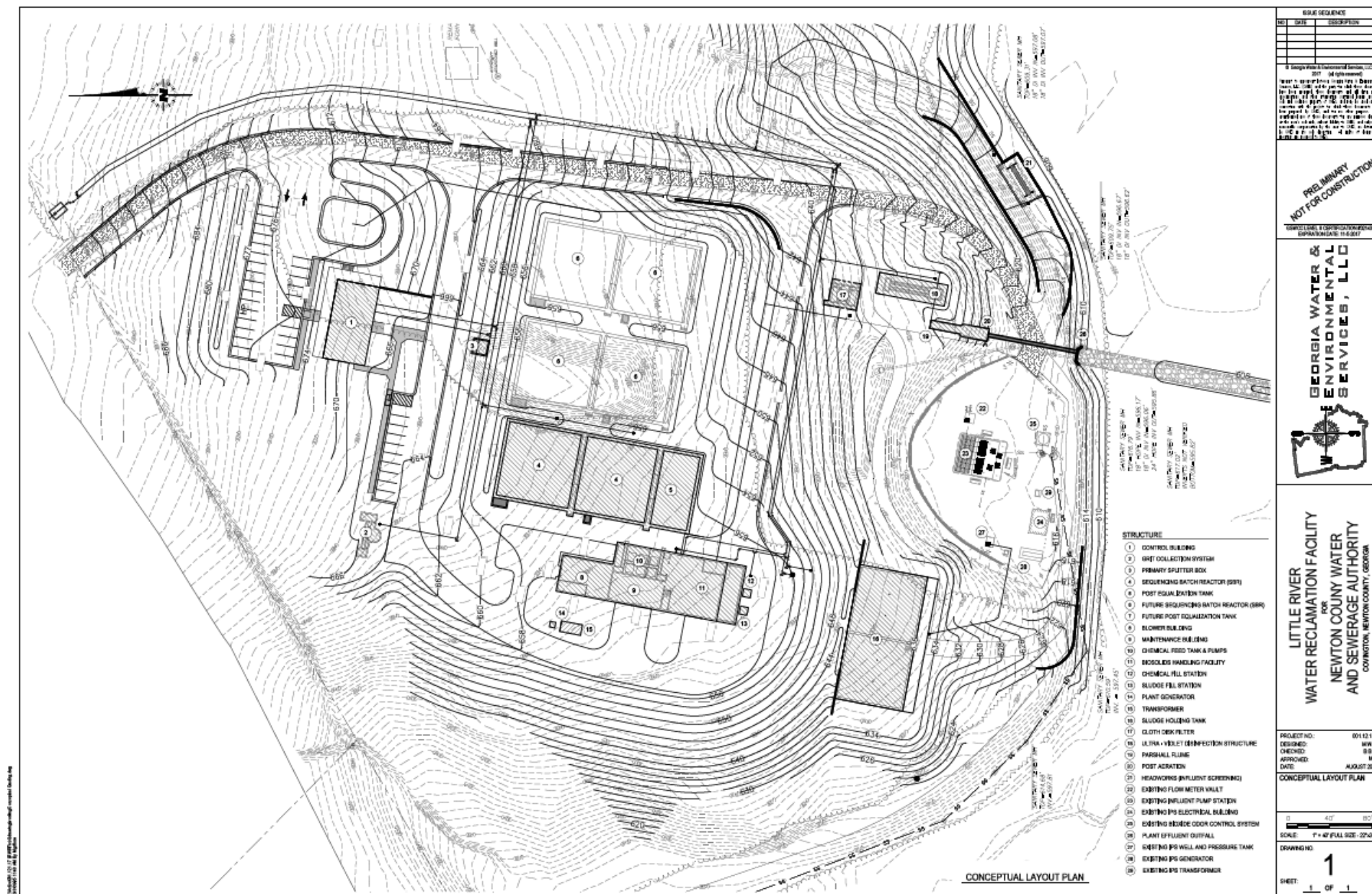
BRUNSWICK - MACON - PERRY

1510 Newsworld Dr., Ste. 204, Brunswick, Georgia 31520
4075 Riverdale Drive, Ste 101, Macon, Georgia 31210
1222 Main Street, Perry, Georgia 31099
Phone: (478) 255-4007
www.georgiawaterservices.com

GWES Project Number: 001.12.1.17



Figure B-2.1 – Site Plan – Not Released for Construction (Drawings provided upon registration)



Appendix C – Special Conditions

- American Iron and Steel Special Conditions and Information
- Supplemental General Conditions for Federally Assisted SRF Construction Contracts

GEORGIA ENVIRONMENTAL FINANCE AUTHORITY

SUPPLEMENTAL GENERAL CONDITIONS

for

FEDERALLY ASSISTED STATE REVOLVING FUND CONSTRUCTION CONTRACTS

May 9, 2014

The following standard language must be incorporated into construction contract documents and in all solicitations for offers and bids for all construction contracts or subcontracts in excess of \$10,000 to be funded in whole or in part by the federally-assisted State Revolving Fund in the State of Georgia.

These Supplemental General Conditions shall not relieve the participants in this project of responsibility to meet any requirements of other portions of this construction contract or of other agencies, whether these other requirements are more or less stringent. The requirements in these Supplemental General Conditions must be satisfied in order for work to be funded with the State Revolving Fund.

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INSTRUCTIONS & GENERAL REQUIREMENTS

It is the policy of the State Revolving Loan Fund (SRF) to promote a fair share of subcontract, materials, equipment and service awards to small, minority, and women-owned businesses for equipment, supplies, construction, and services. Compliance with these contract provisions is required in order for project costs to be eligible for SRF funding. The fair share objective is a goal, not a quota. Failure on the part of the apparent successful bidder to submit required information to the loan recipient (Owner) may be considered by the Owner in evaluating whether the bidder is responsive to bid requirements.

THE PRIME CONTRACTOR MUST SUBMIT THE FOLLOWING ITEMS TO THE OWNER:

A. Before beginning the work of any contract:

- 1) **DBE Compliance Form and related documentation.** The Owner must submit this information to the Georgia Environmental Finance Authority (GEFA) to demonstrate compliance with Disadvantaged Business Enterprise (DBE) requirements. GEFA concurrence is recommended prior to award of the construction contract and is required prior to commencement of any SRF-funded construction. (Pages GEFA-4&5)
- 2) **Certification Regarding Equal Employment Opportunity.** This form is required for the Prime Contractor and for all subcontractors. The Prime Contractor form should be submitted with the DBE Compliance Form, and the subcontractor forms should be submitted as the subcontracts are executed. (Page GEFA-9)
- 3) **Certification Regarding Debarment, Suspension, & Other Responsible Matters.** This form is required for the Prime Contractor and for all subcontractors. The Prime Contractor form should be submitted with the DBE Compliance Form and the subcontractor forms should be submitted as the subcontracts are executed. (Page GEFA-10)
- 4) ***EPA Form 6100-2 DBE Subcontractor Participation Form.** This form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from the Prime Contractor, how much the DBE subcontractor was paid, and any concerns the DBE subcontractor might have. The Prime Contractor must provide this form to each DBE subcontractor. The DBE subcontractor can, as an option, complete and submit this form to the GEFA DBE Coordinator, who will also forward the form to the EPA DBE Coordinator. (Page GEFA-11)
- 5) ***EPA Form 6100-3 DBE Subcontractor Performance Form.** This form captures the description of work to be performed by an intended DBE subcontractor and the price of the work. This form is to be provided by the Prime Contractor to each DBE subcontractor and submitted with the DBE Compliance Form. (Page GEFA-12)
- 6) ***EPA Form 6100-4 DBE Subcontractor Utilization Form.** This form captures intended or anticipated use of an identified DBE subcontractor by the Prime Contractor and the estimated dollar amount of the work. This form is to be completed by the Prime Contractor and submitted with the DBE Compliance Form. (Page GEFA-13)

*** 6100 FORMS ARE NOT REQUIRED WHEN ALL OF THE WORK IS SELF-PERFORMED BY THE PRIME CONTRACTOR.**

B. During the performance of the contract:

- 7) **Changes to Subcontractors Form.** If any changes, substitutions, or additions are proposed to the subcontractors included in previous GEFA concurrences, the Owner must submit this information to GEFA for prior concurrence in order for the affected subcontract work to be eligible for SRF funding. (Page GEFA-14)
- 8) **DBE Annual Report.** The Owner must submit this information to GEFA no later than October 20th of any year that the construction contract is active. (Page GEFA-15)
- 9) **Certified Payrolls.** These should be submitted to the Owner weekly for the Prime Contractor and all subcontractors. The Owner must maintain payroll records and make these available for inspection. Use Department of Labor form WH-347 or a similar form that contains all of the information on the Department of Labor.

THE OWNER MUST SUBMIT INFORMATION FOR GEFA REVIEW AND CONCURRENCE TO:

Georgia Environmental Finance Authority
Attention: DBE Compliance Coordinator
233 Peachtree Street, N.E.
Harris Tower, Suite 900
Atlanta, Georgia 30303
(404)584-1000; (404)584-1069 (fax)
dbe_compliance@gefa.ga.gov

DBE COMPLIANCE FORM

ALL INFORMATION OUTLINED ON THIS FORM IS REQUIRED FOR DBE COMPLIANCE REVIEW. THE PROPOSED PRIME CONTRACTOR AND OWNER SHOULD ENSURE THAT THIS INFORMATION IS COMPLETE PRIOR TO SUBMITTAL.

Loan Recipient _____

SRF Loan Number _____

PRIME CONTRACTOR'S AND OWNER'S CERTIFICATIONS:

I certify that the information submitted on and with this form is true and accurate and that this firm has met and will continue to meet the conditions of this construction contract regarding DBE solicitation and utilization. I further certify that criteria used in selecting subcontractors and suppliers were applied equally to all potential participants and that EPA Forms 6100-2 and 6100-3 were distributed to all DBE subcontractors.

(Prime Contractor signature)

Date _____

(Printed name and title)

I certify that I have reviewed the information submitted on and with this form and that it meets the requirements of the Owner's State Revolving Fund loan contract.

(Signature of Owner or Owner's representative)

Date _____

(Printed name and title)

CONTACT INFORMATION

Owner contact _____

Owner phone number & email _____

Consulting Engineer contact _____

Consulting Engineer phone number & email _____

Proposed Prime Contractor _____

Prime Contractor contact _____

Prime Contractor phone number & email _____

Proposed total contract amount \$ _____

Proposed total MBE participation \$ _____ Percentage _____ Goal: 4.0 percent

Proposed total WBE participation \$ _____ Percentage _____ Goal: 4.0 percent

CONTINUED ON NEXT PAGE

Please submit the following with the DBE Compliance Form:

- 1) List of all committed and uncommitted subcontractors by trade, including company name, address, telephone number, contact person, dollar amount of subcontract, and DBE/MBE/WBE status.
- 2) Indicate in writing if no solicitations were made because the Prime Contractor intends to use only its own forces to accomplish the work.
- 3) Proof of certification by EPA, SBA, DOT (or by state, local, Tribal, or private entities whose certification criteria match EPA criteria) for each subcontractor listed as a DBE, MBE, or WBE.
- 4) Documentation of solicitation efforts for prospective DBE firms, such as fax confirmation sheets, copies of solicitation letters and e-mails, printout of online solicitations, printouts of online search results and copies and affidavits of publication in newspapers or other publications. (see also, **"Six Good Faith Efforts"**, page GEFA-7).
 - a. The Prime Contractor shall use the necessary resources to identify and directly solicit no less than 3 certified MBE firms and 3 certified WBE firms to bid in each expected subcontract trade or area. If a diligent and documented search of the recommended directories does not identify 3 potential certified MBE firms and 3 potential certified WBE firms, then the Prime Contractor shall post an advertisement in the Owner's local legal organ, the Owner's official website, a regional newspaper in a larger community in the proximity, the Prime Contractor's website, or some other appropriate resource.
 - b. The Prime Contractor is encouraged to follow-up each written, fax, or e-mail solicitation with at least 1 logged phone call.
 - c. Whenever possible, post solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- 5) Written justification for not selecting a certified DBE subcontractor that submitted a low bid for any subcontract area.
- 6) Certification By Proposed Prime Contractor or Subcontractor Regarding Equal Employment Opportunity (GEFA-9)
- 7) Certification By Proposed Prime or Subcontractor Regarding Debarment, Suspension, and Other Responsible Matters. (GEFA-10)
- 8) *EPA Form 6100-3 DBE Subcontractor Performance Form for all DBE subcontracts. (GEFA-12)
- 9) *EPA Form 6100-4 DBE Subcontractor Utilization Form for all DBE subcontracts. (GEFA-13)

*6100 forms are not required when all of the work is self-performed by the prime contractor.

END OF DBE COMPLIANCE FORM



DBE COMPLIANCE CHECKLIST

THE PRIME CONTRACTOR MUST SUBMIT THE FOLLOWING ITEMS TO THE OWNER BEFORE THE WORK BEGINS:

Loan Recipient _____

SRF Loan Number _____

Include in Package Submittal

PRIME CONTRACTOR ONLY	TOTAL CONTRACT AMOUNT	
ALL SUBCONTRACTORS, INCLUDING DBE FIRMS	TRADE	AMOUNT
ALL SUBCONTRACTORS, INCLUDING DBE FIRMS	TRADE	AMOUNT
DBE SUBCONTRACTORS ONLY	TRADE	AMOUNT
DBE SUBCONTRACTORS ONLY	TRADE	AMOUNT
PRIME CONTRACTOR ONLY (Not applicable if self-performing all work, with no subcontracting)		

1. **DBE Compliance Form.** The Owner must sign and submit this information to the Georgia Environmental Finance Authority (GEFA) to demonstrate compliance with DBE requirements. GEFA concurrence is recommended prior to award of the construction contract and is required prior to commencement of any SRF-funded construction. (Pages GEFA-4&5)

2. **Certification Regarding Equal Employment Opportunity.** This form is required for the Prime Contractor and for all subcontractors. The Prime Contractor's form should be submitted with the DBE Compliance Form and the subcontractors' forms should be submitted as the subcontracts are executed. (Page GEFA-9)

3. **Certification Regarding Debarment, Suspension, & Other Responsible Matters.** This form is required for the Prime Contractor and for all subcontractors. The Prime Contractor's form should be submitted with the DBE Compliance Form and the subcontractors' forms should be submitted as the subcontracts are executed. (Page GEFA-10)

4. **EPA Form 6100-2 DBE Subcontractor Participation Form.** This form gives a DBE subcontractor the opportunity to describe the work the DBE subcontractor received from Prime Contractor, how much the DBE subcontractor was paid, and any other concerns the DBE subcontractor might have. The Prime Contractor must provide this form to each DBE subcontractor. The DBE subcontractor can, as an option, submit this form to the GEFA DBE Coordinator, who will forward the form to the EPA DBE Coordinator. (Page GEFA-11)

5. **EPA Form 6100-3 DBE Subcontractor Performance Form.** This form captures an intended DBE subcontractor's description of work to be performed for the Prime Contractor and the price of the work. This form is to be provided by the Prime Contractor to each DBE subcontractor and submitted with the DBE Compliance Form. (Page GEFA-12)

6. **EPA Form 6100-4 DBE Subcontractor Utilization Form.** This form captures the Prime Contractor's intended use of an identified DBE subcontractor and the estimated dollar amount of the work. This form is to be completed by the Prime Contractor and submitted with the DBE Compliance Form (Page GEFA-13)

Uncommitted Trades

--	--	--	--

Documentation of Good Faith Efforts

Newspaper ads		Internet Websites	Fax Confirmation	Copies of Solicitation Emails/letters	Copies of phone logs
PROOF OF CERTIFICATION FOR EACH SUBCONTRACTOR LISTED AS A DBE, MBE, OR WBE					

SIX GOOD FAITH EFFORTS

These good faith efforts are required methods to ensure that DBEs have the opportunity to compete for procurements funded by EPA financial assistance dollars. Such good faith efforts are described as follows:

1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This will include placing DBEs on solicitation lists and soliciting them whenever there are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the resources, services, and assistance of the Department of Transportation (DOT), Small Business Administration (SBA), and the Minority Business Development Agency of the Department of Commerce (MBDA).
6. If the Prime Contractor awards subcontracts, it must take the steps described in items (1) through (5) listed above.

Please note that DBEs, MBEs, and WBEs must be certified by EPA, SBA, or DOT (or by state, local, Tribal, or private entities whose certification criteria match EPA's). DBEs must be certified in order to be counted toward the Prime Contractor's MBE/WBE goals. "Self-certified" DBE subcontractors will not be counted toward the Prime Contractor's MBE/WBE goals. Depending upon the certifying agency, a DBE may be classified as a DBE, a Minority Business Enterprise (MBE), or a Women's Business Enterprise (WBE).

The Prime Contractor must employ and document the **Six Good Faith Efforts** for all subcontracts, even if the Prime Contractor has achieved the fair share objectives.

The documentation of solicitations for the **Six Good Faith Efforts** must be detailed in order to allow for satisfactory review. Such documentation might include fax confirmation sheets, copies of solicitation letters/emails, printouts of the online solicitations, printouts of online search results and affidavits of publication in newspapers or other publications. The Prime Contractor is encouraged to follow up each written, fax, or e-mail solicitation with at least 1 logged phone call.

The Prime Contractor should attempt to identify and solicit DBEs in the geographic proximity of the project before soliciting those located farther away.

If a DBE subcontractor fails to complete work under the subcontract for any reason, the Prime Contractor must notify the Owner in writing prior to any termination and must employ the Six Good Faith Efforts described above if using a replacement subcontractor. Any proposed changes from the approved DBE subcontractor list must be reported to the Owner and to GEFA on the *Changes to Approved Subcontractors Form* (GEFA-14) prior to initiation of the action. EPA Forms Nos. 6100-3 and 6100-4 must also be submitted to GEFA for new DBE subcontracts.

RESOURCES FOR IDENTIFYING DBE SUBCONTRACTORS

RESOURCES FOR IDENTIFYING DBE SUBCONTRACTOR'S FOR DIRECT SOLICITATION:

Georgia Department of Transportation (GDOT)
Disadvantaged Business Enterprise Program
(404) 631-1972

https://gdotbiext.dot.ga.gov/analytics/saw.dll?Dashboard&PortalPath=%2Fshared%2FExternal%2F_portal%2FUCP%20Directory&Page=UCP%20Directory&Action=Navigate&Syndicate=true&anon=1

City of Atlanta, Georgia Office of Contract Compliance (404) 330-6010
<https://www.atlantaga.gov/government/mayor-s-office/executive-offices/office-of-contract-compliance>

DeKalb County, Georgia
Office of Purchasing and Contracting
(404) 371-4730
<http://dekalbbsbe.info/wordpress1/wp-content/uploads/2016/05/DeKalbCountyCertifiedVendorsListMay10-2016-Final2.pdf>

Fulton County, Georgia
Purchasing and Contract Compliance
(404) 612-5800
<http://www.fultoncountyga.gov/fcpccd-local-business-directory>

Metropolitan Atlanta Rapid Transit Authority (MARTA)
Disadvantaged Business Enterprise Program
(404) 848-4656
<https://marta.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=8663&TN=marta>

United States Environmental Protection Agency
http://www.epa.gov/osbp/dbe_team.htm
Teree Henderson
National DBE Program Coordinator
(202) 566-2222
henderson.teree@epa.gov

For more information about DBE compliance,
contact:
db_compliance@gefa.ga.gov

NOTES:

- (1) The Prime Contractor shall use the necessary resources to identify and directly solicit no less than 3 certified MBE firms and 3 WBE firms to bid in each expected subcontract area or trade.
- (2) If a diligent and documented search of the recommended directories does not identify 3 potential certified MBE firms and 3 potential certified WBE firms, then the Prime Contractor shall post an advertisement in the Owner's local legal organ, the Owner's official website, a regional newspaper in a larger community in the proximity, the Prime Contractor's website, or some other appropriate resource. Whenever possible, post solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (3) Expenditures to a DBE that acts merely as a broker or passive conduit of funds, without performing, managing, or supervising the work of its subcontract in a manner consistent with normal business practices may not be counted.
- (4) The Prime Contractor should attempt to identify and first solicit DBEs in the geographic proximity of the project before soliciting those located farther away.
- (5) Contact GEFA Program Managers at (404) 584-1000 or db_compliance@gefa.ga.gov for further assistance or resources.

**CERTIFICATION BY PROPOSED PRIME CONTRACTOR OR SUBCONTRACTOR
REGARDING
EQUAL EMPLOYMENT OPPORTUNITY**

Proposed Prime Contractor
Proposed Subcontractor

This certification is required pursuant to Executive Order 11246, Part II, Section 203 (b), (30 F.R. 12319-25). Any bidder or prospective prime contractor, or any of the proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the equal opportunity clause; and, if so, whether it has filed all compliance reports due under applicable instructions.

Where the certification indicated that the prime or subcontractor has not filed a compliance report due under applicable instruction, such contractor shall be required to submit a compliance report.

(1) Bidder has participated in a previous contract or subcontract subject to the Equal Opportunity Clause.
YES _____ NO _____

(2) Compliance Reports were required to be filed in connection with such contract or subcontract.
YES _____ NO _____ (If YES, state what reports were filed and with what agency.)

(3) Bidder has filed all compliance reports due under applicable instructions, including SF-100 (EEO-1 Report).
YES _____ NO _____ (If NO, please explain in detail.)

The information above is true and complete to the best of my knowledge and belief. (A willfully false statement is punishable by law – U.S. Code, Title 18, Section 1001.)

PRINTED NAME & TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR OR SUBCONTRACTOR

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

**CERTIFICATION BY PROPOSED PRIME CONTRACTOR OR SUBCONTRACTOR
REGARDING
DEBARMENT, SUSPENSION, AND OTHER RESPONSIBLE MATTERS**

Proposed Prime Contractor
Proposed Subcontractor

Under Executive Order 12549 individuals or organizations debarred from participation in Federal Assistance Programs may not receive an assistance award under federal program or sub-agreement there under for \$25,000 or more. Accordingly each recipient of a State loan or a contract (engineering or construction) awarded under a loan must complete the following certification (see 40 CFR 32.510).

The prospective participant certifies to the best of its knowledge and belief that it and its principals;

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) 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;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause of default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. (A willfully false statement is punishable by law – U.S. Code, Title 18, Section 1001.)

PRINTED NAME & TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR OR SUBCONTRACTOR

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

_____ I am unable to certify to the above statements. My explanation is as follows:

**Disadvantaged Business Enterprise (DBE) Program
DBE Subcontractor Participation Form**

An EPA Financial Assistance Agreement Recipient must require its prime contractors to provide this form to its DBE subcontractors. This form gives a DBE¹ subcontractor² the opportunity to describe work received and/or report any concerns regarding the EPA-funded project (e.g., in areas such as termination by prime contractor, late payments, etc.). The DBE subcontractor can, as an option, complete and submit this form to the EPA DBE Coordinator at any time during the project period of performance.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Received from the Prime Contractor Involving Construction, Services , Equipment or Supplies	Amount Received by Prime Contractor

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Performance Form

This form is intended to capture the DBE¹ subcontractor's² description of work to be performed and the price of the work submitted to the prime contractor. An EPA Financial Assistance Agreement Recipient must require its prime contractor to have its DBE subcontractors complete this form and include all completed forms in the prime contractors bid or proposal package.

Subcontractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Prime Contractor Name		Issuing/Funding Entity:	

Contract Item Number	Description of Work Submitted to the Prime Contractor Involving Construction, Services , Equipment or Supplies	Price of Work Submitted to the Prime Contractor
DBE Certified By: ___ DOT ___ SBA ___ Other: _____		Meets/ exceeds EPA certification standards? ___ YES ___ NO ___ Unknown

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

² Subcontractor is defined as a company, firm, joint venture, or individual who enters into an agreement with a contractor to provide services pursuant to an EPA award of financial assistance.

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract.

An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package.

Prime contractors should also maintain a copy of this form on file.

Prime Contractor Name		Project Name	
Bid/ Proposal No.	Assistance Agreement ID No. (if known)	Point of Contact	
Address			
Telephone No.		Email Address	
Issuing/Funding Entity:			

I have identified potential DBE certified subcontractors	___ YES	___ NO	
If yes, please complete the table below. If no, please explain:			
Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue
on back
if needed

¹ A DBE is a Disadvantaged, Minority, or Woman Business Enterprise that has been certified by an entity from which EPA accepts certifications as described in 40 CFR 33.204-33.205 or certified by EPA. EPA accepts certifications from entities that meet or exceed EPA certification standards as described in 40 CFR 33.202.

CHANGES TO APPROVED SUBCONTRACTORS FORM

Loan Recipient _____ SRF Loan Number _____

CERTIFICATIONS:

I certify that the information submitted on and with this form is true and accurate and that this firm has met and will continue to meet the conditions of this construction contract regarding DBE solicitation and utilization. I further certify that criteria used in selecting subcontractors and suppliers were applied equally to all potential participants.

(Prime Contractor signature) Date _____

(Printed name and title)

I certify that I have reviewed the information submitted on and with this form and that it meets the requirements of the Owner's State Revolving Fund loan contract.

(Signature of Owner or Owner's representative) Date _____

(Printed name and title)

GENERAL INFORMATION:

- 1) If an approved subcontractor is terminated or replaced, please identify this company and briefly state reason.

Subcontractor Name::	Trade
Reason Terminated or Replaced	

- 2) For new or additional subcontractors, list name, trade, address, telephone number, contact person, dollar amount of subcontract, and DBE status.

New Subcontractor Name and Contact Person	Trade
Address	Telephone Number
Dollar Amount	DBE Status

- 1) Attach proof of certification by EPA, SBA, DOT (or by state, local, Tribal, or private entities whose certification criteria match EPA's) for each subcontractor listed as a DBE, MBE, or WBE.
- 2) Attach documentation of Six Good Faith Efforts solicitation effort for all new subcontracts.
- 3) Provide justification for not selecting any certified DBE subcontractor that submitted a low bid for any subcontract area.
- 4) For each subcontractor, attach certifications regarding Equal Employment Opportunity (GEFA-9) and certifications regarding Debarment, Suspension, and Other responsible Matters (GEFA-10)

DBE ANNUAL REPORT
FORM (5700-52A)

This form must be completed by recipients of federal financial assistance for procurement of supplies, equipment, construction or services. SRF loan recipients are required to submit this report to GEFA by the 20th of October for the previous period of October 1 through September 30. Please submit a "negative" report even if \$0 is the amount paid to MBE/WBE subcontractors during the reporting period.

ANNUAL REPORT FORM (5700-52A)			
1. PRIME CONTRACTOR		2. REPORTING PERIOD (Complete date using current year.) Period Ending (September 30, _____)	
3. SUBMIT TO: Georgia Environmental Finance Authority Attention: DBE Compliance Coordinator 233 Peachtree Street, N.E. Harris Tower, Suite 900 Atlanta, Georgia 30303 dbe_compliance@gefa.ga.gov		4. LOAN RECIPIENT (Name, Address and Telephone)	
5. LOAN RECIPIENT (OWNER) REPORTING CONTACT	PHONE:	6. TYPE OF FEDERAL FINANCIAL ASSISTANCE PROGRAM (Check one) CWSRF _____ DWSRF _____	7. SRF LOAN NUMBER
8. CONTRACTOR NAME & TOTAL CONSTRUCTION CONTRACT AMOUNT		9. ACTUAL DOLLAR AMOUNT PAID TO MBE/WBE SUBCONTRACTORS THIS PERIOD \$ MBE _____ \$ WBE _____ NEGATIVE REPORT (\$0) ____	
10. RECIPIENT'S MBE/WBE GOALS MBE 4.0 % WBE 4.0 %		11. TOTAL DOLLARS SPENT THIS PERIOD MBE \$ _____ WBE \$ _____ NON MBE/WBE \$ _____ TOTAL \$ _____	
12. NAME & TITLE OF AUTHORIZED REPRESENTATIVE OF LOAN RECIPIENT (OWNER).		13. SIGNATURE OF AUTHORIZED REPRESENTATIVE OF LOAN RECIPIENT.	14. DATE
MBE/WBE PAYMENTS MADE DURING PERIOD			
NAME & ADDRESS of DBE (SUB)CONTRACTOR (indicate if MBE or WBE firm)		TOTAL DOLLAR AMOUNT PAID & DATE PAID \$ _____ DATE _____	

SPECIAL PROVISIONS

- (a) The Prime Contractor is required to pay its subcontractors in accordance with the Georgia Prompt Payment Act (OCGA 13-11).
- (b) The Prime Contractor is required to insert the entirety of the Davis Bacon contract requirements into all subcontracts
- (c) Sewer line and water line crossing of all roads and streets shall be done in accordance with the Georgia Department of Transportation (D.O.T.) Policies and Procedures and must comply with the Ga. D.O.T. Standard Specifications, Construction of Roads and Bridges, 1993 Edition.
- (c) Construction shall be carried out so as to prevent bypassing of wastewater flow and to prevent interruption of drinking water treatment during construction. EPD must receive written notification prior to any reduction in the level of treatment and must approve all temporary modifications to the treatment process prior to the activity.
- (d) Erosion and Sedimentation Control shall be accomplished in accordance with the Georgia Erosion and Sedimentation Control Act of 1975 as currently amended and NPDES General Permits (Storm Water from Construction Sites). See also www.gaepd.org and www.gaswcc.georgia.gov for information regarding permits.
- (e) Use of Chemicals: All chemicals used during project construction or furnished for project operation, whether herbicide, pesticide, disinfectant, polymer reactant or of other classification, must show approval of either EPA or USDA. Use of all such chemicals and disposal of residues shall be in conformance with State and local regulations as appropriate.
- (f) It is the duty of the Prime Contractor, the Owner and the Engineer to ensure the construction of the project, including the letting of contracts in connection therewith, shall comply with all applicable laws and regulations and requirements of the United States of America or any agency thereof, the state of Georgia or any agency thereof, territorial, or any local government laws or political subdivision and ordinances to the extent that such requirements do not conflict with Federal laws and this subchapter.
- (g) EPD, EPA, and GEFA shall have access to the site and the project work at all times.

BONDS

Bonding requirements for Contracts of \$100,000 or less are contained in the General Conditions. Bond requirements of contracts in excess of \$100,000 are:

1. Bid guarantee equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a certified check or bid bond submitted with the bid.
2. Performance bond equal to 100 percent of the contract price and;
3. Payment bond equal to 100 percent of the contract price. Bonds must be obtained from companies holding Certificates of Authority as acceptable sureties, issued by the U.S. Treasury.

SPECIAL NOTICE TO BIDDERS

By the submission of this bid, each bidder acknowledges that he understands and agrees to be bound by the equal opportunity requirements of EPA regulations (40 CFR Part 8, particularly Section 8.4 (b)), which shall be applicable throughout the performance of work under any contract awarded pursuant to this solicitation. Each bidder agrees that if awarded a contract, it will similarly bind contractually each subcontractor. In implementation of the foregoing policies, each bidder further understands and agrees that if awarded a contract, it must engage in affirmative action directed at promoting and ensuring equal employment opportunity in the workforce used under the contract (and that it must require contractually the same effort of all subcontractors whose subcontracts exceed \$10,000.00). The bidder understands and agrees that "affirmative action" as used herein shall constitute a good faith effort to achieve and maintain minority employment in each trade in the on-site workforce used on the project.

EQUAL EMPLOYMENT OPPORTUNITY NOTICE

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL OPPORTUNITY (EXECUTIVE ORDER 11246)

1. The Offeror's or Bidder's attention is called to the Equal Opportunity Clause which is included in the nondiscrimination Provision and Labor Standards, EPA Form 5720-4 and the Standard Federal Equal Employment Opportunity (EEO) Construction Contract Specifications set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade	4.0 percent
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Goals for female participation for each trade	4.0 percent
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These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minority and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation to the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical area where the contract is to be performed giving the state, county and city, if any).

EEO Construction Contract Specifications (Executive Order 11246)

EEO Specifications:

1. As used in these specifications:
 - a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;
 - b. "Director" means Director, Office of Federal Contract Compliance Program, United States Department of Labor, or any person to whom the Director delegates authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form, 941.
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
 - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
6. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations ☐ responses.
 - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever actions the Contractor may have taken.
 - d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trained programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7(b) above.
 - f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
 - h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
 - i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
 - j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
 - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
 - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
 - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
 - n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
 - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations 7(a) through (p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant may be asserted as fulfilling any one or more of its obligations under 7(a) through (p) of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes

a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation, if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.
15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Davis-Bacon and Related Acts

Labor Standards Provisions for Federally Assisted Contracts

Contract Provision for Contracts in Excess of \$2,000.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

Subrecipients may obtain wage determinations from the U.S. Department of Labor's web site, <http://www.dol.gov/whd/govcontracts/dbra.htm> (E-tools)

(ii)(A) The subrecipient(s), on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The State award official shall approve a request for an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the subrecipient(s) agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation of the action taken and the request, including the local wage determination shall be sent by the subrecipient (s) to the State award official. The State award official will transmit the request, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210 and to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the State award official or will notify the State award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the subrecipient(s) do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the request and the local wage determination, including the views of all interested parties and the recommendation of the State award official, to the Administrator for determination. The request shall be sent to the EPA DB Regional Coordinator concurrently. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt of the request and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The subrecipient(s), shall upon written request of the EPA Award Official or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to the subrecipient, that is, the entity that receives the sub-grant or loan from the State capitalization grant recipient. Such documentation shall be available on request of the State recipient or EPA. As to each payroll copy received, the subrecipient shall provide written confirmation in a form satisfactory to the State indicating whether or not the project is in compliance with the requirements of 29 CFR 5.5(a)(1) based on the most recent payroll copies for the specified week. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly

payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the subrecipient(s) for transmission to the State or EPA if requested by EPA, the State, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the subrecipient(s).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the State, EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees--

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may be appropriate, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the

meaning of this clause include disputes between the contractor (or any of its subcontractors) and Subrecipient(s), State, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

Contract Provision for Contracts in Excess of \$100,000.

(a) Contract Work Hours and Safety Standards Act. The subrecipient shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The subrecipient, upon written request of the EPA Award Official or an authorized representative of the Department of Labor, shall withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the Subrecipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job

(5) Compliance Verification:

(a) The subrecipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The subrecipient must use Standard Form 1445 (SF 1445) or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The subrecipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the subrecipient should conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. Subrecipients must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. Subrecipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The subrecipient shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The subrecipient shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, if practicable, the subrecipient should spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. Subrecipients must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the subrecipient shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The subrecipient shall periodically review contractors and subcontractors' use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) Subrecipients must provide a report of compliance to the Georgia Environmental Finance Authority detailing compliance efforts and results. This report will be submitted with or prior to the loan recipient's first request for funding of construction costs, prior to final disbursement of funds from the loan, and as requested by the GEFA during the project.

(f) Subrecipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB coordinator and to the appropriate DOL Wage and Hour District Office listed at <http://www.dol.gov/whd/america2.htm>.

INSERT WAGE RATE DETERMINATION HERE

Wage Rates (for *Heavy Construction*) are state/county specific can be found at:

<http://www.dol.gov/whd/govcontracts/dbra.htm>

Sample Payroll Form (WH-347) is found at:

<http://www.dol.gov/whd/forms/wh347.pdf>

Labor Standards Interview Form (SF-1445) is found at:

<http://www.gsa.gov/portal/forms/download/115910>

Davis-Bacon (WH-1321) poster is found at:

<http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>
(English)

<http://www.dol.gov/whd/regs/compliance/posters/davispan.pdf>
(Spanish)

Fair Labor Standards Act Minimum Wage poster is found at:

<http://www.dol.gov/whd/regs/compliance/posters/minwagebwp.pdf>
(English)

<http://www.dol.gov/whd/regs/compliance/posters/minwagespbwP.pdf>
(Spanish)

“EEO Is the Law” poster is found at:

http://www.eeoc.gov/employers/upload/eeoc_self_print_poster.pdf
(English)

http://www.eeoc.gov/employers/upload/eeoc_self_print_poster_spanish.pdf
(Spanish)

“EEO Is the Law” poster supplement is found at:

http://www.eeoc.gov/employers/upload/eeoc_gina_supplement.pdf
(English)

http://www.eeoc.gov/employers/upload/eeoc_gina_supplement_spanish.pdf
(Spanish)

OSHA poster is found at:

<http://www.osha.gov/Publications/osh3165low-res.pdf>
(English)

<http://www.osha.gov/Publications/osh3167.pdf>
(Spanish)

CERTIFIED PAYROLL REVIEW CHECKLIST

(This is a *recommended Certified Payroll Review Checklist for the Owner's use.*)

CONTRACT ID City of CW/DWSRF#00 - 000	PRIME CONTRACTOR/SUBCONTRACTOR X Construction
GENERAL WAGE DECISION AND DATE (Insert number & date)	PAYROLL PERIOD ENDING

INSTRUCTIONS: This checklist is to be used in conjunction with projects requiring Davis-Bacon Wage Rates and compliance reviews. All certified payrolls are to be date stamped upon receipt from the prime contractor.

Payroll Information Checklist:

- _____ Prime Contractor's or subcontractor's name and address
- _____ Contract ID numbers (GEFA SRF No.)
- _____ Week ending.
- _____ Project location.

- _____ Employee ID or Last 4 digits of Social Security Number
 - _____ Social Security Number removed
 - _____ Employee's work classification
 - _____ Identification of OJTs, apprentices and program levels (%) on payrolls.
 - _____ Verify that OJT and Apprentice Program documentation is in project files.

- _____ Daily and weekly employee hours worked in each job classification.
 - _____ Daily and weekly employee overtime (or premium) hours worked
 - _____ Total weekly hours worked on all jobs (prevailing and non-prevailing wage).
 - _____ Base rate shown for each employee, overtime (or premium) rate shown when worked.
 - _____ Verify correct wage rates are being paid.
 - _____ Verify overtime is being paid correctly (over 40 hrs/wk, and Time and a half)
 - _____ Week's gross wages
 - _____ Week's itemized deductions.
 - _____ Week's net wages paid

- _____ Compliance statement attached.
 - _____ Method of fringe benefit payment described by checking either box (4)(a) or (4)(b).
 - _____ Fringe benefit package information in file and updated as needed (if 4(a) is checked)
 - _____ Exceptions explanation for fringe benefit (4)(c).
 - _____ Signature.

Compliance Review Checklist (for field reviews):

- _____ Verify work classifications reported are consistent with the work performed.
- _____ Compare payrolls with wage rate interviews when conducted.
- _____ Compare number of employees and hours worked with project documentation.

REVIEWED BY:	DATE
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GEORGIA ENVIRONMENTAL FINANCE AUTHORITY

AMERICAN IRON AND STEEL

SPECIAL CONDITIONS AND INFORMATION

For

FEDERALLY ASSISTED

STATE REVOLVING LOAN FUND

CONSTRUCTION CONTRACTS

April 11, 2014

The following standard language must be incorporated into construction contract documents and in all solicitations for offers and bids for all construction contracts or subcontracts to be funded, in whole or in part, through the Federally-assisted State Revolving Fund in the State of Georgia for projects subject to the American Iron and Steel requirements.

These Special Conditions shall not relieve the participants in this project of responsibility to meet any requirements of other portions of this construction contract or of other agencies, whether these other requirements are more or less stringent. The requirements in these Special Conditions must be satisfied in order for work to be funded with the State Revolving Fund.

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GENERAL REQUIREMENTS

These Special Conditions are based on guidance provided by the United States Environmental Protection Agency (EPA). Public Law 113-76, the Consolidated Appropriations Act, 2014 (Act), includes an “American Iron and Steel” (AIS) requirement that requires State Revolving Loan Fund (SRF) assistance recipients to use iron and steel products that are produced in the United States for projects in this project. A copy of Section 436 of the Act is found in Appendix 3.

The products and materials subject to these requirements will be defined in Appendix 1 of these special conditions.

The Owner must maintain documentation of compliance with the AIS requirements. The documentation that the Owner maintains will be subject to review and audit by representatives of the state of Georgia, the EPA, the EPA Office of the Inspector General, and other federal authorities.

The Prime Contractor must provide certifications of compliance for all products subject to AIS requirements to the Owner prior to requesting payments for those products. The Owner or the Engineer may require certifications of compliance with submittals and shop drawings for these products as part of the submittal review process.

All manufacturing processes for a covered iron or steel product, as further defined in Appendix 1, must take place in the United States. If a covered product is taken out of the US for any part of the manufacturing process, it becomes foreign source material.

The EPA recommends the use of a step certification process to document the locations of the manufacturing processes involved with the production of steel and iron materials. A step certification is a process under which each handler (supplier, fabricator, manufacturer, processor, etc.) of the iron and steel products certifies that its step in the process was domestically performed. Each time a step in the manufacturing process takes place, the manufacturer delivers its work along with a certification of its origin. A certification should include the name of the manufacturer, the location of the manufacturing facility where the product or process took place (not its headquarters), a description of the product or item being delivered, and a signature by a manufacturer’s responsible party. Attached in Appendix 2 is a sample step certification.

Alternatively, the final manufacturer that delivers the iron or steel product to the worksite, vendor, or contractor, may provide a certification asserting that all manufacturing processes for the product and for its iron and steel components occurred in the United States. The EPA states that additional documentation may be needed if the certification lacks important information and recommends step certification as the best practice. A sample final manufacturer certification is attached in Appendix 2.

The Prime Contractor may document that incidental and generally low cost components, as defined in Appendix 1, are compliant with AIS requirements under the De Minimis Waiver issued by the EPA. For these items, the Contractor must provide the Owner with documentation of costs for these items, including invoices, and a report of types and categories of materials to which the waiver is applied, the total cost of incidental components covered by the waiver for each category, and the calculations by which the total cost of materials incorporated into the project was determined. A sample De Minimis report is attached in Appendix 2.

Contractor, supplier, and manufacturer records are subject to review and audit by the EPA, its Inspector General, and other federal authorities.

Failure to comply with these requirements may delay, limit, or prevent the disbursement of SRF funds to the Owner. Violations of AIS requirements will require correction by the Contractor as determined by the Owner and Engineer, including replacement of deficient products with compliant products and compensation for costs and other damages that may result. Violations may also subject the Owner, the Contractor, and suppliers to other enforcement actions within the discretion of the EPA and other federal authorities.

The Act permits EPA to issue waivers for a case or category of cases in which EPA finds (1) that applying these requirements would be inconsistent with the public interest; (2) iron and steel products are not produced in the US in sufficient and reasonably available quantities and of a satisfactory quality; or (3) inclusion of iron and steel products produced in the US will increase the cost of the overall project by more than 25 percent. The Contractor should notify the Owner and Engineer immediately if it finds that a waiver may be required.

By submitting a bid for this project and by executing this construction contract, the Contractor acknowledges to and for the benefit of the Owner and the state of Georgia that it understands that the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund or the Drinking Water State Revolving Fund and that Federal law authorizing these Funds contains provisions commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("American Iron and Steel Requirement") including iron and steel products provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and the state of Georgia that (a) the Contractor has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Owner or the state of Georgia. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or the state of Georgia to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney's fees) incurred by the Owner or the state of Georgia resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the state of Georgia or any damages owed to the state of Georgia by the Owner). The Owner and the Contractor agree that the state of Georgia, as a lender to the Owner for the funding of its project, is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the state of Georgia.

Appendix 1 – Definitions

For purposes of the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) projects that must comply with the AIS requirement, an iron or steel product is one of the following made primarily of iron or steel that is permanently incorporated into the project:

Lined or unlined pipes or fittings;
Manhole Covers;
Municipal Castings (defined in more detail below);
Hydrants;
Tanks;
Flanges;
Pipe clamps and restraints;
Valves;
Structural steel (defined in more detail below);
Reinforced precast concrete (defined in more detail below); and
Construction materials (defined in more detail below).

Product primarily of iron or steel: The product must be made of greater than 50% iron or steel, measured by cost. If one of the listed products is not made primarily of iron or steel, United States (US) provenance is not required, except as required for reinforced precast concrete. If a product is composed of more than 50% iron or steel, but is not listed in Section 436 (a) (2) of the Act, it is not required to be produced in the US. Alternatively, the iron or steel in such a product can be sourced from outside the US.

Steel: An alloy that includes at least 50 percent iron and between 0.02 and 2 percent carbon and may include other elements. Other alloys of iron are not required to be produced in the US.

Produced in the United States: Production in the US of the iron or steel products used in the project requires that all manufacturing processes, including application of coatings, must take place in the United States, with the exception of metallurgical processes involving refinement of steel additives. All manufacturing processes includes processes such as melting, refining, forming, rolling, drawing, finishing, fabricating and coating. Further, if a domestic iron and steel product is taken out of the US for any part of the manufacturing process, it becomes foreign source material. However, raw materials such as iron ore, limestone and iron and steel scrap are not covered by the AIS requirement, and the material(s), if any, being applied as a coating are similarly not covered. Non-iron or steel components of an iron and steel product may come from non-US sources. For example, for products such as valves and hydrants, the individual non-iron and steel components do not have to be of domestic origin.

Municipal Castings: Municipal castings are cast iron or steel infrastructure products that are melted and cast. They typically provide access, protection, or housing for components incorporated into utility owned drinking water, storm water, wastewater, and surface infrastructure. They are typically made of grey or ductile iron, or steel. Examples of municipal castings include access hatches, ballast screen, benches, bollards, cast bases, cast iron hinged hatches, cast iron riser rings, catch basin inlets, cleanout/monument boxes, construction covers and frames, curb and corner guards, curb openings, detectable warning plates, downspout shoes, drainage grates, frames & curb inlets, inlets, junction boxes, lampposts, manhole covers, rings & frames, risers, meter boxes, steel hinged hatches, steel riser rings, trash receptacles, tree grates, tree guards, trench grates, and valve boxes.

Structural Steel: Structural steel is rolled flanged shapes, having at least one dimension of their cross-section 3 inches or greater, which are used in the construction of bridges, buildings, ships, railroad rolling stock, and for numerous other constructional purposes. Such shapes are designated as wide-flange shapes, standard I-beams, channels, angles, tees and zeeks. Other shapes include H-piles, sheet piling, tie plates, cross ties, and those for other special purposes.

Reinforced Precast Concrete: While reinforced precast concrete may not be at least 50% iron or steel, in this particular case, the reinforcing rebar must be produced in the US and meet the same standards as for any other iron or steel product. Additionally, the casting of the concrete product must take place in the US. The cement and other raw materials used in concrete production are not required to be of domestic origin. If the reinforced concrete is cast at the construction site, the reinforcing rebar is considered to be a construction material and must be produced in the US.

Construction Materials subject to AIS: Construction materials are those articles, materials, or supplies made primarily of iron and steel, that are permanently incorporated into the project, not including mechanical and/or electrical components, equipment and systems. Some of these products may overlap with what is also considered “structural steel”. This includes, but is not limited to, the following products: welding rods, wire rod, bar, angles, concrete reinforcing bar, wire, wire cloth, wire rope and cables, tubing, framing, joists, trusses, fasteners (i.e., nuts and bolts), decking, grating, railings, stairs, access ramps, fire escapes, ladders, wall panels, dome structures, roofing, ductwork, surface drains, cable hanging systems, manhole steps, fencing and fence tubing, guardrails, doors, gates, and screens.

Construction Materials not subject to AIS: Mechanical and/or electrical components, equipment and systems are not considered construction materials. Mechanical equipment is typically that which has motorized parts and/or is powered by a motor. Electrical equipment is typically any machine powered by electricity and includes components that are part of the electrical distribution system.

The following examples, including their appurtenances necessary for their intended use and operation, are NOT considered construction materials: pumps, motors, gear reducers, drives, variable frequency drives (VFDs), mixers, blowers/aeration equipment, compressors, meters, electric/pneumatic/manual accessories used to operate valves (such as valve actuators), gates, motorized screens (such as traveling screens), sensors, controls, switches, supervisory control and data acquisition (SCADA), membrane bioreactor systems, membrane filtration systems, filters, clarifiers and clarifier mechanisms, rakes, grinders, disinfection systems, dewatering equipment, presses (including belt presses), conveyors, cranes, HVAC (excluding ductwork), water heaters, heat exchangers, generators, cabinetry and housings (such as electrical boxes/enclosures), lighting fixtures, electrical conduit, emergency life systems, metal office furniture, shelving, laboratory equipment, and analytical instrumentation.

Items temporarily used during construction, which are removed from the project site upon completion of the project, are not required to be made of U.S. Iron or Steel. For example, trench boxes or scaffolding are not considered construction materials subject to AIS requirements.

Incidental Components compliant with AIS under the De Minimis Waiver: This waiver permits the use of de minimis incidental components that may otherwise be prohibited under AIS. These de minimis items may cumulatively comprise no more than a total of 5 percent of the total cost of the materials used in and incorporated into the project. The cost of an individual item may not exceed 1 percent of the total cost of the materials used in and incorporated into the project.

These items are miscellaneous, generally low-cost components that are essential for, but incidental to, the construction and are permanently incorporated into the project. For many of these incidental components, the country of manufacture and the availability of alternatives are not always readily or reasonably identifiable prior to procurement in the normal course of business. For other incidental components, the country of manufacture may be known, but the miscellaneous character in conjunction with the low cost, individually and in total, as typically procured in bulk, mark them as properly incidental. Examples of incidental components include small washers, screws, fasteners (i.e., nuts and bolts), miscellaneous wire, corner bead, ancillary tube.

Examples of items that are not incidental and are not covered by the De Minimis Waiver include significant process fittings (i.e., tees, elbows, flanges, and brackets), distribution system fittings and valves, force main valves, pipes for sewer collection and/or water distribution, treatment and storage tanks, large structural support structures.

Items covered as compliant under this waiver must be documented in a report to the Owner to demonstrate that they are both incidental and that they fall within the cost allowances of this waiver. The costs of these items must be documented by invoices. The report must include a listing of types and categories of materials to which the waiver is applied, the total cost of incidental components covered by the Waiver for each category, and the calculations by which the total cost of materials incorporated into the project was determined.

Appendix 2 – Sample Certifications

Step Certification

The following information is provided as a sample letter of step certification for American Iron and Steel compliance. Documentation must be provided on company letterhead. This is to be provided by each handler (supplier, fabricator, manufacturer, processor, etc.). Each time a step in the manufacturing process takes place, the handler delivers its work along with a certification of its origin.

Date

Company Name

Company Address

City, State Zip

Subject: American Iron and Steel Step Certification for Project (Insert project name and SRF number)

I, (company representative), certify that the (melting, bending, coating, galvanizing, cutting, etc.) process for (manufacturing or fabricating) the following products and/or materials shipped or provided for the subject project is in full compliance with the American Iron and Steel requirement as mandated in EPA's State Revolving Fund Programs.

List of items, products and/or materials:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Appendix 2 – Sample Certifications

Final manufacturer certification

The following information is provided as a sample letter of the final manufacturer to certify American Iron and Steel compliance for the entire manufacturing process. Documentation must be provided on company letterhead.

Date

Company Name
Company Address
City, State Zip

Subject: American Iron and Steel Certification for Project (Insert project name and SRF number)

I, (company representative), certify that the following products and/or materials shipped/provided to the subject project are in full compliance with the American Iron and Steel requirement of P.L. 113-76 and as mandated in EPA's State Revolving Fund Programs.

List of items, products and/or materials:

If any of the above compliance statements change while providing material to this project we will immediately notify the prime contractor and the engineer.

Signed by company representative

Appendix 2 – Sample Certifications Contractor De Minimis Report

Owner: (Owner Name)

SRF Project No: (SRF Number)

Project Description: (Contract title or brief description)

Date: (Date of report)

Submitted by (name & title): (Contractor representative)
Company Name

LIST OF MATERIALS OR CATEGORIES OF MATERIALS PERMANENTLY INCORPORATED INTO THE PROJECT

Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00

Total Permanent Materials **\$10,000.00**

1 % of total material cost	\$100.00	Maximum cost for individual item waived
5 % of total material cost	\$500.00	Maximum cumulative cost for category waived

LIST OF MATERIALS OR CATEGORIES OF MATERIALS COVERED BY DE MINIMIS WAIVER

COST	COMPLIANT (Yes/No)
Category or Item	Yes
Category or Item	Yes
Category or Item	Yes
Category or Item	Yes
Category or Item	Yes

Total De Minimis Items **\$500.00** **Yes**

INVOICES ATTACHED FOR DE MINIMIS ITEMS.

Appendix 3 – P.L. 113-76, Consolidated Appropriations Act, 2014

The Act states:

Sec. 436 (a)(1) None of the funds made available by a State water pollution control revolving fund as authorized by title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) or made available by a drinking water treatment revolving loan fund as authorized by section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j-12) shall be used for a project for the construction, alteration, maintenance, or repair of a public water system or treatment works unless all of the iron and steel products used in the project are produced in the United States.

(2) In this section, the term “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(b) Subsection (a) shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency (in this section referred to as the “Administrator”) finds that—

(1) applying subsection (a) would be inconsistent with the public interest;

(2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the Administrator receives a request for a waiver under this section, the Administrator shall make available to the public on an informal basis a copy of the request and information available to the Administrator concerning the request, and shall allow for informal public input on the request for at least 15 days prior to making a finding based on the request. The Administrator shall make the request and accompanying information available by electronic means, including on the official public Internet Web site of the Environmental Protection Agency.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

(e) The Administrator may retain up to 0.25 percent of the funds appropriated in this Act for the Clean and Drinking Water State Revolving Funds for carrying out the provisions described in subsection (a)(1) for management and oversight of the requirements of this section.

(f) This section does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency’s capacity to approve such plans and specifications prior to a project requesting bids, prior to the date of the enactment of this Act.

Appendix D - Mandatory Forms

The following forms must be completed and returned with the Proposal:

- Contractor's Affidavit (E-Verify)
- Sub-Contractor's Affidavit (E-Verify)
- SAVE Affidavit
- W-9

CONTRACTOR'S AFFIDAVIT OF EMPLOYMENT ELIGIBILITY

STATE OF GEORGIA

NEWTON COUNTY

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. 13-10-91, stating affirmatively that the individual, firm, or corporation which is engaged in the physical performance of services on behalf of **Newton County Water and Sewerage Authority** has registered with, is authorized to use and uses the Federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. §13-10-91. Furthermore, the undersigned Contractor will continue to use the Federal work authorization program throughout the contract period.

The undersigned further agrees that, should it employ or contract with any Subcontractor(s) in connection with the physical performance of services pursuant to this contract with the **Newton County Water and Sewerage Authority**, Contractor will secure from such Subcontractor(s) similar verification of compliance with O.C.G.A. 13-10-91. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the **Newton County Water and Sewerage Authority** at the time the Subcontractor(s) is retained to perform such service. Contractor hereby attests that its Federal work authorization user identification number and date of authorization are as follows:

E-Verify Company ID Number

Date of Authorization

Name of Contractor

Name of Project

I (We) hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on the _____ day of _____, 20192019, in _____ (City),
_____(State).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and sworn before me on this the _____ day of _____, 2019

Notary Public

My Commission Expires: _____

SUB-CONTRACTOR'S AFFIDAVIT OF EMPLOYMENT ELIGIBILITY

STATE OF GEORGIA

NEWTON COUNTY

By executing this affidavit, the undersigned sub-contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the individual, firm or corporation which is engage in the physical performance

of services under a contract for _____ (name of subcontractor with whom such sub-contractor has privity of contract) and

_____ (name of contractor) on behalf of Newton County Water and Sewerage Authority has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned sub-contractor will continue to use the federal work authorization program throughout the contract period and the undersigned sub-contractor will contract for the physical performance of services in satisfaction of such contract only with sub-contractors who present an affidavit to the sub-contractor with the information required by O.C.G.A. § 13-10-91(b). The undersigned sub-contractor shall submit, at the

time of such contract, this affidavit to _____ (name of sub-contractor with whom such sub-contractor has privity of contract). Additionally, the undersigned sub-contractor will forward notice of the receipt of any affidavit from a sub-contractor to

_____ (name of sub-contractor with whom such subcontractor has privity of contract). Sub-contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

E-Verify Company ID Number

Date of Authorization

Name of Contractor

Name of Project

I (We) hereby declare under penalty of disqualification that the foregoing is true and correct.

Executed on the _ day of _____, 2019, in _____

(City), _____ (State).

Signature of Authorized Officer or Agent

Printed Name and Title of Authorized Officer or Agent

Subscribed and sworn before me on this the _____ day of _____, 2019

Notary Public

My Commission Expires: _____

SAVE AFFIDAVIT

STATE OF GEORGIA

NEWTON COUNTY

By executing this affidavit under oath, as an applicant for a public benefit, as referenced in O.C.G.A. §50-36-1, administered by the Georgia Department of Community Affairs, the undersigned applicant verifies one of the following with respect to my ability to enter into a contract with the Newton County Water and Sewerage Authority:

- 1) _____ I am a United States citizen.
- OR
- 2) _____ I am a legal permanent resident of the United States.
- OR
- 3) _____ I am an otherwise qualified alien or non-immigrant under the Federal Immigration and Nationality Act and lawfully present in the United States with an alien number issued by the Department of Homeland Security or other federal immigration agency. My alien number issued by the Department of Homeland Security or other federal immigration agency is:

_____.

The undersigned applicant also hereby verifies that he or she is 18 years of age or older and has provided at least one secure and verifiable document, as required by O.C.G.A. §50-36-1(f)(1), with this affidavit.

The secure and verifiable document provided with this affidavit can best be classified as:

_____.

In making the above representation under oath, I understand that any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit shall be guilty of a violation of O.C.G.A §16-10-20, and face criminal penalties as allowed by such criminal statute.

Executed this the _____ day of _____, 2019 in _____ (City),
_____ (State).

*Signature of Applicant

Printed Name of Applicant

Subscribed and sworn before me on this the _____ day of _____, 2019.

Notary Public

My Commission Expires: _____

Insert W-9 pdf here.

Appendix E - Miscellaneous

The following items shall be completed and returned with the Proposal under Appendix E:

- Addenda Acknowledgement (if applicable)
- CMAR Agreement (TBA; Addendum No. 1)
- Cost Proposal (TBA; Addendum No. 1)
- Contractor's Licenses
 - Business License
 - Georgia Utility Contractor's License

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

Acknowledgements:

Please fill out and sign below to indicate Addenda received to the RFP.

Received Addendum No. _____ Dated: _____

Received Addendum No. _____ Dated: _____

Received Addendum No. _____ Dated: _____

Received Addendum No. _____ Dated: _____

Received Addendum No. _____ Dated: _____

This, the _____ day of _____, 2019

Company name: _____

*Printed Name

*Signature

*Title

(Corporate Seal)

Request for Proposal Construction Management at Risk Services for the A. Scott Emmons Water Reclamation Facility at the Little River

Addendum No. 1

Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

(770) 385-3923



www.ncwsa.us

December 20, 2018

Addendum No. 1 Instructions

Summary

Addendum No. 1 revises certain language in the RFP at Sections or locations as instructed. It also addresses questions from the pre-submittal meeting and includes the following materials:

- Power Point Presentation from Pres-Submittal Meeting
- Technical Specifications and Project Manual
- Renderings

Note: Addendum No. 2 will provide the CMAR Agreement and the Cost Proposal.

Questions from the Pre-Submittal Conference Held on 12/14/2018

Q: Regarding the Proposal submittal date: When will decision be made?

A: We will consider accelerating the schedule. See Addendum No. 1

Q: When can we mobilize to the site?

A: After award of project by Authority Board and subsequent execution of CMAR Agreement.

Q: Along with the date, will it be decided next week if interviews will be necessary?

A: If asked, the Board would probably defer toward a Staff Recommendation of saving time. However, we reserve the right to interview to aid in decision making.

Q: Are contract negotiations going to be at the end of April?

A: Per the published schedule in the RFP; unless we accelerate the submittal schedule in Addendum No. 1.

Q: What is the process for submitting proposals and can we move the date?

A: Addendum No. 1 would revise the date, if that is the course of action.

Q: Will the silo features be in the documents?

A: Yes; downloads would be available.

Q: Is there a place in the documents where it lists where Phase I preconstruction services are described?

A: Yes. The Appendix has a list of tasks associated with the Preconstruction Phase.

Q: Is the PowerPoint from the Pre-Submittal Meeting in the documents?

A: No; however, it will be provided in Addendum No. 1.

Revisions

1. On Page 6, Schedule, replace with the following table :

Issue RFP:	November 26, 2018
Acknowledgement:	December 7, 2018, 5:00 p.m.
Pre-submittal Conference:	December 14, 2018, 10:00 a.m.
Submit Proposals:	February 1, 2019; 5:00 p.m.
Interviews (if needed):	February 11 – 13, 2019
Award:	February 20, 2019
Contract Negotiation (Est.):	March 2019
Notice To Proceed (Est.):	April 1, 2019

2. On Page 7, Qualifications, revise 1st paragraph as follows :

- a. Delete the following sentence:

Proposers should demonstrate a minimum of 5 years of firm and key team member experience in CMAR, or other collaborative project delivery methodology, and direct self-performance of water or wastewater treatment plants for municipal, public or private agencies.

- b. Substitute the following text for the deleted sentence:

Proposers should demonstrate a minimum of 10 years of firm and key team member experience in contracting for water or wastewater treatment plant construction for municipal, public or private agencies. NCWSA will look favorably on firms that propose minimal change orders, avoid claims and litigation, and offer innovative approaches while collaboratively work with the Owner and Engineer to solve problems.

3. *On Page -7, Experience, revise the second paragraph as follows:*

a. *Delete the following sentence:*

A desirable candidate will have proven experience delivering projects in the CMAR or other alternative delivery category.

b. *Substitute the following sentence for the deleted sentence:*

A desirable candidate will have proven experience delivering water or waste water treatment plant projects as follows:

4. *On Page 7, Experience, revise Item 2 as follows:*

a. *Delete the following text: ...five (5) relevant projects, at least three (3) of which were procured through alternative delivery including CMAR, Design-Build or Progressive Design-Build.*

b. *Substitute the following text for the deleted text: ...five (5) relevant projects highlighting innovative approaches and collaboratively working with Owner and Engineer to solve problems.*

5. *On Page 8, Experience, after Item 3, make the following revisions:*

a. *Strike the following sentence:*

Although we are interested in alternative delivery experience, for traditional design-bid-build, list the bid price, and total cost of the project at completion.

6. *Under Appendix A, Page A-3, revise the 1st sentence as follows:*

a. *Delete the following:*

Construction manager will essentially serve as an extension of the Owner to implement the Project.

b. *Substitute the following sentence for the deleted sentence: The CMAR will be an independent contractor to the Owner.*

Request for Proposal Construction Management at Risk Services for the A. Scott Emmons Water Reclamation Facility at the Little River

Addendum No. 2

Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

(770) 385-3923



www.ncwsa.us

January 4, 2019

Addendum No. 2 Instructions

Summary

Addendum No.2 provides additional items including:

- Additional Instructions for Cost Proposal
- Appendix E: Cost Proposal Including General Conditions and Cost of Work Matrix
- Appendix E: Proposed CM Agreement with Exhibits

Instructions

1. *On Page 9, Cost Proposal, add the following instruction :*

Please provide the firm's Cost Proposal response under Appendix E, in a sealed envelope, labeled Cost Proposal and secured in the Firm's Proposal (3-ring binder).

2. *On Page 10, Forms and Affidavits, add note to Cost Proposal as follows:*

Please provide the firm's Cost Proposal response under Appendix E, in a sealed envelope, labeled Cost Proposal and secured in the Firm's Proposal (3-ring binder).

Additional Documents

Replace Page E-1, Appendix E – Miscellaneous with Appendix E – Miscellaneous documents contained herein.

Appendix E - Miscellaneous

The following items shall be completed and returned with the Proposal under Appendix E:

- Addenda Acknowledgement (if applicable)
- Cost Proposal
- Proposed CM Agreement w/ General Conditions & Exhibits A - D
- Contractor's Licenses
 - Business License
 - Georgia Utility Contractor's License

Cost Proposal Including General Conditions and Cost of Work Matrix

This table describes how the work items that support the Owner's Project Cost are defined. The components of the CMAR's GMP should be broken down and described as follows:

- Fixed Costs for General Conditions Work,
- Reimbursable Costs for General Conditions Work,
- Percent Fee, and
- Direct Construction Costs

Owner's Definitions:

Cost of Work = Columns 1+ 2+ 3

GMP = Cost of Work + Column 4.

Total Project Cost = GMP + Column 5

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
1.	Allowances			X		
2.	Alternates			X		
3.	Design & Engineering Services and Services During Construction					X
4.	Work performed by CMAR and / or subcontractors			X		
5.	Insurance Premiums		X		X	
6.	Business Licenses & Associated Fees				X	
7.	Communications: Cell phones, radios, pagers, phone, fax, computer networks, etc.	X				
8.	Construction Schedules	X				
9.	Contract Modification Procedures	X				
10.	Commissioning			X		
11.	Home Office Overhead				X	
12.	Correction of Non-Conforming Work				X	
13.	Escrow Cost & Fees				X	
14.	Final Cleaning & Pest Control			X		
15.	Profit				X	
16.	Project Closeout	X				
17.	Project Warranty		X			
18.	Quality Control	X				
19.	Safety and Administration	X				
20.	Subcontractor Administration and Coordination	X				
21.	Submittal Procedures	X				

General Conditions and Cost of Work Matrix (cont.)

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
22.	Construction Equipment – Owned and Rented including fuel and maintenance			X		
23.	Direct Labor Expense including Benefits and Workers Compensation Insurance			X		
24.	Drug / Substance Abuse Testing	X				
25.	Performance & Payment Bond Premium				X	
26.	Processing Progress Payment	X				
27.	Project Accounting				X	
28.	Project Management & Field Coordination Staff	X				
29.	Project Meetings / Minutes	X				
30.	Regulatory Permits and Fees		X			
31.	Reproduction Costs: Plans / Specifications / Bid Documents		X			
32.	Review and Analysis of Subcontractor Qualifications	X				
33.	Incidentals and small tools (under \$500) including repairs, storage and maintenance	X				
34.	Subcontractor Bonds			X		
35.	Subcontractor Costs			X		
36.	Subcontractor Closeout / Warranty			X		
37.	Subcontractor Submittal Procedures			X		
38.	Substitution Requests	X				
39.	Environmental Controls			X		
40.	Electronic Record Drawings	X				
41.	O&M Manuals	X				
42.	Job Site Offices, Furnishings, Equipment, and Supplies	X				
43.	General Housekeeping		X			
44.	Material Hoisting / Distribution			X		
45.	Project Photos / Recordings	X				
46.	Project Signage / Identification	X				
47.	Site Survey (Line / Grade Control)			X		
48.	Special Inspections and Testing					X
49.	Temporary Fencing / Security / Barricades / Partitions / Signs		X			
50.	Temporary Fire Protection		X			
51.	Temporary Lay-Down Areas / Roads		X			
52.	Temporary Lighting		X			

General Conditions and Cost of Work Matrix (cont.)

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
53.	Temporary Parking	X				
54.	Temporary Power Consumption		X			
55.	Temporary Facilities & Controls: Temporary Power Service	X				
56.	Temporary Sanitary Facilities	X				
57.	Temporary Water Consumption		X			
58.	Temporary Water Service		X			
59.	Temporary Weather Protection		X			
60.	Vehicles	X				
61.	Warranty – Correcting Defective Work				X	
62.	Waste Management		X			
63.	Travel and per diem for home office and project management staff	X				
64.	Insurance Deductibles				X	

Cost Proposal

Under the terms and conditions contained in the RFP and its accompanying Agreement, the undersigned proposes to contract with the Newton County Water and Sewerage Authority to provide the following professional and construction phase services for the indicated prices or rates.

Phase I - Preconstruction Services Fee is defined as the CMAR's price to work collaboratively with the Owner and Engineer to develop the GMP for the Owner.

A. Phase I Preconstruction Services: \$ _____ Dollars

B. Builder's Fee %: To meet the Owner's requirements for Competitive Sealed Proposals as defined in O.C.G.A. 36-91-2, the CMAR shall provide its firm Builder's Fee to be expressed as a percentage and allocated as defined in Column 4. This percentage fee will apply to the Construction Services Phase (Phase II) and changes to the Work that occur or are required during

Phase II – Construction Phase Services: _____ %.
Percent

By: _____
Signature

Firm or Company: _____
Name of Organization

Date: _____

DRAFT AIA® Document A133™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the « » day of « » in the year « 2019 »
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status and address)

«Newton County Water & Sewerage Authority »« »
«11325 Brown Bridge Road
Covington, Georgia 30016 »

and the Construction Manager:
(Name, legal status and address)

« »« »
« »

for the following Project:
(Name and address or location)

«A. Scott Emmons Water Reclamation Facility at the Little River »
«505 Shire Parkway, Social Circle, Georgia 30025»

The Engineer:
(Name, legal status and address)

«Georgia Water and Environmental Services, LLC »« »
«1222 Main Street
Perry, Georgia 31069 »

The Owner's Designated Representative:
(Name, address and other information)

«Mr. Wayne Haynie, P.E. »
«Chief Engineer »
«Newton County Water & Sewerage Authority »
«11325 Brown Bridge Road »
«Covington, Georgia 30016 »
«(770) 385-3923
wh@ncwsa.us »

The Construction Manager's Designated Representative:
(Name, address and other information)

Mr. Burke Murph, III, P.E. »
« Georgia Water & Environmental Services, LLC »
« 1222 Main Street »
« Perry, GA 31069 »
« (478) 235-0307 »

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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The Engineer's Designated Representative:
(Name, address and other information)

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The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PHASE I SERVICES
5	COMPENSATION FOR PHASE II SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR PHASE II SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
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11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, Special and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Engineer and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Engineer and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Phase I Services (Preconstruction Phase)

§ 2.1.1 The Construction Manager shall provide the following Phase I Services:

- .1 Prepare a construction management plan for the Project (the "Construction Management Plan") that considers the Owner's schedule, budget, and design requirements for the Project, including alternatives for sequencing and managing the Project.
- .2 Prepare and maintain a Project schedule in collaboration with the Engineer detailing design, permitting, preconstruction and construction phase activities with start-up and commissioning occurring no later than June 1, 2021 (the "Project Schedule"). The Project Schedule shall be in critical path format and shall include all preconstruction, procurement, construction, and post-construction activities and will be refined as the Project design progresses. The critical path shall be defined on the Project Schedule and shall include the following: estimated start and end dates for each activity; time requirements for sequences and durations; milestones dates for receipt and approval of design documents, receipt of regulatory approvals and permits; issuance of the Guaranteed Maximum Price Amendment; time requirements for preparation and processing of shop drawings and samples; delivery durations or schedules for materials or equipment requiring long-lead time procurement; a Project procurement schedule; and installation and construction completion.
- .3 Provide a third party Project controls platform or similar Project server that will be used to store and exchange information between the Owner, Engineer, and Construction Manager. This web-based platform shall be used throughout all phases of the Project including pre-construction, construction, start-up and commissioning.
- .4 Review Project design documents (Drawings and Specifications) at key Project milestones (90%) and provide recommendations with respect to constructability, sequence of construction, maintenance of plant operations, construction duration, materials of construction, procurement strategy, and other factors that may influence Project costs, performance, or quality.
- .5 Provide value-engineering recommendations to Owner and Engineer, including cost and constructability evaluations of alternate materials and systems that meet the Engineer's intent.
- .6 Reimburse Engineer for any and all changes and revisions to the Drawings and Specifications resulting from Sections 2.1.1.4 and 2.1.1.5. Reimbursement shall be made from the Owner's Allowance contained in the Phase I Services cost proposal.
- .7 Support the Owner's efforts to procure key process equipment integral to the Project design. This effort would entail negotiating firm quotations and preparing for issuance of purchase orders on long lead-time equipment.
- .8 Prepare and maintain a cost model defining the estimate of the construction cost including a report identifying variances from the Project budget and prior submittals (the "Cost Model"). The Cost Model shall include a Work breakdown structure of sufficient detail to be reviewed and approved by the Owner. Variances between the Cost Model and the Owner's estimated construction cost or Project budget shall be identified and recommendations for reconciling the variances shall be prepared by the Construction Manager and presented to the Owner.
- .9 Regularly attend monthly meetings with the Owner and Engineer during the Preconstruction Phase. Provide updates to Project Schedule and Construction Management Plan.
- .10 Prepare a permitting plan that identifies all construction-related permits that must be obtained by the Construction Manager as well as those permits that are the responsibility of the Owner (the "Permitting Plan").

- .11 Provide updates regarding the status of permits as set forth on the Permitting Plan at each design milestone review meeting and identify timelines on the Project Schedule.
- .12 Prepare a Procurement Plan meeting the requirements of applicable procurement policies to obtain bids and firm quotations from equipment vendors, suppliers and subcontractors for performance of the Work. The Procurement Plan shall identify assessment tools and scoring criteria for selection, participation goals, recommended bid packages, and the process for integrating Owner-selected and pre-negotiated equipment, if any, into the Project. The Procurement Plan shall identify procurement time requirements and durations that shall be integrated into the Project Schedule and shall identify long-lead items, and other items that may affect the Project Schedule.
- .13 Establish Project Safety Plan and Protocols. Construction Manager shall conduct workshops with the Owner, Engineer and other associated parties to instill a safe Project Site well before ground-breaking.
- .14 Prepare Start-up and Sequencing Plan that identifies an approach for implementing new processes and managing existing water production during construction and start-up. Incorporate the Start-up and Sequencing Plan into the Project Schedule and Cost Model.
- .15 Prepare a Guaranteed Maximum Price proposal package including labor, materials, bids and firm quotations from equipment suppliers, subcontractors, allowances, general conditions, fee, contingency, and all assumptions using the final design package (Drawings and Specifications) prepared by the Engineer.
- .16 Participate in Guaranteed Maximum Price negotiations with the Owner.
- .17 Develop final Guaranteed Maximum Price document.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Engineer and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Engineer on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Engineer on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 The Construction Manager shall prepare and periodically update the Project Schedule for the Engineer's review and the Owner's acceptance. The Construction Manager shall obtain the Engineer's approval for the portion of the Project Schedule relating to the performance of the Engineer's services. The Project Schedule shall comply with Section 2.1.1.2 and coordinate and integrate the Construction Manager's services, the Engineer's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on Drawings and Specifications prepared by the Engineer, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements for the Engineer's review and Owner's approval. If the Engineer or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Engineer progresses with the preparation of the Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Engineer, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed

Maximum Price for the Work. Such estimates shall be provided for the Engineer's review and the Owner's approval. The Construction Manager shall inform the Owner and Engineer when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Engineer's review and the Owner's acceptance, the Procurement Plan set forth in Section 2.1.1.12.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Engineer and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Engineer may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Engineer, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's general conditions and Fee. Construction Manager's Guaranteed Maximum Price proposal shall encompass the entirety of the Work, including the following procurement and construction tasks:

Advertisement and Bidding:

- .1 Arrange bid packages and solicit bids in accordance with the Procurement Plan.
- .2 Identify bidders and manage production and distribution of bid documents.
- .3 Schedule and conduct pre-bid conferences in conjunction with the Engineer.
- .4 Monitor bidder activity.
- .5 Issue clarifications and required addenda to bidders.
- .6 Publicly open, review and analyze bids, in conjunction with the Owner and Engineer.
- .7 Prepare estimates of the additional costs and impacts to the Guaranteed Maximum Price and Project Schedule attributable to the addenda, if any.

Construction Services

- .8 Issue Notices of Award and execute Subcontractor agreements with selected responsive, responsible bidders.
- .9 Provide and maintain on-site staff for all required construction management, administration, and self-performance functions.
- .10 Establish and maintain coordination procedures between all parties.

- .11 Maintain and update the Project Schedule, the Construction Management Plan, the Permitting Plan, the Procurement Plan and the Cost Model.
- .12 Conduct and record Project meetings with all Subcontractors, Owner, Engineer, and other stakeholders and independent contractors.
- .13 Maintain a system for the expedient review and processing of requests for information, shop drawings, material and equipment samples, product data, change orders, schedule adjustments, substitutes, pay requests, and logs.
- .14 Maintain records and submit bi-weekly reports and formal monthly reports to the Engineer and Owner, as required by this Agreement.
- .15 Establish and maintain a quality control program to monitor the quality of the Work and ensure compliance with the Contract Documents.
- .16 Establish and maintain a health and safety program that meets all standards, regulations applicable to the Project.
- .17 Maintain and update the Cost Model and provide cost control through progress payment review and verifications according to the Project Schedule and Guaranteed Maximum Price.
- .18 Develop and maintain as-built and record drawings for the duration of the Project.
- .19 Coordinate factory witness testing and final acceptance testing required by the Engineer.
- .20 Develop, coordinate and execute a phased sequencing and start-up plan that meets minimum regulatory requirements of the Owner's facilities, including managing current wastewater flows.
- .21 Coordinate Project completion activities, including assembly of guarantees, manuals, as-built and record drawings, and closeout documents; training; regulatory approvals; and the Owner's final acceptance.
- .22 Coordinate and monitor the resolution of remaining "punch-list" items to the satisfaction of the Engineer and the Owner.
- .23 Coordinate systems start-up and commissioning activities.
- .24 Coordinate the compilation of Subcontractor operations and maintenance manuals for transmittal to the Engineer and Owner.

Project Closeout / Warranty:

- .25 Coordinate furniture, furnishings and equipment deliveries and installation.
- .26 Submit as-built and record drawings for approval of the Engineer and the Owner.
- .27 Assist in transition to operation by the Owner.
- .28 Receive, record and address all Warranty issues.
- .29 Resolve all Warranty issues in accordance with the terms of the Contract Documents and to the satisfaction of the Engineer and the Owner.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Engineer, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not

include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's general conditions and Fee;
- .4 An updated Project Schedule meeting the requirements of Section 2.1.1.2 and indicating the anticipated dates of Substantial Completion, start-up, and commissioning upon which the proposed Guaranteed Maximum Price is based, with start-up and commissioning occurring no later than June 1, 2021;
- .5 Construction Management Plan, Permitting Plan, Procurement Plan and Cost Model updated to comport with Construction Manager's Guaranteed Maximum Price proposal; and
- .6 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. Construction Manager's use of contingency amounts shall be subject to Owner's review and prior approval as provided for herein.

§ 2.2.5 The Construction Manager shall meet with the Owner and Engineer to review the Guaranteed Maximum Price proposal. In the event that the Owner and Engineer discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Engineer. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Engineer to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Engineer of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.2.10 If the Owner and Construction Manager are unable to reach agreement on the Guaranteed Maximum Price proposal, the Owner may terminate this Agreement for convenience by written notice to Construction Manager. Upon such termination, Owner shall be permitted to direct the Engineer to finalize the Drawings and Specifications and create construction documents suitable for public bidding of the Project, or, to negotiate with the next highest ranked proposer for the Project. In such event, Construction Manager shall be entitled to receive payment of the Phase I Services performed prior to receipt of Owner's notice of termination in accordance with Article 4 hereof and such compensation shall be Construction Manager's sole and exclusive remedy. In no event, shall Construction Manager

be entitled to damages or payment of amounts in addition to its Phase I Service (Preconstruction Phase) compensation including, but not limited to, payments for lost opportunity costs, anticipated profits, or fees, general conditions, or costs related to the Construction Phase.

§ 2.3 Phase II Services (Construction Phase)

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner’s acceptance of the Construction Manager’s Guaranteed Maximum Price proposal or the Owner’s issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 **Early Completion Incentive and Liquidated Damages.** Construction Manager shall be eligible to receive an early completion bonus in an amount of up to \$90,000.00 for achieving Substantial Completion earlier than the date established by the Guaranteed Maximum Price Amendment. In the event Construction Manager actually achieves Substantial Completion early, Construction Manager shall be entitled to a \$500.00 per day bonus for each day Construction Manager achieves Substantial Completion prior to the required date, up to a maximum of 180 days (or \$90,000.00). Owner shall pay Construction Manager any bonus amounts it may be entitled to under this provision, subject to any adjustments or reductions permitted or required by other provisions of the Contract, with Construction Manager’s final payment. In the event the Construction Manager fails to achieve Substantial Completion prior to the date established by the Guaranteed Maximum Price Amendment, the Owner will sustain damages and losses as a result of such failure. The exact amount of such damages will be difficult to ascertain. The Owner and the Construction Manager, therefore, agree that if the Construction Manager fails to achieve Substantial Completion of the Work prior to the date established by the Guaranteed Maximum Price Amendment, the Owner shall be entitled to retain or recover from the Construction Manager, as liquidated damages and not as a penalty, the sum of Five Hundred Dollars (\$500.00) per day, commencing on the day after the date Substantial Completion is to occur as set forth in the Guaranteed Maximum Price Amendment. Owner and Construction Manager acknowledge and agree that the liquidated damages provided hereunder are (i) a reasonable pre-estimate of the Owner’s losses likely to be suffered in the event of such delay, (ii) in the nature of liquidated damages and not a penalty, and (iii) fair and reasonable. Construction Manager shall pay Owner all liquidated damages on request. The Owner may deduct liquidated damages described in this section from any unpaid amounts then or thereafter due the Construction Manager under the Contract.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager’s own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. Construction Manager’s procurement of such Work shall be carried out in accordance with the provisions of the State of Georgia’s Local Government Public Works Construction Statute, O.C.G.A. §§ 36-91-1 *et seq.*, and other Georgia State and Federal procurement requirements applicable to this Agreement.

§ 2.3.2.2 [Not Used].

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Engineer.

§ 2.3.2.6 [Not Used]. Engineer

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Engineer. Construction Manager's progress reports shall include information reasonably requested by the Owner, including an updated Project Schedule indicating progress of the Work against the plan and critical path. Construction Manager's progress reports shall also include an updated Construction Management Plan, Permitting Plan, Procurement Plan and Cost Model reflecting the progress and status of the Project. The Construction Manager shall also keep, and make available to the Owner and Engineer, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 In conjunction with the Cost Model, the Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Engineer and shall provide this information in its monthly reports to the Owner and Engineer, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Phase I - Preconstruction and Phase II - Construction Services.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project. The Owner has provided Construction Manager with the following information for its use and assistance:

- .1 Boundary Survey;
- .2 Waste Load Allocation;
- .3 Environmental Information Document;
- .4 Design Development Report;
- .5 Geotechnical and Subsurface Investigation;
- .6 Ninety Percent (90%) Construction Drawings;
- .7 Project Manual and Technical Specifications; and
- .8 Access Road, Phase II Construction Drawings.

Engineer

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Engineer. The Owner and the Engineer, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the

Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to reasonably rely on the accuracy of information and services furnished by the Owner but shall exercise reasonable diligence to verify the accuracy of such information and exercise proper precautions relating to its use and the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 As set forth in Section 3.1.1, the Owner has furnished to Construction Manager certain surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 3.1.4.3 As set forth in Section 3.1.1, the Owner has provided the Geotechnical and Subsurface Investigation to Construction Manager. The Owner, when such services are requested and at Construction Manager's sole cost and expense, shall furnish additional services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Engineer does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Engineer

The Owner shall retain an Engineer to provide services, duties and responsibilities as described herein.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PHASE I SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Phase I Services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Phase I Services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

§ 4.1.3 The Phase I Services covered by this Agreement shall be completed within « ninety » (« 90 ») calendar day of the date of this Agreement.

§ 4.2 Payments

§ 4.2.1 Construction Manager shall provide a schedule of values setting forth its scope of services and how Construction Manager will invoice the Owner for payment of such services. Owner's payments for services shall be made periodically on the basis of Construction Manager's schedule of values and in proportion to services performed as approved by the Owner upon its review and evaluation of Construction Manager's invoice.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid « forty-five » (« 45 ») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

« 7.5 » % « annually »

ARTICLE 5 COMPENSATION FOR PHASE II SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« »

§ 5.1.2 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« »

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

« Ten Percent (10%) »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed « » percent (« » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

« If the final Contract Sum is less than the final Guaranteed Maximum Price, the difference between such Contract Sum and Guaranteed Maximum Price shall be considered savings and any such savings shall be shared equally by the Owner and Construction Manager. Owner shall pay Construction Manager any savings it may be entitled to under this provision, subject to any adjustments or reductions permitted or required by other provisions of the Contract, with Construction Manager's final payment. »

§ 5.2.1.1 The Guaranteed Maximum Price a contingency in the amount of (Five Percent (5%) of the Guaranteed Maximum Price) Dollars (\$_____). The expenditure of contingency amounts shall be subject to Owner's review and written approval and the contingency may be used as permitted by Section 2.2.4 upon the Construction Manager's written request. At any time, Construction Manager desires to expend contingency amounts, it shall submit a written request to Owner describing in detail the expenditure amount, the events and circumstances giving rise to Construction Manager's request and any further information Construction Manager wishes to provide to justify its request. In response to such request, Owner shall provide a written response approving or denying, in whole or in part, Construction Manager's request or requesting additional information needed for its review. In the event of Owner's denial of Construction Manager's request, either in whole or in part, Owner's written response shall provide the

reasons therefor. If Construction Manager contests any response issued by Owner denying, in whole or in part, Construction Manager's request, Construction Manager may assert a Claim in accordance with Article 9 hereof. Any unexpended amounts of the contingency shall be returned to the Owner via a deductive Change Order, reducing the Guaranteed Maximum Price in the appropriate amount, upon final completion of the Work.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing as approved in accordance with Owner's enabling statute and charter. Construction Manager acknowledges and agrees that changes to the Contract cannot occur as a result of oral direction by the Engineer or the Owner and cannot occur as a result of the conduct of the Owner or Engineer or as a result of course of dealing between the parties. The Engineer may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of properly authorized changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201-2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201-2007 shall have the meanings assigned to them in AIA Document A201-2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201-2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 6.4.1 Costs, including transportation, weather protection and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 6.5.1 Costs of transportation, fuel, weather protection, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value as defined by RS Means Data, latest edition.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval, and rates shall be subject to Section 5.1.4.

§ 6.5.3 Costs of cleanup and removal of debris from the site of the Work and its proper and legal disposal.

§ 6.5.4 Costs of document reproductions, photographs, facsimile transmissions and long-distance telephone calls, overnight mail, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location and properly insured, subject to the Owner's prior approval.

§ 6.5.7 Utility costs (including water, gas, oil and electricity), temporary toilets, and protection and altering of public utilities (where such alterations are required by the Contract Documents or for the performance of the Work).

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

§ 6.6.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property (including the Work), as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;

- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Phase I Services (Preconstruction Phase);
- .9 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor;
- .10 Insurance deductibles, including any amounts expended by Construction Manager satisfying liabilities or risks that are self-insured;
- .11 The costs of any fines, re-inspection fees and penalties, including interest thereon, assessed against Construction Manager by any federal, state or local government or quasi-governmental authority attributable to the fault or responsibility of the Construction Manager;
- .12 The costs of any liability, taxes, charges contributions attributable to Construction Manager's failure to make timely disbursements to or failure to pay Subcontractors;
- .13 The costs of bonds to discharge liens filed against the Project, including its lands and improvements, by Subcontractors who have not been paid amounts due to them by Construction Manager for reasons due to the fault or responsibility of Construction Manager;
- .14 The costs of premiums for Subcontractor default insurance; and
- .15 Legal, mediation and arbitration costs, including attorneys' fees, arising from or relating to disputes between Owner and Construction Manager.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions and Construction Manager's Self-Performed Work

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall provide written notification to the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.10.3 As part of Construction Manager's written notification of a contemplated related-party transaction, as required under Section 6.10.2, Construction Manager shall provide Owner responsible and responsive bids of at least three (3) other non-related, qualified parties and a summary of all bids confirming that the bid of Construction

Manager's related –party is the lowest responsible and responsive bid. Construction Manager's notification shall provide a detailed explanation of the transaction and scope of Work encompassed by the transaction as well as Construction Manager's rationale why Owner should authorize the requested related-party transaction.

§ 6.10.4 If any of the costs to be reimbursed arise from Construction Manager's self-performance of Work, the Construction Manager shall provide written notification to the Owner of the specific scope Work to be self-performed, including the anticipated cost to be incurred, before any such Work is performed or cost incurred. If Owner, after such notification, authorizes the Construction Manager to self-perform such Work, then the cost incurred shall be included as a cost to be reimbursed. If Owner fails to authorize the Construction Manager's request to self-perform Work, the Construction Manager shall procure the Work, equipment, goods or services from some other person or entity according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.10.5 As part of Construction Manager's written notification of its request to self-perform Work, as required under Section 6.10.4, Construction Manager shall provide Owner its detailed estimate of the cost of the Work to be self-performed, responsible and responsive bids of at least three (3) other non-related, qualified parties to perform such Work, and a summary of all bids confirming that the cost of Construction Manager's self-performed Work is the lowest responsible and responsive bid. Construction Manager's notification shall provide a detailed explanation of the scope of the Work to be self-performed as well as Construction Manager's rationale why Owner should authorize Construction Manager to self-perform the requested Work.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and follow Generally Accepted Accounting Principles. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR PHASE II SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Engineer by the Construction Manager and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents.

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 7.1.3 Provided that an Application for Payment is received by the Engineer not later than the « 25th » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the « 25th » day of the « following » month.

(Federal, state or local laws may require payment within a certain period of time.)

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit a billing manifest which shall include payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Engineer to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.4.1 With each Application for Payment, the Construction Manager shall submit to the Owner its fully executed Construction Manager's Conditional Claim Waiver and Release upon Progress Payment in the form attached hereto as Exhibit "A." Satisfaction of all requirements set forth in this Section 7.1.4, including submitting Construction Manager's fully executed Construction Manager's Conditional Claim Waiver and Release Upon Progress Payment

form, shall be an express condition precedent to Owner's obligation to make any progress payment to Construction Manager.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item and Construction Manager's general conditions shall be shown separately and itemized by component parts. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer and Owner may require. This schedule, unless objected to by the Engineer or Owner, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of « ten » percent (« 10 » %), subject to Section 7.1.11. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of « ten » percent (« 10 » %) from that portion of the Work that the Construction Manager self-performs, subject to Section 7.1.11;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Engineer has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 7.1.9 Except with the Owner's prior approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Engineer has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Engineer has made exhaustive or continuous on-site inspections; or that the Engineer has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.1.11 Under Sections 7.1.7.3 and 7.1.7.4, the Owner shall withhold retainage of ten percent (10%) from each progress payment until fifty percent (50%) of the Contract value, including change orders and other additions to Contract, is due. If the manner of completion of the Contract and its progress are reasonably satisfactory to the Owner no more retainage shall be withheld. If, after discontinuing retainage, the Owner determines that the Work is unsatisfactory or has fallen behind the Project Schedule, the Owner may resume retainage at the previous level.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work in a form and in such detail as is acceptable to the Owner and its auditors and a final Application for Payment; and
- .3 the Owner's auditors have completed their review of the Construction Manager's final accounting and have produced their written report of the Cost of Work substantiating the Construction Manager's final accounting;
- .4 the Construction Manager has submitted to the Owner its fully executed Construction Manager's Final, Unconditional Claim Waiver and Release upon Final Payment in the form attached hereto as Exhibit "B;" and
- .5 a final Certificate for Payment has been issued by the Engineer.

Satisfaction of all requirements set forth in this Section 7.2.1 shall be an express condition precedent to Owner's obligation to make final payment to Construction Manager. The Owner's final payment to the Construction Manager shall be made no later than 30 days after all requirements of Section 7.2.1 are met to the reasonable satisfaction of the Owner. Engineer

« »

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Engineer by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Engineer will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Engineer's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Engineer is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request a meeting with the Owner and its auditors to review such report and seek a negotiated resolution of any disputed amount. A request for such a meeting shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Engineer's final Certificate for Payment. Failure to request such a meeting within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, provided all other requirements of Section 7.2.1 are satisfied, the Owner shall pay the Construction Manager the amount certified in the Engineer's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Construction Manager's Insurance Requirements attached to this Agreement as Exhibit "C" as supplemented by Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Workers Compensation	Statutory Requirements
Employers Liability	\$1,000,000/\$1,000,000/\$1,000,000
Commercial General Liability	\$20,000,000/\$20,000,000
Automotive Liability	\$1,000,000 combined limit
Pollution Liability	\$10,000,000/\$10,000,000
Professional Liability	\$10,000,000/\$10,000,000
Builder's Risk	Full Contract Value
Payment and Performance Bonds	Full Contract Value

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Phase I Services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

☐ Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☒ Litigation in a court of competent jurisdiction

☐ Other: *(Specify)*

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§ 9.3 Initial Decision Maker

The Engineer will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Phase II Services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Engineer.)

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement accordance with Section 2.2.10 hereof.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be compensated for Phase I Services performed prior to receipt of a notice of termination in accordance with Section 2.2.10 hereof. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager’s Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner’s rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

« »

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« »

- .5 Other documents:

(List other documents, if any, forming part of the Agreement.)

- .1. The Request for Proposals issued November 27, 2018, as subsequently amended by Addenda;
- .2. The Special Conditions, including 1) the Georgia Environmental Finance Authority American Iron Steel Special Conditions and Information for Federally Assisted State Revolving Loan Fund Construction Contracts, dated April 11, 2014, and 2) the Georgia Environmental Finance Authority Supplemental General Conditions for Federally Assisted State Revolving Fund Construction Contracts dated May 9, 2014;
- .3. The Construction Manager's Proposal in response to Item 12.2.5.1 (RFP), found above. »

This Agreement is entered into as of the day and year first written above.

OWNER (Signature)

« »« »

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

« »« »

(Printed name and title)

GENERAL CONDITIONS

DRAFT AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« A. Scott Emmons Water Reclamation Facility at the Little River »
«>>

THE OWNER:

(Name, legal status and address)

« Newton County Water and Sewerage Authority »« »
« 11325 Brown Bridge Road
Covington, Georgia 30016 »

THE ENGINEER:

(Name, legal status and address)

« Georgia Water and Environmental Services, LLC »« »
« 1222 Main Street
Perry, Georgia 31069 »

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary, Special and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Engineer. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Engineer or the Engineer's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Engineer or the Engineer's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Engineer's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Engineer and the Engineer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Work not covered in the Contract Documents will not be required unless it is consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of a conflict between the Drawings, Specifications or other Contract Documents, the Contractor shall be deemed to have included the more stringent requirement or more expensive option in the Guaranteed Maximum Price as determined by Owner in its sole and absolute discretion.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity, the Contract Documents frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Engineer and the Engineer’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Engineer’s or Engineer’s consultants’ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Engineer and the Engineer’s consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Engineer does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 2.1.2 [Not Used].

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 [Not Used].

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to reasonably rely on the

accuracy of information furnished by the Owner but shall exercise reasonable diligence to verify the accuracy of such information and exercise proper precautions relating to its use and the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's additional services and fees of consultants, experts and attorneys made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Engineer in the Engineer's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Engineer may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Engineer any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Engineer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Engineer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Engineer in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient

maintenance, improper operation, or normal wear and tear and normal usage. If required by the Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Engineer before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Engineer will promptly investigate such conditions and, if the Engineer determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Guaranteed Maximum Price or Contract Time, or both. If the Engineer determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Engineer's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Engineer. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Guaranteed Maximum Price and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Guaranteed Maximum Price all allowances stated in the Contract Documents.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, general conditions, Fee and other expenses contemplated for stated allowance amounts shall be included in the Guaranteed Maximum Price but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Engineer the name and qualifications of a proposed superintendent. The Engineer may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Engineer has reasonable objection to the proposed superintendent or (2) that the Engineer requires additional time to review. Failure of the Engineer to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Engineer has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor shall prepare the Project Schedule in accord accordance with the Agreement. The Project Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Engineer's approval. The Engineer's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Engineer reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in the Guaranteed Maximum Price or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Engineer.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Engineer and shall be delivered to the Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Engineer is subject to the limitations of Section 4.2.7. Informational submittals upon which the Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Engineer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Engineer Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Engineer that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Engineer.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and (1) the Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Engineer's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Engineer on previous submittals. In the absence of such written notice, the Engineer's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Engineer access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Engineer. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Engineer.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, Engineer, Engineer's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, including such claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), caused by the Contractor's breach of the Contract, or the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor's obligation to indemnify, defend and hold harmless the indemnitees identified in this Section 3.18 shall not apply to claims, damages, losses or expenses attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property to the extent such claims, damages, losses or expenses are caused by the sole negligence of such indemnitees.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ENGINEER

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain a designer lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering in the jurisdiction where the Project is located. That person or entity is identified as the Engineer in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Engineer as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Engineer. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Engineer is terminated, the Owner shall employ a successor designer as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Engineer.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Engineer will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Engineer issues the final Certificate for Payment. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Engineer will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Engineer will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Engineer will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Engineer about matters arising out of or relating to the Contract. Communications by and with the Engineer's consultants shall be through the Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Engineer's evaluations of the Contractor's Applications for Payment, the Engineer will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Engineer has authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer considers it necessary or advisable, the Engineer will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Engineer will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action will be taken in accordance with the submittal schedule approved by the Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Engineer's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Engineer's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Engineer, of any construction means, methods, techniques, sequences or

procedures. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Engineer will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Engineer will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Engineer will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Engineer agree, the Engineer will provide one or more project representatives to assist in carrying out the Engineer's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Engineer will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Engineer will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Engineer's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Engineer will review and respond to requests for information about the Contract Documents. The Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Procurement of Work to be performed by Subcontractors shall be performed in accordance with the terms of the Agreement.

§ 5.2.2 [Not Used].

§ 5.2.3 [Not Used].

§ 5.2.4 [Not Used].

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume

toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Engineer apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Engineer will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Engineer; a Construction Change Directive requires agreement by the Owner and Engineer and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Engineer alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Engineer and signed by the Owner, Contractor and Engineer stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Execution of a Change Order shall constitute a full and final settlement, accord and satisfaction of all Claims between the Contractor and Owner arising out of or related to the changes in the Work that are the subject matter of the Change Order, including the effect the changed Work has upon unchanged Work and the cumulative effect the Change Order, taken together with prior Change Orders, has on the Work.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Engineer and signed by the Owner and Engineer, directing a change in the Work prior to agreement on adjustment, if any, in the -Guaranteed Maximum Price or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order

changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Guaranteed Maximum Price and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Engineer of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Guaranteed Maximum Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price, the Engineer shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Guaranteed Maximum Price, an amount for general conditions and Fee as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Engineer may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be actual net cost as confirmed by the Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for general conditions and Fee shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Engineer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Engineer determines, in the Engineer's professional judgment, to be reasonably justified. The Engineer's interim determination of cost shall be the basis for an adjustment in the

Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Engineer concerning the adjustments in the Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Engineer will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Engineer has authority to order minor changes in the Work not involving adjustment in the Guaranteed Maximum Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Engineer and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Engineer in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Engineer, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Engineer determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Engineer may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Guaranteed Maximum Price is stated in the Agreement and, including authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

The Contractor shall submit to the Engineer and Owner, before the first Application for Payment, a schedule of values allocating the entire Guaranteed Maximum Price to the various portions of the Work and prepared in such form and

supported by such data to substantiate its accuracy as the Engineer and Owner may require. This schedule, unless objected to by the Engineer or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Engineer an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Engineer may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Engineer, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Engineer will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Engineer determines is properly due, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Engineer to the Owner, based on the Engineer's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Engineer's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Engineer. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Guaranteed Maximum Price.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Engineer's opinion the representations to the Owner required by Section 9.4.2 cannot be

made. If the Engineer is unable to certify payment in the amount of the Application, the Engineer will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to make such representations to the Owner. The Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Engineer withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Engineer and the Engineer will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Engineer has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Engineer.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Engineer will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Engineer and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Engineer shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary

liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 [Not Used].

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Engineer a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, the Contractor shall then submit a request for another inspection by the Engineer to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Engineer will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Engineer as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Engineer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Engineer shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Engineer will promptly make such inspection and, when the Engineer finds the Work acceptable under the Contract Documents and the Contract fully performed, the Engineer

will promptly issue a final Certificate for Payment stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Engineer so confirms, the Owner shall, upon application by the Contractor and certification by the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Engineer prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other properties at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Engineer.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Engineer in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Engineer the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Engineer will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Engineer has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Engineer, Engineer's consultants and agents and employees of any of them from and against claims,

damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

The insurance and bond requirements set forth in this Article 11 shall be supplemented by Construction Manager's Insurance Requirements attached to the Agreement as Exhibit "C." To the extent that any inconsistency or conflict exists between the terms of the Construction Manager's Insurance Requirements and this Article 11, the terms of Construction's Insurance Requirements shall control.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect

to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled, materially changed or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Engineer and the Engineer's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Guaranteed Maximum Price, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Engineer's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 [Not Used].

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall be responsible for all deductibles and shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner;

this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Contractor shall purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. To the extent any loss of use is covered by such insurance, the Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor determines that insurance for risks other than those described herein or other special causes of loss should be included in the property insurance policy, the Contractor shall notify the Owner in writing of same and the parties shall determine if such insurance is appropriate or required, and if such a determination is made, the cost thereof shall be incorporated into the Guaranteed Maximum Price by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled, materially changed or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Engineer, Engineer's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such

objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 Contractor shall provide payment and performance bonds meeting the requirements of Georgia's Local Government Public Works Construction Law, O.C.G.A. § 36-91-1 *et seq.*, on forms attached hereto as Exhibit "D." acceptable to the Owner.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Engineer, be uncovered for the Engineer's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Engineer has not specifically requested to examine prior to its being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Engineer or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Engineer timely notice of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Engineer's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Engineer.

§ 13.5.5 If the Engineer is to observe tests, inspections or approvals required by the Contract Documents, the Engineer will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 120 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work as described in Section 14.1.1 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 180 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Engineer, terminate the Contract and recover from the Owner payment for Cost of the Work executed, including Fee on Work executed and costs incurred by reason of such termination. The recovery set forth in this Section 14.1.3 shall be Contractor's sole and exclusive remedy and in no event shall Contractor be entitled to recovery additional costs, expenses or damages, including, but not limited, to lost opportunity costs, Fee on Work not executed or lost profits.

§ 14.1.4 [Not Used].

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Guaranteed Maximum Price exceeds costs of finishing the Work, including compensation for the Engineer's services and expenses made necessary thereby, including the costs and fees of consultants, experts, attorneys, and other legal costs and damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.

§ 14.2.5 If Owner terminates the employment of the Contractor pursuant to this Section 14.2, including its Sub-Sections, and such termination is later determined to be in error, improper or wrongful by a court of competent jurisdiction, including any mandatory dispute resolution conducted under the Contract Documents, such termination shall be converted to a termination for convenience pursuant to Section 14.4 hereof and Contractor's remedy shall be determined in accordance with Section 14.4.3.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Guaranteed Maximum Price shall include Fee. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Cost of the Work executed, and costs incurred by reason of such termination, along with reasonable Fee on the Work executed. The recovery set forth in this Section 14.4.3 shall be Contractor's sole and exclusive remedy and in no event shall Contractor be entitled to recovery additional costs, expenses or damages, including, but not limited, to lost opportunity costs, Fee on Work not executed or lost profits.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor must be initiated by written notice to the Owner and to the Initial Decision Maker with a copy sent to the Engineer, if the Engineer is not serving as the Initial Decision Maker. Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim. Contractor's written notice required by this Section 15.1.2 shall describe with particularity the events or circumstances giving rise to such Claim and shall include Contractor's 1) pricing proposal for any adjustment sought in the Guaranteed Maximum Price, and 2) request for any adjustment in the Contract Time, which shall include analysis of the Project Schedule supporting Contractor's request. In the event that the events and circumstances giving rise to Contractor's Claim are ongoing, thereby preventing the preparation of accurate proposals for adjustments in the Guaranteed Maximum Price or Contract Time, Contractor's written notice shall state as clearly as possible the events and circumstances giving rise to the Claim and advise the Owner of the ongoing nature of such events preventing Contractor's accurate proposals for adjustments in the Guaranteed Maximum Price and Contract Time. In such event, Contractor shall provide Owner with a second written notice within 21 days after the cessation of the events giving rise to Contractor's Claim which shall include Contractor's 1) pricing proposal for any adjustment sought in the Guaranteed Maximum Price, and 2) request for any adjustment in the Contract Time, which shall include analysis of the Project Schedule supporting Contractor's request. Contractor's failure to strictly comply with the notice requirements set forth in this Section 15.1.2 shall result in waiver and release of Contractor's Claim.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Engineer will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Guaranteed Maximum Price, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Engineer will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Engineer, if the Engineer is not serving as the Initial Decision Maker, of any change in the Guaranteed Maximum Price or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

EXHIBIT A

Construction Manager's Conditional Claim Waiver and Release

STATE OF GEORGIA
COUNTY OF NEWTON

The undersigned, _____ ("Construction Manager"), has been engaged under contract with Newton County Water & Sewerage Authority ("Owner") to furnish certain materials, equipment, services, and/or labor for the construction of improvements known as the A. Scott Emmons Water Reclamation Facility at the Little River ("Project"), together with all improvements and appurtenances attendant thereto, which is located unincorporated eastern Newton County, near Social Circle, State of Georgia.

Upon receipt of the sum of \$_____, which represents the latest Application(s) for Payment, the Construction Manager waives and releases any and all claims, demands, actions,

causes of action or other rights against Owner through the date of _____, _____ ("Current Date") and reserves only those rights that the Construction Manager might have in any retained amounts, on account of materials, equipment, services and/or labor furnished by the undersigned to or on account of Owner or any other entity for said Project. Exceptions as follows:

(If no exception or "none" is entered above, undersigned shall be deemed not to have reserved any claim except those rights it may have in retained amounts.)

Construction Manager affirms, warrants, and represents that Construction Manager has paid in full all laborers, materialmen, mechanics, manufacturers, suppliers, and subcontractors for all work performed and who have furnished services, labor, equipment, or materials, or any one of these items to

the Construction Manager, for use at the Project through and including _____, _____ (date of Construction Manager's last prior Application(s) for Payment), and that the Construction Manager is not indebted to any person or entity for labor, equipment, services or materials used in connection with or as a part of such Project in any amount whatsoever through and including the date hereof, except as listed below:

(If no persons or entities listed or "none" is entered above, undersigned shall be deemed to have represented that it is not indebted to any person or entity for labor, equipment, services or materials used in connection with or as a part of the Project.)

Construction Manager further affirms, warrants, and represents that there are no outstanding claims of any nature, contractual or otherwise, or for any personal injury, death or property damage, arising from or associated with the performance of the Construction Manager's work through and including the date hereof which might be the basis of any claim, suit, lien, or demand that could be asserted against Owner, Construction Manager, the Project, and all property, real and personal, related to the Project other than those exceptions listed above.

This Waiver and Release is freely and voluntarily given, and the undersigned acknowledges and represents that it has fully reviewed the terms and conditions of this Waiver and Release, that it is fully informed with respect to the legal effect of this Waiver and Release, and that it has voluntarily chosen to accept the terms and conditions of this Waiver and Release in return for the payment recited above. Construction Manager agrees to indemnify, hold harmless and defend Owner against any and all losses, claims, damages, costs or expenses, of any nature whatsoever, including all attorneys' fees, and the fees of consultants, experts and other professionals, arising out of any claims or demands asserted by any of its employees, laborers, materialmen, subcontractors or consultants, of any tier, relating to any materials, services, equipment or labor supplied to the Project through the Current Date other than those exceptions listed above.

The undersigned further agrees that making and receipt of payment and execution of this Waiver and Release shall in no way release the undersigned from its continuing obligations with respect to the completion of any work remaining undone, including any obligations of the undersigned to the Owner.

FOR CONSTRUCTION MANAGER:

Applicable to Application for Payment No(s). _____

Signed: _____

By: _____

Title: _____

Date: _____

AFFIDAVIT

On this _____ day of _____, _____, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the Construction Manager and that this document was signed under oath personally and on behalf of the Construction Manager.

Notary Public

My Commission Expires: _____

EXHIBIT B

**Construction Manager's Final, Unconditional Claim Waiver and Release
Upon Final Payment**

STATE OF GEORGIA
COUNTY OF Newton

The undersigned, _____ ("Construction Manager"), has been engaged under contract with Newton County Water & Sewerage Authority ("Owner") to furnish certain materials, equipment, services, and/or labor for the construction of improvements known as the A. Scott Emmons Water Reclamation Facility at the Little River ("Project"), together with all improvements and appurtenances attendant thereto, which is located unincorporated eastern Newton County, near Social Circle, State of Georgia.

Construction Manager represents that it has been paid in full for all labor, services, equipment and material furnished to the Project, and Construction Manager hereby waives and releases any and all claims, demands, actions, causes of action or other rights against Owner, at law, in contract, tort, equity or otherwise, which Construction Manager has, may have had or may have in the future arising out of Construction Manager's performance of work on the Project.

This Waiver and Release applies to all facts, acts, events, circumstances, changes, constructive or actual delays, accelerations, extra work, disruptions, inefficiencies, interferences and the like which have occurred, or may be claimed to have occurred prior to the date of this Waiver and Release, whether or not known to the Construction Manager at the time of execution of this Waiver and Release.

The Construction Manager further represents that all of its obligations, legal, equitable, or otherwise, relating to or arising out of its work on the Project have been fully satisfied, including, but not limited to obligations relating to:

- Employees, laborers, materialmen and subcontractors employed by the Construction Manager;
- Labor, materials, equipment and supplies furnished by others to the Construction Manager; and
- Sales and use taxes, social security taxes, income tax withholding, unemployment insurance, privilege taxes, license fees, and any other taxes and obligations imposed by governmental authorities.

This Waiver and Release is freely and voluntarily given, and the Construction Manager acknowledges and represents that it has fully reviewed the terms and conditions of this Waiver and Release and that it is fully informed with respect to the legal effect of this Waiver and Release. The Construction Manager understands, agrees and acknowledges that, upon the execution of this document, this document waives rights unconditionally and is fully enforceable to extinguish all claims of the Construction Manager. Construction Manager agrees to indemnify, hold harmless and defend Owner against any and all losses, claims, damages, costs or expenses, of any nature whatsoever, including all attorneys' fees, and the fees of consultants, experts and other professionals, arising out of any claims or demands asserted by any of its employees, laborers, materialmen, subcontractors or consultants, of any tier, relating to any materials, services, equipment or labor supplied to the Project.

FOR CONSTRUCTION MANAGER:

Applicable to Application for Payment Nos.: All

Signed: _____

Print Name: _____

Title: _____

Date: _____

AFFIDAVIT

On this _____ day of _____, _____, before me appeared the above-signed, known or identified to me personally, who, being first duly sworn, did say that s/he is the authorized representative of the Construction Manager and that this document was signed under oath personally and on behalf of the Construction Manager.

Notary Public

My Commission Expires: _____

EXHIBIT C

Construction Manager's Insurance Requirements

1.0 Construction Manager's Insurance and Minimum Limits of Liability. Construction Manager shall at a minimum, and irrespective of any other terms of the Contract, provide and maintain in force, and, at Construction Manager's sole expense, the insurance required by this Exhibit concurrent with Construction Manager's obligations under the terms of the Contract. Such insurance shall be with a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located and shall have a minimum rating of A- by A.M. Best Company, or the equivalent rating by another rating authority acceptable to Owner ("Insurer(s)").

1.1 General Liability: A Commercial General Liability policy (with umbrella and / or excess as needed) on occurrence based forms with the following minimum limits and coverage:

1.1.1 Limits:

\$20,000,000	Per Occurrence	\$5,000	Medical Expense per person
\$20,000,000	Personal and Advertising Injury	\$20,000,000	General Aggregate
\$100,000	Fire Damage	\$20,000,000	Products / Completed Operations- per Occurrence and Aggregate

1.1.2 Coverage:

- a. Contractual Liability insuring the obligations assumed by Construction Manager under the Contract.
- b. Explosion, Collapse and Underground (XCU).
- c. Per Project General Aggregate (Form # CG 25 03).
- d. Additional Insureds on all policies including all Primary Liability and Excess/Umbrella as may be provided:
 - Owner and its designees identified in the Contract and all of the affiliates, parents, subsidiaries, officials, directors, employees, successors, assigns, representatives and volunteers of each of them, shall be named as Additional Insureds on all Construction Manager's policies, including Operations and Products/Completed Operations.
 - Additional Insured coverage shall be provided on either: (i) Form # CG 20 10 11 85, covering Operations and Products / Completed Operations of Construction Manager; or (ii) Form # CG 20 10 01 covering ongoing operations and Form # CG 20 37 10 01 covering Additional Insured Completed Operations; or (iv) equivalent form(s) acceptable to Owner.
 - If any of the foregoing forms contain a blanket Additional Insured endorsement or provision, the policy shall be endorsed to provide Owner notice of termination of coverage for the Project.
- e. Products / Completed Operations coverage shall be maintained for a minimum period of five (5) years after final completion and Owner's acceptance of the Project.
- f. Cross Liability (Separation of Insureds).

No policy shall contain exclusions for residential construction, claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or services, mold and/or pollution (unless provided by a separate policy), claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor, or inability to name the parties identified in 1.1.4. a. as additional insureds for Products / Completed Operations coverage. Construction Manager and its Insurer(s) acknowledge that they have read the foregoing and warrant that their policy (ies) do (es) not contain such exclusions or gaps in coverage. Should the insurer(s) selected by Construction Manager fail or refuse to assume the defense of any claim that could or should be covered by the insurance required above, Construction Manager and its surety shall be liable to Construction Manager for all damages, fees and costs (including attorneys' fees) incurred in defending the claim, paying any settlement or judgment and/or pursuing the insurer(s) for coverage.

- 1.2 Commercial Automobile Liability:** A Commercial Automobile Liability policy including coverage for death, bodily injury and property damage arising from Owned, Hired and Non-Owned Vehicles operated on or off the Project site with limits of:

\$1,000,000 Combined Single Limit

- 1.3 Workers' Compensation:** Regardless of the number of Construction Manager's employees, Construction Manager shall provide and maintain Workers' Compensation insurance covering Construction Manager and all workers. Such insurance shall provide all statutory benefits required by the state in which the Project is located and/or any other governmental or legal authority having jurisdiction, and include Employer's Liability with limits of:

\$1,000,000 Each Accident \$1,000,000 Disease Policy Limit \$1,000,000 Each Employee

Such insurance shall include an Alternate Employer Endorsement naming the Owner as the Alternate Employer.

If at any time Construction Manager has workers not on Construction Manager's direct payroll, (e.g. leased employees, contract workers, or other workers that could be classified as a "borrowed servant") not covered by Construction Manager's Workers Compensation insurance then, in addition to and not in lieu of Construction Manager's Workers' Compensation insurance, Construction Manager shall cause all such workers or their employers (e.g. lower tier contractors, employee leasing companies, labor brokers) to provide and maintain separate Workers' Compensation coverage for such employees with Employer's Liability in the above limits, and with an Alternate Employer Endorsement naming Construction Manager as the Alternate Employer. Construction Manager shall maintain evidence of this coverage through Certificates of Insurance, and Construction Manager shall provide copies of such certificates of insurance to Construction Manager upon request. Anytime Construction Manager employs such workers, Construction Manager represents and warrants that: (1) Construction Manager has complete control and direction of such workers for all Work under this Subcontract (2) that the direct employer of such workers has no authority over their control or direction, and (3) Construction Manager has the exclusive right to remove or discharge such workers from the Project Site.

LIMITS OF LIABILITY: The limits required by this Paragraph 1.0 may be satisfied by a combination of underlying (primary), umbrella and/or excess policies. However, the designation of any insurance as an "umbrella policy" or "excess policy" shall not be controlling as to priority of coverage, and Construction Manager agrees that the total limits of insurance required by Construction Manager shall be primary and non-contributory in all respects to insurance by the Owner, if any. If Construction Manager maintains

such insurance in limits or combination of limits greater than that required by this Exhibit, Owner shall, as an Additional Insured, be entitled to the full limits of such policies.

By requiring insurance herein, Owner does not represent that coverage and limits will necessarily be adequate to protect Construction Manager, and such coverage and limits shall not be deemed as a limitation on Construction Manager's liability under the indemnities granted Construction Manager or any other party.

1.4 Professional Liability: Professional Liability with a minimum limit of \$10,000,000 per claim and \$10,000,000 aggregate covering claims arising out of the performance of professional engineering, architecture, or other professional services under the Contract and caused by errors, omissions, or acts for which Construction Manager is liable. Such insurance shall be maintained in force by Construction Manager for a minimum extended reporting period of; (a) five (5) years after final completion and Owner's acceptance of the Project, or (b) for such longer period as may be required by the Contract Documents. Construction Manager shall require the same limits from any design professional or engineer engaged by Construction Manager on the Project.

1.5 Environmental/Pollution Liability: Environmental/Pollution Liability with a minimum limit of \$10,000,000 per claim and \$10,000,000 aggregate covering claims arising out of the release, discharge or use of pollutants or hazardous materials, and including the development of microbial matter (fungae) for which Construction Manager is liable. Such insurance shall be maintained in force by Construction Manager for a minimum extended reporting period of; (a) five (5) years after the date of final completion and Owner's acceptance of the Project, or (b) for such longer period as may be required by the Contract Documents.

1.6 Owner's and Construction Manager's Protective Liability ("OCP"): (☐) Required
If required by this Exhibit, or provided to satisfy a condition of the contract, the OCP policy shall have a minimum policy limit of no less than the contract Price or \$1,000,000, whichever is greater. The OCP policy shall name Owner for primary liability coverage except it shall be amended to provide excess coverage over Construction Manager's Commercial General and Umbrella Liability policies as well as waive any rights of subrogation against Owner and other parties designated by Construction Manager. [The OCP policy shall name Owner as the insured, be amended to provide excess coverage over Construction Manager's Commercial General and Umbrella / Excess Liability policies, and waive any rights of subrogation against Owner and other parties designated by Construction Manager.] The Original of or binder for the OCP policy, shall be provided to Construction Manager prior to the start of Construction Manager's Work and shall be effective on or before the date Construction Manager's Work commences. [The Original of, or binder for, the OCP policy shall be effective on or before the date of, and be provided to Construction Manager prior to, the start of Construction Manager's Work.]

1.7 Builder's Risk Insurance: Owner shall purchase Builder's Risk policy (ies). Construction Manager shall determine for itself the adequacy of Builder's Risk or Installation Risk coverage as it relates to Construction Manager's Work, including its materials and equipment, prior to commencement of Construction Manager's Work. Upon written request, Owner will provide Construction Manager with a copy of the Builder's Risk insurance policy. Construction Manager shall be responsible for the amount of any deductible, or loss or damage to the Work caused by Construction Manager, to the extent not reimbursed by applicable Builder's Risk insurance.

1.8 Other Insurance: Construction Manager shall maintain separate insurance, be responsible for, and waives and releases claims against Owner relating to loss or damage to rented, leased or owned equipment, temporary facilities, or other personal property of Construction Manager or its lower tier contractors or vendors, or any of their employees.

- 2.0 EVIDENCE OF INSURANCE.** No later than fifteen (15) days after the execution of the Contract or five (5) days prior to the start of Construction Manager's Work, whichever is earlier, Construction Manager shall provide evidence of all coverage required by the Contract acceptable to Owner. THE REQUIRED ENDORSEMENTS SHALL BE ATTACHED TO A CERTIFICATE(S) AND ALL POLICIES SHALL BE ENDORSED TO PROVIDE NO LESS THAN THIRTY (30) DAYS PRIOR WRITTEN NOTICE TO THE CERTIFICATE HOLDER OF MATERIAL CHANGE, CANCELLATION OR NON-RENEWAL.
- 3.0 SUBCONTRACTING TO OTHERS.** If permitted under the Contract, Construction Manager shall require and secure similar insurance from its contractors of every tier.
- 4.0 REPORTS OF ACCIDENT AND INJURY.** Construction Manager shall immediately advise Owner in writing of the facts and details of every accident involving personal injury or property damage arising out of or related to Construction Manager's Work.
- 5.0 DEDUCTIBLES OR SELF INSURED RETENTIONS (SIR).** Construction Manager shall be responsible for payment of all deductibles or SIR applicable to Construction Manager's insurance coverage. Unless expressly agreed to in writing by Owner, all required insurance coverage shall be without any deductible or self-insured retention greater than \$25,000 per occurrence. If Construction Manager determines a larger deductible or self-insured retention exists without Owner's express written consent, Owner may withhold payment otherwise due Construction Manager under the Contract, in amount of such deductible or self-insured retention, until the expiration of all Construction Manager's obligations. In the event Owner makes a claim against any of Construction Manager's insurance required by this Exhibit or otherwise provided under the Contract Documents, Owner may withhold from any payment otherwise due Construction Manager an amount to reasonably protect Owner from such claim, until such claim is released or satisfied.
- 6.0 WAIVER OF SUBROGATION.** Construction Manager shall obtain a written waiver of subrogation in favor of Owner and all other Additional Insureds from its insurers for all policies required in this Exhibit. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.
- 7.0 PRIMARY AND NON-CONTRIBUTORY.** Construction Manager stipulates and shall provide written confirmation from its insurer(s) that the insurance required in this Exhibit, described above is primary and non-contributory.
- 8.0** If Construction Manager fails to fulfill the requirements of this Exhibit, Owner may: (1) terminate the Construction Manager's employment under the Contract for default, or (2) purchase such insurance coverage at Construction Manager's expense, (3) withhold from payment owed or owing Construction Manager until such time such failure is rectified. Such withholding shall not be deemed to be a default under the Contract Documents.
- 9.0 NON-WAIVER.** Construction Manager agrees that all documentation required by this Exhibit shall be provided prior to the start of Construction Manager's Work. Construction Manager's failure to provide, or Owner's failure to request, such documentation shall not be construed as a waiver of any of Construction Manager's obligations under this Exhibit. If Construction Manager submits any documentation that does not conform to the requirements of this Exhibit, Owner's failure to object to such non-conforming documentation shall not operate as an e stopple or waiver of such requirements.

EXHIBIT D

Performance Bond

STATE OF GEORGIA
COUNTY OF NEWTON

BOND NO.: _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as

Principal, (hereinafter known as Contractor), and we, _____, as
Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the Newton County Water &
Sewerage Authority (hereinafter known as Owner) for use and benefit of those entitled thereto, in the sum of

_____ Dollars (\$ _____),
for the payment of which will and truly to be made, in lawful money of the United States of America, we do hereby
bind ourselves, successors, assigns, heirs and personal representatives, jointly and severally, firmly by these presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Owner has engaged the said Contractor for the sum of

_____ Dollars (\$ _____)
for the construction of improvements known as the A. Scott Emmons Water Reclamation Facility at the Little River

as more fully appears in a written Contract Agreement bearing the date of _____, 20____, a
copy of which Contract Agreement is by reference hereby made a part hereof.

NOW, THEREFORE, if said Contractor shall fully perform all the undertakings and obligations under the Contract Agreement, shall fully indemnify the Owner from all costs and damage whatsoever, shall fully reimburse the said Owner any and all expense which it may incur in making good any such default, including the fees of attorneys, consultants and experts actually incurred and all other costs and expenses of litigation or dispute resolution, and shall correct all defects in products and workmanship appearing within one year of the completion of the Contract Agreement and acceptance of the Work provided for in said Contract Agreement by Owner, then this obligation shall be null and void. Otherwise, it shall remain in full force and effect.

It is hereby stipulated and agreed that no change, extension of time, alteration, or addition to the terms of the Contract Agreement, the performed Work, or the Specifications shall affect the obligations under this Bond, and notice is hereby waived of any such change, extension of time, alteration, or addition to the terms of the Contract Agreement, to the Work, or to the Contract Documents.

This Bond is given pursuant to and in accordance with the provisions of O.C.G.A. Section 36-91-1 *et seq.* and all the provisions of the law referring to this character of Bond as set forth in said Sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said Contractor has hereunder affixed its signature and seal, and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this day of,

_____, 20_____, executed in three counterparts.

CONTRACTOR - PRINCIPAL: _____

By: _____

Name: _____
(Please Print)

Title: _____

ATTEST: _____

Name: _____
(Please Print)

Title: _____ (SEAL)

Note: Attestation for a corporation must be by the corporate secretary; for a partnership by another partner; for an individual by a notary.

SURETY: _____

By: _____

Name: _____
(Please Print)

Title: _____

ATTEST: _____

Name: _____
(Please Print)

Title: _____ (SEAL)

Note: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state of Georgia.

Payment Bond

STATE OF GEORGIA
COUNTY OF NEWTON

KNOW ALL MEN BY THESE PRESENTS, that we, _____

as Principal, known as Contractor, and we, _____ as
Surety, are held and firmly bound unto the Newton County Water & Sewerage Authority, called
the Owner, in the penal sum of

_____ Dollars (\$ _____), for the
payment of which sum will and truly to be made, in lawful money of the United States of America, we do
hereby bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally,
firmly by these presents.

WHEREAS, said Contractor has entered into a certain written Contract Agreement with said Owner,

dated _____, 20_____, for the construction of improvements known as the A. Scott
Emmons Water Reclamation Facility at the Little River, which Contract Agreement and the Contract
Documents for said Work shall be deemed a part hereof as fully as if set out herein.

NOW, THEREFORE, the condition of this obligation is such, that if said Contractor and all subcontractors to
whom any portion of the Work provided for in said Contract Agreement is sublet and all assignees of said
Contractor and of such subcontractors shall promptly make payments to all persons supplying them with labor,
products, services, or supplies for or in the prosecution of the Work provided for in such Contract Agreement,
or in any amendment or extension of or addition to said Contract Agreement, and for the payment of reasonable
attorney's fees incurred by the claimant in suits on this Bond, then the above obligation shall be void; otherwise,
it shall remain in full force and effect.

HOWEVER, this Bond is subject to the following conditions and limitations:

- (a) Any person, firm, or corporation that has furnished labor, products, or supplies for or in the
prosecution of the Work provided for in said Contract Agreement shall have a direct right of
action against the Contractor and Surety on this Bond, which right of action shall be asserted in a
proceeding, instituted in the county in which the Work provided for in said Contract Agreement
is to be performed or in any county in which Contractor or Surety does business. Such right of
action shall be asserted in proceedings instituted in the name of the claimant or claimants for its
use and benefit against said Contractor and Surety or either party (but not later than one year after
the completion of the Contract Agreement and acceptance of the Work provided for in said
Contract Agreement by Owner) in which action such claim or claims shall be adjudicated and
judgment rendered thereon.
- (b) The Principal and Surety hereby designate and appoint the firm of
_____, as the agent of
each party to receive and accept service of process or other pleading issued or filed in any
proceeding instituted on this Bond and hereby consent that such service shall be the same as
personal service on the Contractor and/or Surety.
- (c) In no event shall the Surety be liable for a greater sum than the penalty of this Bond, or subject to
any suit, action or proceeding thereon that is instituted later than one year after the final settlement
of said Contract Agreement.

- (d) This Bond is given pursuant to and in accordance with provisions of O.C.G.A. Section 36-91-1 *et seq.* hereinafter, and all the provisions of law referring to this character of Bond as set forth in said Sections or as may be hereinafter enacted, and these are hereby made a part hereof to the same extent as if set out herein in full.

IN WITNESS WHEREOF, the said Contractor has hereunder affixed its signature and seal, and said Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized

officers, on this day of _____, 20_____, executed in three counterparts.

CONTRACTOR - PRINCIPAL:_____

By:_____

Name:_____

(Please Print)

Title:_____

ATTEST:_____

Name:_____

(Please Print)

(SEAL)

Title:_____

Note: Attestation for a corporation must be by the corporate secretary; for a partnership by another partner; for an individual by a notary.

SURETY:_____

By:_____

Name:_____

(Please Print)

Title:_____

WITNESS:_____

Name:_____

(Please Print)

(SEAL)

Title:_____

Note: Surety companies executing Bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

Request for Proposal Construction Management at Risk Services for the A. Scott Emmons Water Reclamation Facility at the Little River

Addendum No. 3

Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

(770) 385-3923



www.ncwsa.us

January 18, 2019

Addendum No. 3 Instructions

Summary

Addendum No. 3 provides the following:

- Additional Instructions for Proposal submittal
- Appendix E: Revised Cost Proposal Including General Conditions and Cost of Work Matrix
- Answers to questions received since Addendum No. 2
- 30% Drawings for Little River Access Road – Phase II

Cost Proposal

An Owner's Allowance of \$50,000.00 has been included in the Cost Proposal for to cover the cost of engineering changes, if any, as a result of suggestions or collaboration during Phase I Services. This Owner's Allowance will be included in Total of the Cost Proposal. Please replace the Cost Proposal to be located in Appendix E with the revised form herein.

Drawings

As discussed in the pre-submittal conference, Phase II of the WRF Access Road will be incorporated into the CMAR's project scope. Please incorporate the 30% Construction Drawings for the Little River Access Road Phase II into the documents.

Questions & Answers:

- 1. Since the proposed CMAR Agreement and corresponding General Conditions were only released in Addendum #2, we request a 2-week window (21 January) to submit contract RFIs.*
 - a. The RFP instructions, Page 10, Section 6, allows the Proposer to submit comments on the proposed agreement (can be included in the Proposal). These comments would be worked out during contract negotiations before Phase I or Phase II Services award, as applicable.
 - b. However, please submit all questions to the Owner Contact by 12:00 p.m., EST, Friday, January 25, 2019.
- 2. Confirm that a bid bond is not required to be submitted with our RFP response / CMAR Proposal that is due on 2/1/19.*
 - a. Reference Page 4, Section 2, Para. 3: Phase I – Preconstruction Services are considered professional services as opposed to Public Works Construction. A bid bond is not required as part of the sealed Cost Proposal.

3. *Can you please advise if the Safety section (Requested in the middle of page 8 of the RFP) is to be included in the 20-page limit?*
 - a. Reference Page 8: Yes; we ask that a description of the firm's Corporate Safety Program with key statistics be included in the 20-pages.

Cost Proposal Including General Conditions and Cost of Work Matrix

This table describes how the work items that support the Owner's Project Cost are defined. The components of the CMAR's GMP should be broken down and described as follows:

- Fixed Costs for General Conditions Work,
- Reimbursable Costs for General Conditions Work,
- Percent Fee, and
- Direct Construction Costs

Owner's Definitions:

Cost of Work = Columns 1+ 2+ 3

GMP = Cost of Work + Column 4.

Total Project Cost = GMP + Column 5

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
1.	Allowances			X		
2.	Alternates			X		
3.	Design & Engineering Services and Services During Construction					X
4.	Work performed by CMAR and / or subcontractors			X		
5.	Insurance Premiums		X		X	
6.	Business Licenses & Associated Fees				X	
7.	Communications: Cell phones, radios, pagers, phone, fax, computer networks, etc.	X				
8.	Construction Schedules	X				
9.	Contract Modification Procedures	X				
10.	Commissioning			X		
11.	Home Office Overhead				X	
12.	Correction of Non-Conforming Work				X	
13.	Escrow Cost & Fees				X	
14.	Final Cleaning & Pest Control			X		
15.	Profit				X	
16.	Project Closeout	X				
17.	Project Warranty		X			
18.	Quality Control	X				
19.	Safety and Administration	X				
20.	Subcontractor Administration and Coordination	X				
21.	Submittal Procedures	X				

General Conditions and Cost of Work Matrix (cont.)

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
22.	Construction Equipment – Owned and Rented including fuel and maintenance			X		
23.	Direct Labor Expense including Benefits and Workers Compensation Insurance			X		
24.	Drug / Substance Abuse Testing	X				
25.	Performance & Payment Bond Premium				X	
26.	Processing Progress Payment	X				
27.	Project Accounting				X	
28.	Project Management & Field Coordination Staff	X				
29.	Project Meetings / Minutes	X				
30.	Regulatory Permits and Fees		X			
31.	Reproduction Costs: Plans / Specifications / Bid Documents		X			
32.	Review and Analysis of Subcontractor Qualifications	X				
33.	Incidentals and small tools (under \$500) including repairs, storage and maintenance	X				
34.	Subcontractor Bonds			X		
35.	Subcontractor Costs			X		
36.	Subcontractor Closeout / Warranty			X		
37.	Subcontractor Submittal Procedures			X		
38.	Substitution Requests	X				
39.	Environmental Controls			X		
40.	Electronic Record Drawings	X				
41.	O&M Manuals	X				
42.	Job Site Offices, Furnishings, Equipment, and Supplies	X				
43.	General Housekeeping		X			
44.	Material Hoisting / Distribution			X		
45.	Project Photos / Recordings	X				
46.	Project Signage / Identification	X				
47.	Site Survey (Line / Grade Control)			X		
48.	Special Inspections and Testing					X
49.	Temporary Fencing / Security / Barricades / Partitions / Signs		X			
50.	Temporary Fire Protection		X			
51.	Temporary Lay-Down Areas / Roads		X			
52.	Temporary Lighting		X			

General Conditions and Cost of Work Matrix (cont.)

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
53.	Temporary Parking	X				
54.	Temporary Power Consumption		X			
55.	Temporary Facilities & Controls: Temporary Power Service	X				
56.	Temporary Sanitary Facilities	X				
57.	Temporary Water Consumption		X			
58.	Temporary Water Service		X			
59.	Temporary Weather Protection		X			
60.	Vehicles	X				
61.	Warranty – Correcting Defective Work				X	
62.	Waste Management		X			
63.	Travel and per diem for home office and project management staff	X				
64.	Insurance Deductibles				X	

Cost Proposal

Under the terms and conditions contained in the RFP and its accompanying Agreement, the undersigned proposes to contract with the Newton County Water and Sewerage Authority to provide the following professional and construction phase services for the indicated prices or rates.

Phase I - Preconstruction Services Fee is defined as the CMAR's price to work collaboratively with the Owner and Engineer to develop the GMP for the Owner.

A. Phase I Preconstruction Services: \$ _____
Dollars

B. Owner's Allowance: Revisions to Construction Drawings by Engineer \$50,000.00

C. Total: \$ _____

D. Builder's Fee %: To meet the Owner's requirements for Competitive Sealed Proposals as defined in O.C.G.A. 36-91-2, the CMAR shall provide its firm Builder's Fee to be expressed as a percentage and allocated as defined in Column 4. This percentage fee will apply to the Construction Services Phase (Phase II) and changes to the Work that occur or are required during

Phase II – Construction Phase Services: _____ %.
Percent

By: _____
Signature

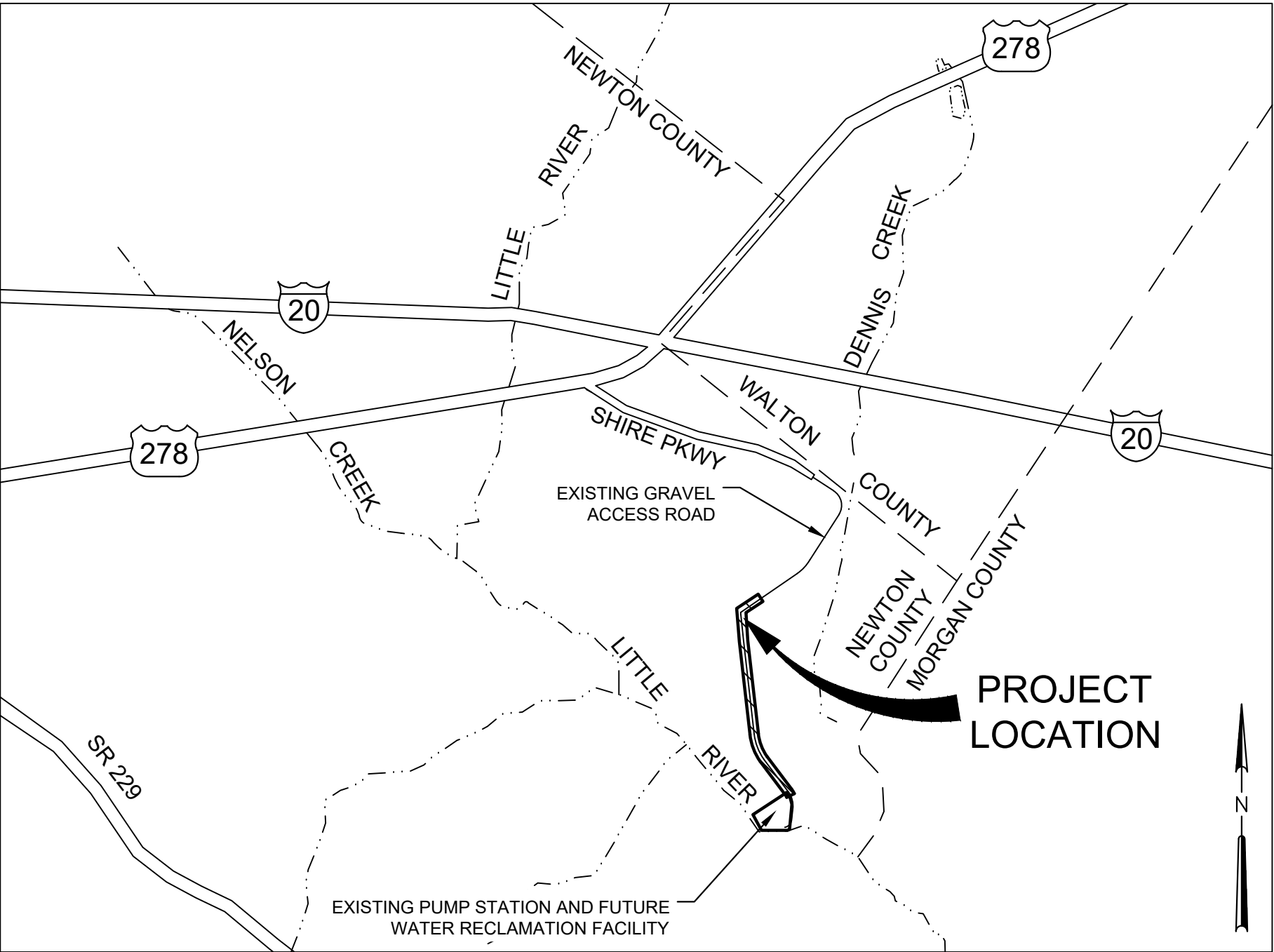
Firm or Company: _____
Name of Organization

Date: _____

LITTLE RIVER WRF & PS ACCESS ROAD EXTENSION

FOR

NEWTON COUNTY WATER AND SEWERAGE AUTHORITY
LAND LOTS 104, 105, & 128 OF THE 1st DISTRICT OF NEWTON COUNTY, GEORGIA



LOCATION MAP
NOT TO SCALE



INDEX OF DRAWINGS

SHEET NUMBER	SHEET TITLE
C0.01	COVER SHEET
C0.02	GENERAL NOTES & LEGEND
C1.00	TYPICAL SECTIONS
C1.01	OVERALL ACCESS ROAD EXTENSION PLAN
C1.02	SITE PLAN
C2.01	ROAD PLAN AND PROFILE
C2.02	ROAD PLAN AND PROFILE
C2.03	ROAD PLAN AND PROFILE

OWNER

NEWTON COUNTY WATER AND SEWERAGE AUTHORITY
11325 BROWN BRIDGE ROAD
COVINGTON, GA 30016
PHONE: (770) 787-1375
CONTACT: WAYNE HAYNIE, PE
EMAIL: wh@ncwsa.us

ENGINEER

BARGE DESIGN SOLUTIONS
6525 THE CORNERS PARKWAY, SUITE 450
PEACHTREE CORNERS, GA 30092
PHONE: (678) 515-9411
CONTACT: JUAN ACOSTA, PE
GSWCC LEVEL II CERT. NO. 7281 (EXPIRES 02/20/2021)
EMAIL: juan.acosta@bargedesign.com

24-HOUR CONTACT

CONTACT: WAYNE HAYNIE, PE
PHONE: (770) 385-3920
EMAIL: wh@ncwsa.us

Call Before You Dig
(800) 282-7411

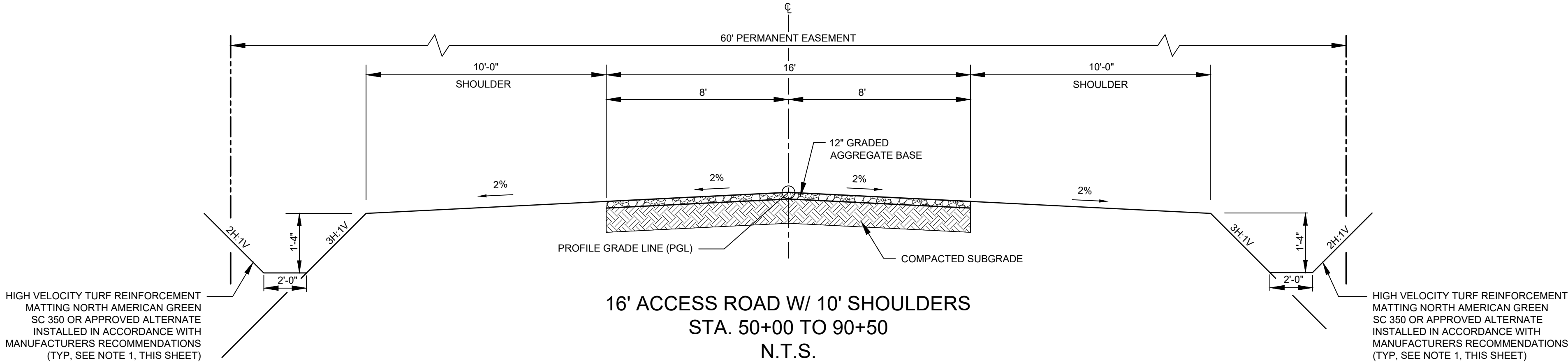
GEORGIA811
Utilities Protection Center, Inc.

Know what's below.
Call before you dig.

JANUARY 2019
30% OWNER REVIEW

DRAWINGS MAY NOT HAVE BEEN PRINTED AT ORIGINAL FULL-SIZE SCALE





NOTE:
1. TURF REINFORCEMENT MATTING SHALL BE INSTALLED IN ALL DITCHES AND ON ALL SLOPES 3:1 AND STEEPER.

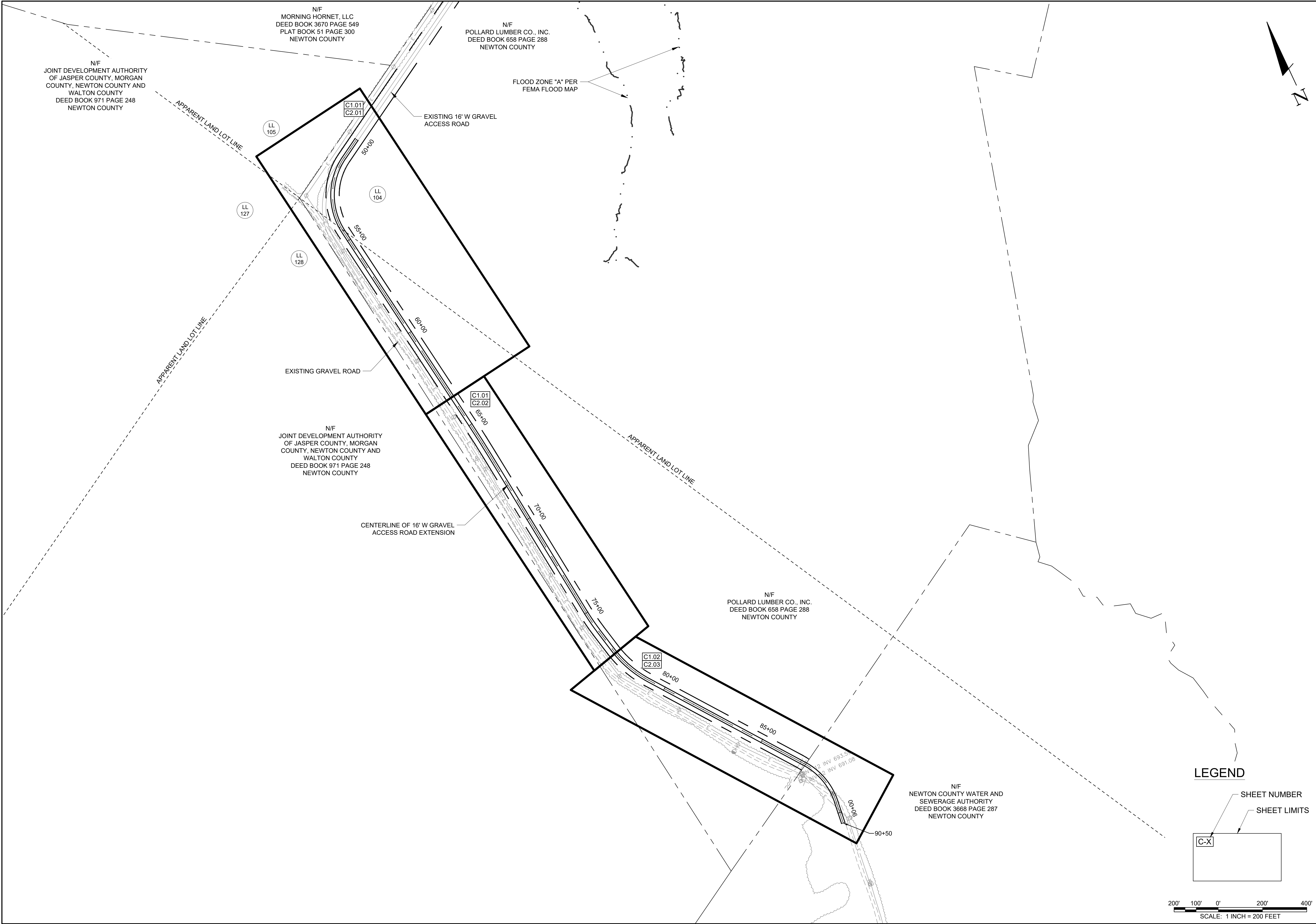
TYPICAL SECTIONS					LITTLE RIVER WRF & PS ACCESS ROAD EXTENSION NEWTON COUNTY WATER AND SEWERAGE AUTHORITY
REV.	DR.	CHK.	DATE	DESCRIPTION	
A	JA		01/11/19	30% OWNER REVIEW	

BARGE

DESIGN SOLUTIONS

6625 The Corners Parkway // Suite 450 // Peachtree Corners, Georgia 30092
PHONE (678) 512-3411

CREATED: 1/9/2019 LAST SAVED: 1/9/2019 BY: JEACOSTA PLOT DATE: 1/9/2019



BARGE

DESIGN SOLUTIONS

6525 The Corners Parkway // Suite 450 // Peachtree Corners, Georgia 30092
PHONE (678) 512-3411

OVERALL ACCESS ROAD EXTENSION PLAN

LITTLE RIVER WRF & PS ACCESS ROAD EXTENSION

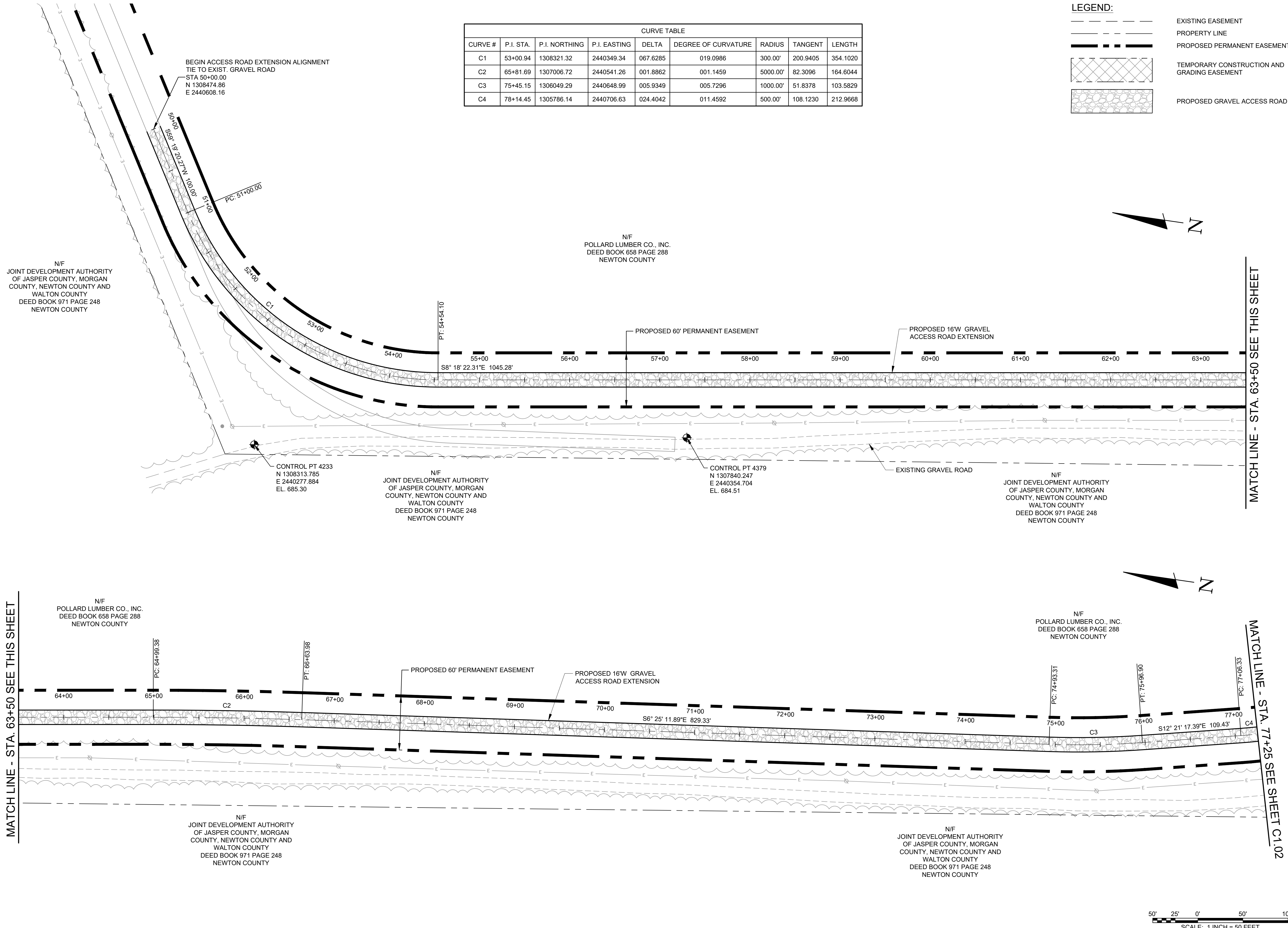
NEWTON COUNTY WATER AND SEWERAGE AUTHORITY

REV.	CHK.	DR.	DATE	DESCRIPTION
A		JA	01/11/19	30% OWNER REVIEW

C1.00

PROJ. NO. 3626110

CREATED: 1/9/2019 LAST SAVED: 1/9/2019 BY: JEACOSTA PLOT DATE: 1/9/2019



REV.

DR.

CHK.

DATE

DESCRIPTION

A

JA

01/11/19

30% OWNER REVIEW

C1.01

PROJ. NO. 3626110

SITE PLAN

LITTLE RIVER WRF & PS ACCESS ROAD EXTENSION

NEWTON COUNTY WATER AND SEWERAGE AUTHORITY

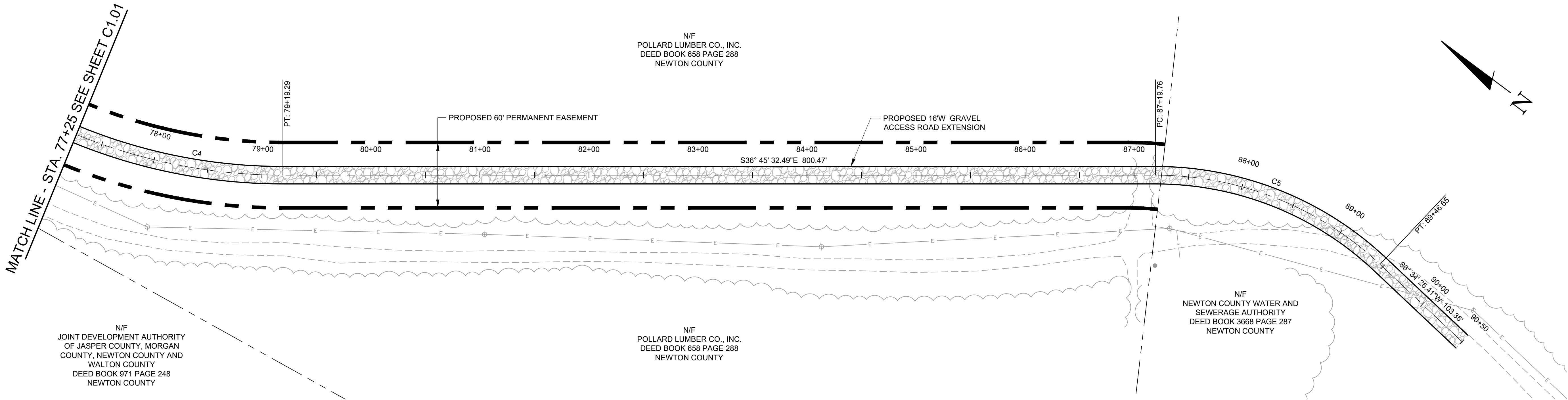
BARGE

DESIGN SOLUTIONS

6625 The Corners Parkway // Suite 450 // Peachtree Corners, Georgia 30092

PHONE (678) 512-3411

CREATED: 1/9/2019 LAST SAVED: 1/9/2019 BY: JEACOSTA PLOT DATE: 1/9/2019



CURVE TABLE								
CURVE #	P.I. STA.	P.I. NORTHING	P.I. EASTING	DELTA	DEGREE OF CURVATURE	RADIUS	TANGENT	LENGTH
C4	78+14.45	1305786.14	2440706.63	024.4042	011.4592	500.00'	108.1230	212.9668
C5	88+38.94	1304962.73	2441321.70	043.3327	019.0986	300.00'	119.1806	226.8897

LEGEND:

EXISTING EASEMENT

PROPERTY LINE

PROPOSED PERMANENT EASEMENT

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

PROPOSED GRAVEL ACCESS ROAD

SITE PLAN

LITTLE RIVER WRF & PS ACCESS ROAD EXTENSION

NEWTON COUNTY WATER AND SEWERAGE AUTHORITY

REV.	DR.	CHK.	DATE	DESCRIPTION
A	JA		01/11/19	30% OWNER REVIEW

C1.02

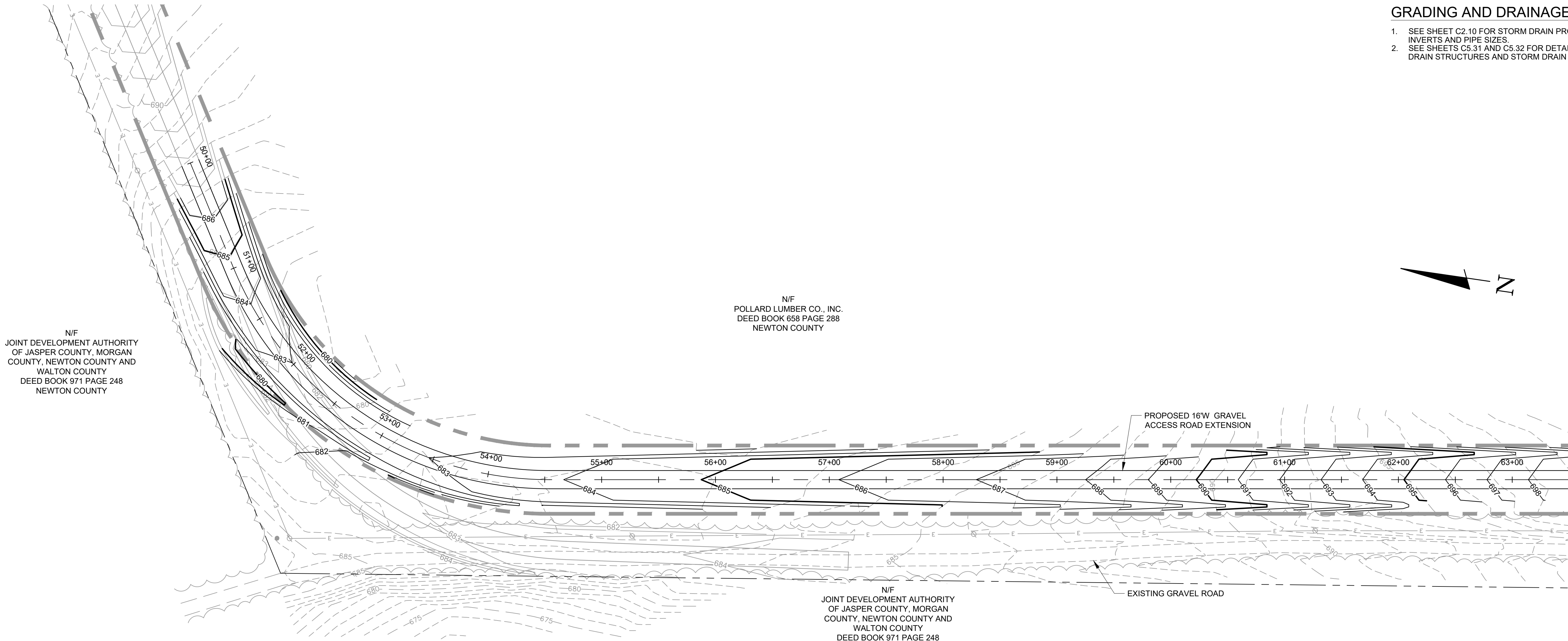
PROJ. NO. 3626110

BARGE

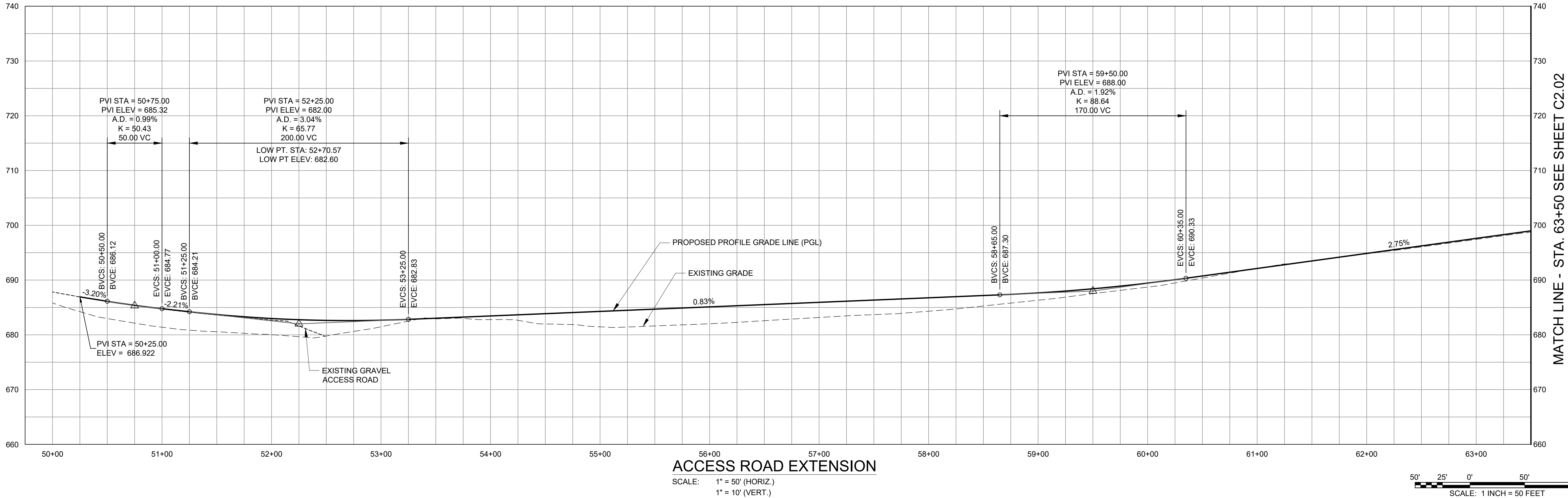
DESIGN SOLUTIONS

6625 The Corners Parkway // Suite 450 // Peachtree Corners, Georgia 30092
PHONE (678) 512-3411

CREATED: 1/9/2019 LAST SAVED: 1/9/2019 BY: JEACOSTA PLOT DATE: 1/9/2019



- GRADING AND DRAINAGE NOTES:
- SEE SHEET C2.10 FOR STORM DRAIN PROFILES, INVERTS AND PIPE SIZES.
 - SEE SHEETS C5.31 AND C5.32 FOR DETAILS OF STORM DRAIN STRUCTURES AND STORM DRAIN TRENCH.



ROAD PLAN AND PROFILE

LITTLE RIVER WRF & PS ACCESS ROAD EXTENSION

NEWTON COUNTY WATER AND SEWERAGE AUTHORITY

REV.	DR.	CHK.	DATE	DESCRIPTION
A	JA		01/11/19	30% OWNER REVIEW

C2.01

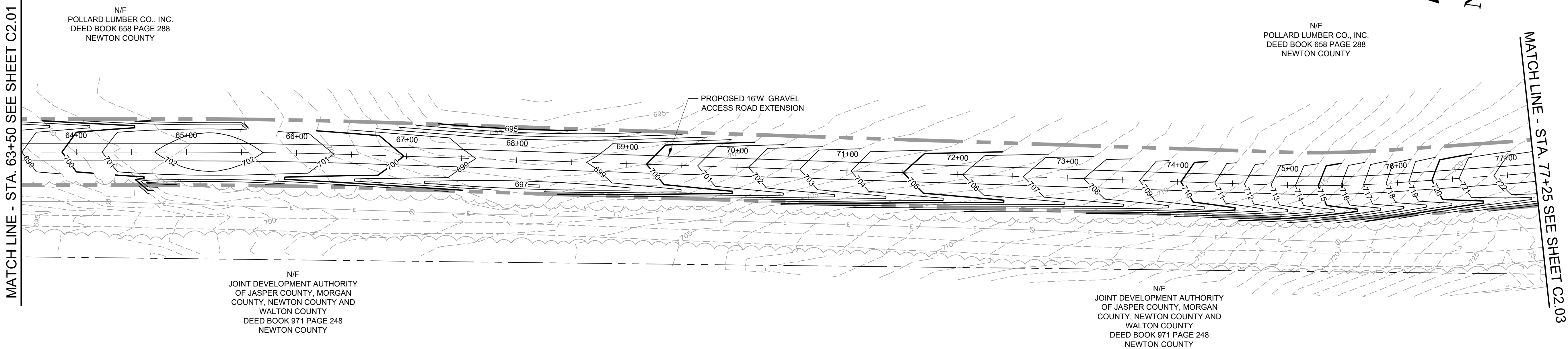
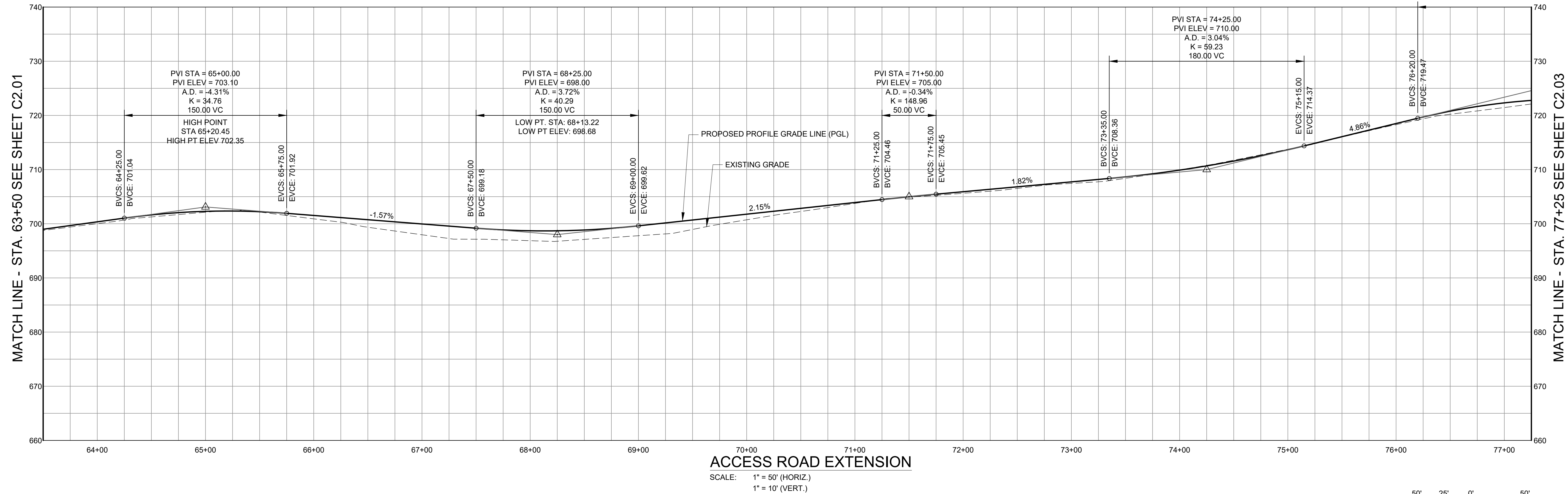
PROJ. NO. 3626110

BARGE

DESIGN SOLUTIONS

6525 The Corners Parkway // Suite 450 // Peachtree Corners, Georgia 30092
PHONE (678) 512-3411

CREATED: 1/9/2019 LAST SAVED: 1/9/2019 BY: JEACOSTA PLOT DATE: 1/9/2019



GRADING AND DRAINAGE NOTES:

1. SEE SHEET C2.10 FOR STORM DRAIN PROFILES, INVERTS AND PIPE SIZES.
2. SEE SHEETS C5.31 AND C5.32 FOR DETAILS OF STORM DRAIN STRUCTURES AND STORM DRAIN TRENCH.

ROAD PLAN AND PROFILE

LITTLE RIVER WRF & PS ACCESS ROAD EXTENSION

NEWTON COUNTY WATER AND SEWERAGE AUTHORITY

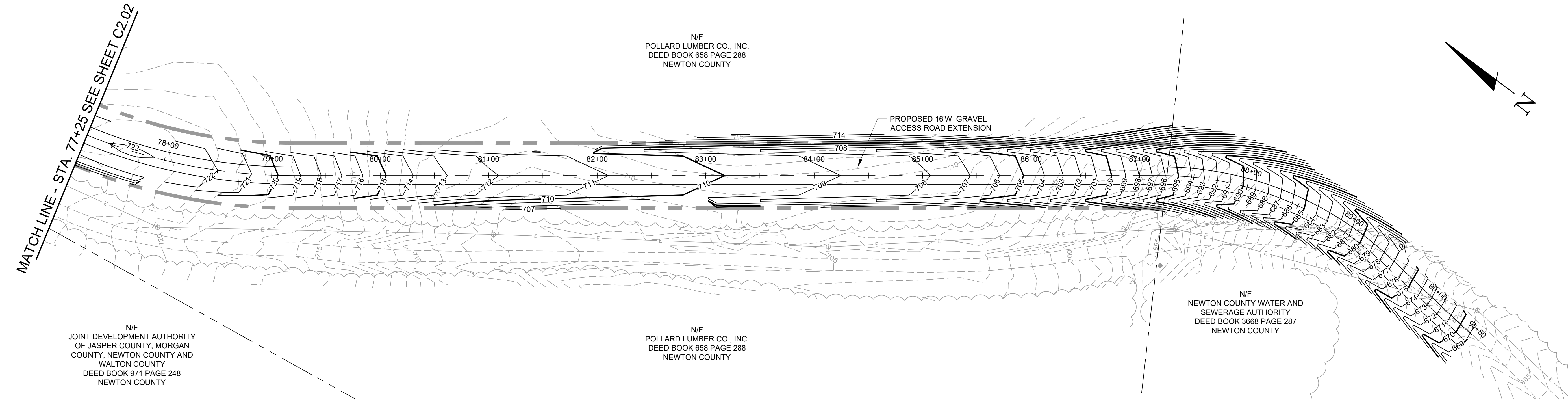
REV.	DR.	CHK.	DATE	DESCRIPTION
A	JA		01/11/19	30% OWNER REVIEW

C2.02
PROJ. NO. 3626110

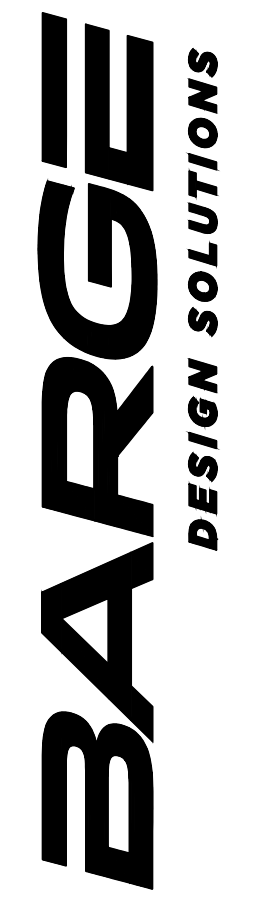
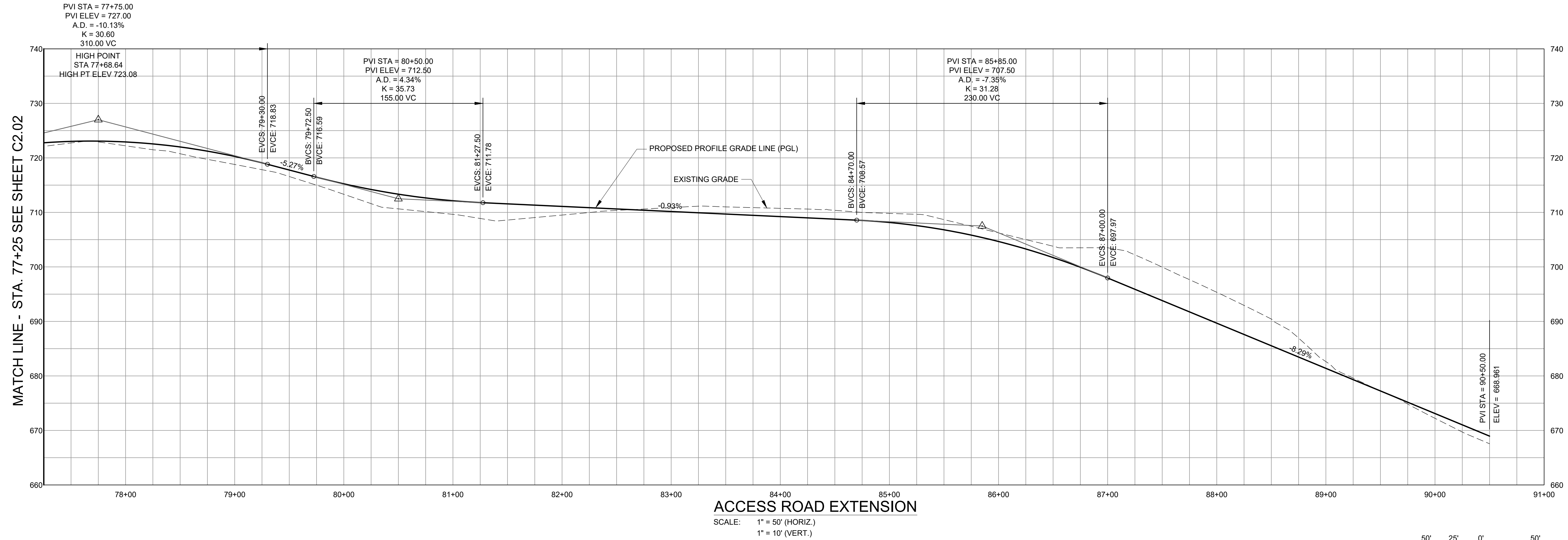
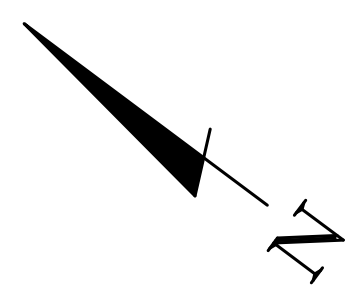
BARGE
DESIGN SOLUTIONS

6525 The Corners Parkway // Suite 450 // Peachtree Corners, Georgia 30092
PHONE (678) 512-9411

CREATED: 1/9/2019 LAST SAVED: 1/9/2019 BY: JEACOSTA PLOT DATE: 1/9/2019



- GRADING AND DRAINAGE NOTES:**
- SEE SHEET C2.10 FOR STORM DRAIN PROFILES, INVERTS AND PIPE SIZES.
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6625 The Corners Parkway / Suite 450 / Peachtree Corners, Georgia 30092
PHONE (678) 512-9411

ROAD PLAN AND PROFILE

LITTLE RIVER WRF & PS ACCESS ROAD EXTENSION

NEWTON COUNTY WATER AND SEWERAGE AUTHORITY

REV.	DR.	CHK.	DATE	DESCRIPTION
A	JA		01/11/19	30% OWNER REVIEW

C2.03
PROJ. NO. 3626110

Request for Proposal Construction Management at Risk Services for the A. Scott Emmons Water Reclamation Facility at the Little River

Addendum No. 4

Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

(770) 385-3923



www.ncwsa.us

January 25, 2019

Addendum No. 4 Instructions

Summary

Addendum No. 4 provides the following:

- Additional Instructions for Proposal submittal
- Appendix E: Revised Cost Proposal Including General Conditions and Cost of Work Matrix
- Answers to questions received since Addendum No. 3

Instructions

1. On Page 7, Format, 2nd paragraph,

a. Delete the sentence:

Limit the total page count to 60 or less, 8.5 X 11-inch equivalent, minimum 11-point font.

b. Replace with the following sentence:

Limit the total page count to 60 or less (excluding mandatory forms provided by the Owner), 8.5 X 11-inch equivalent, minimum 11-point font.

Cost Proposal

Please replace the Cost Proposal to be located in Appendix E with the revised form herein. See Q&A for explanation of revisions.

Questions & Answers:

1. Reference Addendum No. 2; Proposed CM Agreement w / General Conditions & Exhibits A – D.

a. Please confirm that the intent (of the instructions) is for proposers to include all these documents in the proposal.

i. If so, please confirm these pages do not count against the 60-page page limit.

ii. If so, please clarify what portions of these documents you intend for the proposers to complete as part of the proposal.

The intent of providing the Proposed CM Agreement with General Conditions & Exhibits A – D was to allow the Proposer an opportunity to review and comment on same.

Citing Addendum No. 3: The RFP instructions, Page 10, Section 6, allows the Proposer to submit comments on the proposed agreement (can be included in the Proposal). These

comments would be worked out during contract negotiations before Phase I or Phase II Services award, as applicable. We consider any comments received on the Agreement as a jump start on future contract discussions.

If the Proposer wishes to include any or all of the Proposed CM Agreement & Exhibit pages in the Appendix, they will be considered mandatory forms provided by the Owner and will not be counted toward the 60-page limit.

We do not intend for the Proposer to complete or fill out the CM Agreement & Exhibits as part of the Proposal. Comments on the Agreement, whether on the Agreement pages or on separate pages, will be considered mandatory forms provided by the Owner and will not be counted toward the 60-page limit.

2. *Please reference the “Cost Proposal Including General Conditions and Cost of Work Matrix” form issued in Addendum No. 3:*
 - a. *Item “No. 5. Insurance Premiums” has the boxed checked for both columns 2 and 4. Please confirm that only the box in column 2 should be checked consistent with 6.6.1 of the AIA Document A133-2009 agreement.*
 - b. *Item “No. 25. Performance & Payment Bond Premium” has the box checked for column 4. Please confirm that only the box in column 2 should be checked consistent with 6.6.1 of the AIA Document A133-2009 agreement.*

The Cost Proposal form has been revised accordingly and is included herein.

Cost Proposal Including General Conditions and Cost of Work Matrix

This table describes how the work items that support the Owner's Project Cost are defined. The components of the CMAR's GMP should be broken down and described as follows:

- Fixed Costs for General Conditions Work,
- Reimbursable Costs for General Conditions Work,
- Percent Fee, and
- Direct Construction Costs

Owner's Definitions:

Cost of Work = Columns 1+ 2+ 3

GMP = Cost of Work + Column 4.

Total Project Cost = GMP + Column 5

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
1.	Allowances			X		
2.	Alternates			X		
3.	Design & Engineering Services and Services During Construction					X
4.	Work performed by CMAR and / or subcontractors			X		
5.	Insurance premiums directly attributed to the Project		X			
6.	Business Licenses & Associated Fees				X	
7.	Communications: Cell phones, radios, pagers, phone, fax, computer networks, etc.	X				
8.	Construction Schedules	X				
9.	Contract Modification Procedures	X				
10.	Commissioning			X		
11.	Home Office Overhead				X	
12.	Correction of Non-Conforming Work				X	
13.	Escrow Cost & Fees				X	
14.	Final Cleaning & Pest Control			X		
15.	Profit				X	
16.	Project Closeout	X				
17.	Project Warranty		X			
18.	Quality Control	X				
19.	Safety and Administration	X				
20.	Subcontractor Administration and Coordination	X				
21.	Submittal Procedures	X				

General Conditions and Cost of Work Matrix (cont.)

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
22.	Construction Equipment – Owned and Rented including fuel and maintenance			X		
23.	Direct Labor Expense including Benefits and Workers Compensation Insurance			X		
24.	Drug / Substance Abuse Testing	X				
25.	Performance & Payment Bond premiums directly attributed to this Project.		X			
26.	Processing Progress Payment	X				
27.	Project Accounting				X	
28.	Project Management & Field Coordination Staff	X				
29.	Project Meetings / Minutes	X				
30.	Regulatory Permits and Fees		X			
31.	Reproduction Costs: Plans / Specifications / Bid Documents		X			
32.	Review and Analysis of Subcontractor Qualifications	X				
33.	Incidentals and small tools (under \$500) including repairs, storage and maintenance	X				
34.	Subcontractor Bonds			X		
35.	Subcontractor Costs			X		
36.	Subcontractor Closeout / Warranty			X		
37.	Subcontractor Submittal Procedures			X		
38.	Substitution Requests	X				
39.	Environmental Controls			X		
40.	Electronic Record Drawings	X				
41.	O&M Manuals	X				
42.	Job Site Offices, Furnishings, Equipment, and Supplies	X				
43.	General Housekeeping		X			
44.	Material Hoisting / Distribution			X		
45.	Project Photos / Recordings	X				
46.	Project Signage / Identification	X				
47.	Site Survey (Line / Grade Control)			X		
48.	Special Inspections and Testing					X
49.	Temporary Fencing / Security / Barricades / Partitions / Signs		X			
50.	Temporary Fire Protection		X			
51.	Temporary Lay-Down Areas / Roads		X			

General Conditions and Cost of Work Matrix (cont.)

No.	Item	1. Fixed Cost General Conditions Work	2. Reimbursed Cost for General Conditions Work	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
52.	Temporary Lighting		X			
53.	Temporary Parking	X				
54.	Temporary Power Consumption		X			
55.	Temporary Facilities & Controls: Temporary Power Service	X				
56.	Temporary Sanitary Facilities	X				
57.	Temporary Water Consumption		X			
58.	Temporary Water Service		X			
59.	Temporary Weather Protection		X			
60.	Vehicles	X				
61.	Warranty – Correcting Defective Work				X	
62.	Waste Management		X			
63.	Travel and per diem for home office and project management staff	X				
64.	Insurance Deductibles				X	

Cost Proposal

Under the terms and conditions contained in the RFP and its accompanying Agreement, the undersigned proposes to contract with the Newton County Water and Sewerage Authority to provide the following professional and construction phase services for the indicated prices or rates.

Phase I - Preconstruction Services Fee is defined as the CMAR's price to work collaboratively with the Owner and Engineer to develop the GMP for the Owner.

A. Phase I Preconstruction Services: \$ _____ Dollars

B. Owner's Allowance: Revisions to Construction Drawings by Engineer \$50,000.00

C. Total: \$ _____

D. Builder's Fee %: To meet the Owner's requirements for Competitive Sealed Proposals as defined in O.C.G.A. 36-91-2, the CMAR shall provide its firm Builder's Fee to be expressed as a percentage and allocated as defined in Column 4. This percentage fee will apply to the Construction Services Phase (Phase II) and changes to the Work that occur or are required during

Phase II – Construction Phase Services: _____ %.

Percent

By: _____
Signature

Firm or Company: _____
Name of Organization

Date: _____

Request for Proposal Construction Management at Risk Services for the A. Scott Emmons Water Reclamation Facility at the Little River

Addendum No. 5

Newton County Water and Sewerage Authority
11325 Brown Bridge Road
Covington, Georgia 30016

(770) 385-3923



www.ncwsa.us

January 29, 2019

Addendum No. 5 Instructions

Summary

Addendum No. 5 provides the following:

- Answers to questions received since Addendum No. 4
- Directions to shipping or delivering proposals to the office.

Questions & Answers:

What date will the 90% design drawings be delivered to the selected CMAR?

The 90% design drawings will be provided with the Notice to Proceed to the selected CMAR.

Additional Guidance on Submittal of Proposal

When shipping or delivering proposals to the NCWSA office, please note that the Water Billing Lobby closes at 4:30 p.m., Monday through Friday. If arriving after that time, please go to the side (“speak easy”) door next to the lobby and ring the doorbell; Ms. Vicki will receive and time stamp your package.