

# Request for Proposal

## Design-Build Services for Campus Site Improvements

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

(770) 385-3923



[www.ncwsa.us](http://www.ncwsa.us)

April 29, 2019

## Contents

Section 1: Introduction .....	3
Summary .....	3
Solicitation .....	3
Selection.....	3
Obtaining Documents .....	3
Pre-Submittal Meeting.....	4
Open Records.....	4
Permits .....	4
Easements, Lands and Right-of-Way .....	4
Section 2: General Information .....	4
Contract Overview .....	4
Project Scope of Services.....	4
Responsibilities of NCWSA .....	4
Responsibilities of the Design-Builder .....	4
Section 3: Procurement Process.....	5
Acknowledgement of RFP .....	5
Communications .....	5
Clarifications and Addenda.....	5
Schedule.....	6
Section 4: Submittal Requirements.....	6
Submittal and Due Date .....	6
Format .....	6
Letter of Interest.....	6
Experience, Past Performance, and Current Workload .....	7
Project Schedule.....	7
Project Approach .....	7
Cost Proposal .....	8
Value Added Services .....	8
Section 5: Evaluation and Selection .....	8
Evaluation Factors .....	8
Selection Process .....	8
Section 6: Appendices .....	8
Forms, Affidavits, and Exhibits .....	8
Appendix A - Mandatory Forms.....	A-1

Design-Builder's Affidavit of Employment Eligibility .....	A-2
Sub-Contractor's Affidavit of Employment Eligibility .....	A-3
SAVE Affidavit .....	A-4
Sample W-9. ....	A-5
Appendix B – Commercial Items .....	B-1
<b>Acknowledgment of Receipt of Addenda</b> .....	B-2
Cost Proposal .....	B-3
Proposed Design-Build Agreement with General Conditions Exhibits A - D.....	B-4
Appendix C – Project Description and Scope of Services.....	C-1
Exhibit 1 – Project Description.....	C-2
Phase I – Pre-Construction Phase Services:.....	C-2
Phase II – Construction Phase Services: (Future Amendment, for Reference Only) .....	C-2
Exhibit 2 – Design-Builder's Scope of Services.....	C-4
Phase I – Pre-Construction Services: .....	C-4
Phase II Services – Final Procurement, and Construction (To be authorized by Amendment to Phase I Agreement):.....	C-5
Exhibit 3 – Owner's Concept Plan.....	C-7

## Section 1: Introduction

### Summary

Newton County Water & Sewerage Authority (NCWSA), herein also referred to as the Owner, is requesting Proposals for performing surveying, land planning, engineering, site design, landscape architecture, permitting, and subsequently, construction phase services for campus-wide improvements to the Owner's office campus and maintenance facilities (Project). The detailed Scope of Services is described herein but generally includes developing design documents for the demolition, minor clearing, grading, excavation, storm drainage, sewers, site lighting, paving, and security features for the Owner's campus.

The Project is located at the Owner's central administrative complex, 11325 Brown Bridge Road, Covington, GA 30016. The Owner's desired Project budget is \$600,000.00. The final budget may be revised by the Owner due to changes in programmatic requirements, funding availability, or other pertinent factors.

The Owner will fund the project from existing revenues; no bond issues, SRF loans, or grants are anticipated.

The Project does not require special bidding requirements, i.e., American Iron and Steel Special Conditions or SRF bidding requirements.

### Solicitation

The legal authority for this solicitation is defined under Georgia Law (O.C.G.A. 36-91 Article 2). This procurement is defined as a Competitive Sealed Proposal, as defined under O.C.G.A. 36-91-21(c).

This Request for Proposals (RFP) is for professional and construction management services from qualified teams or firms according to the requirements set forth in this RFP, including the format and content guidelines specified. This RFP is for Phase I – Pre-construction Services including planning, permitting, design and cost estimating services leading to the development of a Guaranteed Maximum Price for the subsequent construction. This RFP does not require a bid, payment, or performance bond(s); however, specimen requirements for same are included in the proposed Design-Build Agreement for subsequent amendment(s) to the Project. The subsequent construction of the Project will be conducted under Phase II – Construction Services to be awarded by an Amendment to the proposed Design-Build Agreement.

### Selection

Generally, the NCWSA selection team shall review and evaluate Proposals. The selection team will rank the Proposals in order of most advantageous to the NCWSA based on the evaluation factors set forth in the RFP. The evaluation factors shall be the basis on which the award recommendation and decision is made. The Owner reserves the right to ask for additional information and / or clarification from or about any or all of the qualified firms.

Upon completion of the evaluation process, the NCWSA selection team's recommendation of the most advantageous Proposal will be presented to the Owner's Board at their regularly scheduled meeting after Proposals are evaluated.. The Owner will notify all Proposers of the rankings and awarded Proposer, and issue a Notice of Award no later than 3 days following the Owner's regularly scheduled Board meeting. The Owner is not responsible for any costs incurred by the qualified firm prior to signing a contract.

The Owner has the authority to reject all 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 may be found on NCWSA's Procurement webpage located at <https://ncwsa.us/departments/purchasing>. After review of the RFP, the project site plan may be downloaded after registration including payment of a non-refundable \$50.00 fee to offset reproduction, administrative, and technology costs. Please see Section 3: Acknowledgement of RFP, Communications for Owner's point of contact.

### Pre-Submittal Meeting

A mandatory pre-submittal meeting will be held on May 15, 2019 at 10:00 AM at the Owner's office in the Authority Board Room. Please provide sufficient time to clear office security and arrive at the Board Room for prompt sign-in.

### 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 NCWSA. Qualified firms shall note proprietary information or trade secrets.

### Permits

The selected Design-Builder is responsible for preparing and submitting, in coordination with the Owner as necessary, to obtain all necessary Permits for subsequent construction of the Project.

### Easements, Lands and Right-of-Way

The Work described herein is to be conducted on the property or easements of NCWSA, or public rights-of-way along the County roadways adjacent to the site. The Owner knows of no additional lands and easements to be required for the Work.

## Section 2: General Information

### Contract Overview

NCWSA requests Proposals, including Statements of Qualifications, from qualified Contractors, Engineers, or Design-Build teams for land planning, landscape architecture, permitting, engineering, site design, and pre-construction cost estimating services for the future construction of storm water detention ponds, demolition of an existing building, circulation drives and exits, construction of new paved and gravel parking areas, storm drains, grading, site utilities, and other improvements described herein, located on the Owner's Covington campus.

The construction delivery method is anticipated to be a Progressive Design-Build.

Under a separate procurement, the Owner will solicit a one-step Competitive Sealed Proposal for Design-Build services for a Pre-Engineered Building and related service connections on the Site.

The Project includes tasks described in more detail herein.

The Project will be awarded as a Contract should the procurement reach the Board action stage. The Authority's proposed agreement for professional, Phase I – Pre-Construction Services is included within this RFP for the Proposer to review and provide comment, as necessary, with its response.

### Project Scope of Services

The Scope of Services for the Project is outlined in Appendix C- Exhibit 2 herein.

### Responsibilities of NCWSA

NCWSA, through our assigned project manager and assistants, will administer the services and work closely with the selected Design-Builder to fulfill our responsibilities in a timely manner. Our commitments include:

- Outlining project requirements.
- Reviewing work products, deliverable, and responses timely to the Design-Builder.
- Providing access to buried or inaccessible sewer and water connections.
- Furnishing existing studies, drawings, utility locates, plans, specifications, shop drawings, data, and other information that will assist the Design-Builder in the Project.
- Funding the Project and rendering timely compensation.

### Responsibilities of the Design-Builder

Major responsibilities shall include, but are not limited to, the following:

- Deliver design, permitting and cost estimating services in a timely manner.

- Locate, excavate, and protect all buried utilities and facilities within the confines of the Project
- Responsible for all licenses, permits, inspections, and code compliances applicable to the Project and conforming to all local, state, and Federal requirements
- Keep the Owner's premises free from waste and material accumulation caused by the Project. All waste shall be properly removed and disposed of outside of NCWSA's property
- Maintain workable conditions for Contractor's and, if applicable, subcontractors' employees
- Protect all existing buildings, drives, and landscaping
- Execute the Work in accordance with the Contract Documents.

### Section 3: Procurement Process

#### Acknowledgement of RFP

Interested Proposers shall acknowledge with an email when it has received the RFP. 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.

#### 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:

Ms. Lindsey Chambers  
11325 Brown Bridge Road  
Covington, GA 30016  
Phone: (770) 385-3923  
Email: [lc@ncwsa.us](mailto:lc@ncwsa.us)

Please note any verbal communications with the Owner's Contact or other individuals are not binding. With the exception of the Owner's 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 Information from Proposers shall clearly indicate the section or statement in the RFP which requires additional information or clarification. Questions shall be emailed to the Owner's Contact at the aforementioned address. Clarifications or modifications to this RFP will be made by written addenda and 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:	April 29, 2019
Pre-Bid Meeting:	May 15, 2019; 10:00 AM
Last Day for RFIs:	May 22, 2019; 5:00 PM
Submit Proposals:	May 31, 2019; 10:00 AM
Award:	June 05, 2019
Contract Negotiation:	June 06 – 23, 2019
Notice To Proceed:	June 24, 2019

## Section 4: Submittal Requirements

### Submittal and Due Date

Publish and submit one copy of the Response addressed to the Owner's Contact by the submission date. Include a memory drive containing the identical digitally published version in Adobe format. A 1½-inch 3-ring binder with clearly labeled tabs and appendices is the acceptable format in place of permanently bound documents. Proposals received after this deadline will not be given consideration and no Proposal may be withdrawn for a period of 60 days.

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.

If Proposals are mailed, please include a sealed envelope marked as follows within the enveloped used to mail said Proposal. Each sealed Proposal must have the following plainly marked on the outside:

1. "NCWSA Design-Build Services for Campus Site Improvements"
2. Proposer's Name
3. Proposer's Address

### Format

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

Covers, table of contents, section dividers, resumes, extra project descriptions, and appendices do not count toward the 20-page limit. Mandatory forms, comments on the proposed agreement and all other items should be located in the appendices. Limit the total page count to 50 or less, 8.5 X 11-inch equivalent, minimum 11-point font. Large figures such as 11 X 17-inch will count as 1 page.

### Letter of Interest

The 1-page letter of interest shall explain basic information about the Proposing Firm or team. Include the following information:

- Firm name(s) and address;
- Understanding of work to be done;
- Primary contact assigned to the Project if firm is successful;
- Location of the office from which work is to be performed; and,

- List of all sub-consultants and their role on this Project.

### Experience, Past Performance, and Current Workload

**Project Experience:** This section must describe the experience of the firm(s) and project team members on projects similar to the tasks described in the RFP. The Proposer shall submit descriptions of reference projects to demonstrate relevant experience.

**Past Performance – Maintenance Building Construction:** Within the past 10 years, the Proposer should have successfully completed at least 5 similar or comparable projects for commercial, institutional, or municipal owners in the Southeastern United States.

**Past Performance – Detention Pond Construction:** Within the past 10 years, the Proposer should have successfully completed at least 5 similar or comparable projects for commercial, institutional, or municipal owners in the Southeastern United States.

**Past Performance – Grading and Clearing:** Within the past 10 years, the Proposer should have successfully completed at least 5 similar or comparable projects for commercial, institutional, or municipal owners in the Southeastern United States.

**Current Workload:** List all major projects the proposing firm is and / or will be involved in. Provide information on current and future Projects to which your firm is committed, including the estimated cost of these Projects.

For each category of Project Experience, the Proposer will highlight relevant projects. Each project description shall contain the following information:

- Project name and project manager;
- Owner's contact information, including phone and email address;
- Description of the project and relevance to this RFP;
- Original and Final contract cost, including Change Order cost(s) and outstanding claims to date;
- Start, contractual completion, and actual completion dates;
- Describe, if any, legal action implemented by Builder against Owner / subcontractor (if 'yes,' explain fully);
- Key team members for this Project with a clear description of role and responsibilities; and,
- Major subcontractor firm(s).

Project Descriptions may be located in the Appendix.

### Project Schedule

Provide a bar graph / Gantt chart of the proposed schedule for performing each phase of the Project. Identify and explain any potential friction point(s) which may occur during the Project with possible solution(s) to mitigate and / or reduce their impact(s).

### Project Approach

The Proposal must describe the Proposer's recommended approach for efficiently performing the Work. The Owner desires any proposed cost saving measures and sustainable designs and future construction methods.

Demonstrate your firm's understanding and approach including:

- Confirming project requirements and the firm's responsibilities.
- Determining the sequence and durations of required activities.
- Ensuring health and safety of the Owner, the public and the Project team.
- Identifying and resolving constructability issues during the life of the Project.
- Assuring quality throughout each phase of the Project.



- Managing changes to the Project.
- Resolving potential conflicts between your team and others on the site.

### Cost Proposal

A Cost Proposal is provided in the Appendices for the requested services.

Please provide the firm's Cost Proposal response under Appendix B, in a sealed envelope, labeled Cost Proposal and secured in the Firm's Proposal.

Cost Proposals shall remain valid for 60 days from date of submission. The Owner retains the right to review and negotiate costs with the selected Proposer(s).

### Value Added Services

Along the same lines of the Project Management Approach, explain a service(s) offered by the Design-Builder which fits a niche or is a differentiator from the competition. Examples include, but are not limited to, are:

- Design-Builder's proximity to the Project site
- Design-Builder's capability to self-perform crafts and trades
- Expedited Project Schedule

## Section 5: Evaluation and Selection

### Evaluation Factors

A selection committee comprised of the Owner's team will evaluate and rank Proposals applying the evaluation factors described below:

<b><u>Evaluation Criteria</u></b>	<b><u>Value (Points)</u></b>
Letter of Interest	Pass / Fail
Experience, Past Performance, & Current Workload	35 Points
Cost Proposal	35 Points
Project Management Approach	15 Points
Project Schedule	10 Points
Value Added Services	5 Points
Completion and Submission of Required Forms	Pass / Fail
<b>Total</b>	<b>100 Points</b>

### Selection Process

The Owner will make an award to the responsible and responsive firm whose Proposal is determined to be the most advantageous to the Authority.

The Owner may request additional information from one or more Proposers in order to complete the evaluation process. At its option, the Owner may invite one or more Proposers to make a presentation or discuss their Proposal. After the evaluation process is complete, the Owner will notify all Proposers. The top ranked Proposer will be selected for contract award or offered the opportunity to negotiate the final terms of the Contract. If the Owner determines that the top-ranked Proposer's proposed final terms of the Contract are not advantageous to the Owner, the Owner may choose to select or negotiate with the next-ranked Proposer.

## Section 6: Appendices

### Forms, Affidavits, and Exhibits

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
- Design Builder's Affidavit (E-Verify)
- Sub-Contractor's Affidavit (as needed)
- SAVE Affidavit
- W-9

## Appendix A - Mandatory Forms

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

Design-Builder's Affidavit (E-Verify)

Sub-Contractor's Affidavit (E-Verify)

SAVE Affidavit

W-9

Design-Builder'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 \_\_\_\_\_, 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: \_\_\_\_\_

## 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:\_\_\_\_\_

Sample W-9.

## Appendix B – Commercial Items

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

Addenda Acknowledgement (if applicable)

Cost Proposal

Proposed Agreement with General Conditions and Exhibits A – D

Licenses

Business License

Georgia Utility Contractor's License (as applicable)

Professional Engineering Firm licensure



### 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)

## 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 Design-Builder's price to design, permit and work collaboratively with the Owner 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 Design-Builder shall provide its firm Builder's Fee to be expressed as a percentage. 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: \_\_\_\_\_

Proposed Design-Build Agreement with General Conditions Exhibits A - D



---

# **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN- BUILDER - COST PLUS FEE WITH AN OPTION FOR A GUARANTEED MAXIMUM PRICE**

---

## **Document No. 530**

Second Edition 2010  
© Design-Build Institute of America  
Washington, DC

# TABLE OF CONTENTS

Article	Name	Page
<u>Article 1</u>	.....	2
	Scope of Services .....	2
<u>Article 2</u>	.....	2
<u>Contract Documents</u>	.....	2
<u>Article 3</u>	.....	3
	Interpretation and Intent .....	3
<u>Article 4</u>	.....	4
	Ownership of Work Product.....	4
<u>Article 5</u>	.....	5
	Contract Time .....	5
<u>Article 6</u>	.....	7
	Contract Price .....	7
<u>Article 7</u>	.....	16
	Procedure for Payment.....	16
<u>Article 8</u>	.....	18
	Termination for Convenience .....	18
<u>Article 9</u>	.....	19
<u>Representatives of the Parties</u>	.....	19
<u>Article 10</u>	.....	20
	Bonds and Insurance .....	20
<u>Article 11</u>	.....	21
	Other Provisions.....	21



# Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price

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

---

This **AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year of 20\_\_\_\_\_, by and between the following parties, for services in connection with the Project  
identified below:

**OWNER:**

*(Name and address)*

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

**DESIGN-BUILDER:**

*(Name and address)*

**TBD**

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

NCWSA Campus Site Improvements  
11325 Brown Bridge Road  
Covington, Georgia 30016

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder  
agree as set forth herein.

## **Article 1**

### **Scope of Services**

- 1.1** The Design-Builder will serve as an independent contractor of the Owner to implement the Project. This Scope of Services is intended to provide a general summary of tasks expected of the Design-Builder for the Project. A detailed Scope of Services will be further developed and refined by the Owner and Design-Builder.
- 1.2** The Scope of Services for the Project is outlined in the Appendix C – Exhibit 2 within the Request for Proposal.

## **Article 2**

### **Contract Documents**

- 2.1** The Contract Documents are comprised of the following:
  - 2.1.1** All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) (“General Conditions of Contract”);
  - 2.1.2** The GMP Proposal accepted by Owner in accordance with Section 6.8.2 herein;
  - 2.1.3** This Agreement, including all exhibits as follows:
    - 2.1.3.1** Exhibit A – Owner’s Project Criteria;
    - 2.1.3.2** Exhibit B – Insurance Exhibit;
    - 2.1.3.3** Exhibit C – Payment and Performance Bond Exhibit; and
    - 2.1.3.4** Exhibit D – Design-Builder’s Waiver and Release Upon Payment Forms.
  - 2.1.4** The General Conditions of Contract; and
  - 2.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

### **Article 3**

#### **Interpretation and Intent**

- 3.1** Design-Builder and Owner, prior to execution of the Agreement (and again, if applicable, at the time of acceptance of the GMP Proposal by Owner in accordance with Section 6.8.2 hereof), shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement or, if applicable, prior to Owner's acceptance of the GMP Proposal.
- 3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, or if applicable, after Owner's acceptance of the GMP Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.
- 3.3** Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.
- 3.4** If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by a materially inaccurate design specification.
- 3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements between the parties shall survive the execution of the Agreement and form any part of the Contract Documents.



## **Article 4**

### **Ownership of Work Product**

- 4.1 Work Product.** All drawings, specifications and other documents and Electronic Data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.
- 4.2 Owner’s Limited License upon Project Completion and Payment in Full to Design-Builder.** Upon Owner’s payment in full for all Work performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights, and / or patents, in the Work Product. Such transfer is conditioned on Owner’s express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner’s sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the “Indemnified Parties”), and on the Owner’s obligations to provide the indemnity set forth in Section 4.5 below.
- 4.3 Owner’s Limited License upon Owner’s Termination for Convenience.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:
- 4.3.1** Use of the Work Product is at Owner’s sole risk without liability or legal exposure to any Indemnified Party, and on the Owner’s obligation to provide the indemnity set forth in Section 4.5 below, and
- 4.3.2** Owner agrees to pay Design-Builder the additional sum of \$10.00 as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.
- 4.4 Owner’s Limited License upon Design-Builder’s Default.** If this Agreement is terminated due to Design-Builder’s default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.
- 4.5 Owner’s Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify, and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys’ fees, arising out of or resulting from the Owner’s negligent alteration of the Work Product which did not involve the Design-Builder.

## **Article 5**

### **Contract Time**

- 5.1 Date of Commencement.** The Work shall commence within 10 days of Design-Builder's receipt of Owner's Notice to Proceed ("Date of Commencement") unless the parties mutually agree otherwise in writing.
- 5.2 Substantial Completion and Final Completion.**
- 5.2.1** Substantial Completion of the entire Work (Phases One and Two) shall be achieved no later than 270 calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").
- 5.2.2** Interim milestones and / or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows:
- 5.2.2.1 Phase One Services – Design-Builder shall complete its Phase One Services and submit to Owner its GMP Proposal no later than 90 calendar days after the Date of Commencement; and
- 5.2.2.2 Phase Two Services – Design-Builder shall achieve Substantial Completion of Phase Two Services no later than 270 calendar days after the Date of Commencement.
- 5.2.3** Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract. Scheduled Final Completion shall occur no later than 300 calendar days after the Date of Commencement.
- 5.2.4** All of the dates set forth in this Article 5 (collectively the "Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.
- 5.3 Time is of the Essence.** Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.
- 5.4 Liquidated Damages.** Design-Builder understands that if Substantial Completion of the entire Work is not attained by the Scheduled Final Completion Date, or is not attained in accordance with the dates set forth in Section 5.2.2 above, Owner will suffer damages, which are difficult or impossible to estimate accurately at the time the Agreement is executed. Design-Builder and Owner agree that the following liquidated damages are a reasonable estimate of the Owner's probable loss in the event of Design-Builder's failure to attain the required Final Completion dates and, therefore, do not constitute a penalty or forfeiture. Design-Builder understands that if Final Completion is not achieved within 60 calendar days of the Scheduled Substantial Completion Date, Owner will suffer damages that are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within aforementioned calendar days of the Scheduled Final Completion Date, Design-Builder shall pay to Owner \$200.00 as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.
- 5.5 Early Completion Incentive.** Design-Builder understands if Substantial Completion for the entirety of the Work is reached before the Scheduled Substantial Completion Date, Owner will compensate Design-Builder for Early Completion. Design-Builder and Owner agree the following Early Completion Incentive is reasonable in the event of Design-Builder's success to attain an earlier Substantial Completion. Design-Builder understands Owner will reward Design-Builder up

to \$12,000.00 for attaining Substantial Completion up to 60 calendar days before the Scheduled Substantial Completion Date. Design-Builder agrees if Substantial Completion is achieved within aforementioned calendar days of the Scheduled Substantial Completion Date, Owner shall reward Design-Builder \$200.00 for each calendar day Substantial Completion is achieved before Scheduled Substantial Completion Date. Early Completion Incentive will be forfeited at a rate of \$200 per calendar day for each day that Substantial Completion is not achieved before the Scheduled Substantial Completion Date.

## **Article 6**

### **Contract Price**

#### **6.1 Contract Price.**

**6.1.1** Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to Design-Builder's Fee (as defined in Section 6.2 hereof) plus the Cost of the Work (as defined in Section 6.3 hereof), subject to any GMP established in Section 6.8 hereof and any adjustments made in accordance with the General Conditions of Contract.

**6.1.2** For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis:

**6.1.2.1** Owner shall pay Design-Builder the lump-sum price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) for Design-Builder's performance of **Phase One Services (Design and Pre-Construction)**, which shall include preparation of site permitting documents (construction drawings, specifications and all local permitting applications estimated as 80% Construction Documents) and preparation of the GMP Proposal.

#### **6.2 Design-Builder's Fee (Phase Two Services – Construction).**

**6.2.1** Design-Builder's Fee shall be fixed in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), for Design-Builder's performance of **Phase Two Services (Construction)**, as adjusted in accordance with Section 6.2.2 below.

**6.2.2** Design-Builder's Fee will be adjusted as follows for any changes in the Work:

**6.2.2.1** For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of **TBD** percent (\_\_\_\_%) of the additional Costs of the Work incurred for that Change Order, plus an appropriate adjustment to Design-Builder's General Conditions as mutually determined by Owner and Design-Builder.

**6.2.2.2** For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include no additional reduction to account for Design-Builder's Fee; however, an appropriate adjustment to Design-Builder's General Conditions shall be mutually determined by Owner and Design-Builder.

#### **6.3 Cost of the Work.**

**6.3.1** The term Cost of the Work shall mean costs necessarily and actually incurred by Design-Builder in the proper performance of the Work. Such costs shall be at rates consistent with the standard paid at the place of the Project except with prior consent of the Owner. Where any cost is subject to the Owner's prior approval, the Design-Builder shall obtain this approval prior to incurring the cost. The Cost of the Work shall include only the following:

**6.3.2** Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's prior written approval, at locations off the Site; provided, however, that the costs for those

employees of Design-Builder and those of its Design Consultant performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services and fixed as part of Design-Builder's GMP Proposal provided pursuant to Section 6.8 of this Agreement.

**6.3.3** Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or, with Owner's prior written approval, working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

**6.3.4** Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in, performing the function set forth in, and are paid such wages and salaries fixed in Design-Builder's GMP Proposal provided pursuant to Section 6.8 of this Agreement.

**6.3.5** Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.3.1 through 6.3.3 hereof.

**6.3.6** The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

**6.3.7** Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

**6.3.8** Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise its best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

**6.3.9** Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or necessarily used in completing the Work.

**6.3.10** Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

**6.3.11** Costs of removal of debris and waste from the Site.

**6.3.12** The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

**6.3.13** Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work. The total rental charge or cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rental rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval and rates shall not exceed the rates set forth in the Army Corp of Engineers Manual.

**6.3.14** Premiums for insurance and bonds required by this Agreement or the performance of the Work.

**6.3.15** All fuel and utility costs incurred in the performance of the Work.

**6.3.16** Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

**6.3.17** Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs arise after the execution of this Agreement, Design-Builder receives Owner's prior written approval, and such costs do not arise from or relate to disputes between Owner and Design-Builder.

**6.3.18** Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

**6.3.19** The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

**6.3.20** Deposits which are lost, except to the extent caused by Design-Builder's inadvertence, fault or negligence or Design-Builder's failure to fulfill a specific responsibility under the Contract Documents.

**6.3.21** Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

**6.3.22** Accounting and data processing costs related to the Work.

**6.3.23** Other costs necessarily and properly incurred in the performance of the Work to the extent of Owner's prior written approval.

## **6.4 Allowance Items and Allowance Values.**

**6.4.1** Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Proposal and are included within the GMP.

**6.4.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to

constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

**6.4.3** No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, the Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

**6.4.4** The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Price, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

**6.4.5** Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.4.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **6.5 Non-Reimbursable Costs.**

**6.5.1** The following costs shall not be deemed as Cost of the Work:

**6.5.1.1** Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.3.1, 6.3.2 and 6.3.3 hereof.

**6.5.1.2** Overhead and general expenses, except as provided for in Section 6.3 hereof, or which may be recoverable for changes to the Work.

**6.5.1.3** The cost of Design-Builder's capital used in the performance of the Work.

**6.5.1.4** Costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded;

**6.5.2.5** Except as provided in Section 6.3.7 above, Costs due to the negligence or failure of the Design-Builder, Subcontractors or Design Consultants 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 Documents;

**6.5.2.6** Any cost not specifically and expressly described in or reasonably inferable from Sections 6.3.1 through 6.3.22 above.

**6.5.2.7** Costs for services or Work incurred in performance of Phase One Pre-construction Services;

**6.5.2.8** Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to any Subcontractor or Design Consultant;

**6.5.2.9** Insurance deductibles, including any amounts expended by Design Consultant satisfying liabilities or risks self-insured;

**6.5.2.10** Except as provided in Section 6.3.16 above, legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work.

**6.5.2.11** The costs of any fines, re-inspection fees and penalties, including interest thereon, assessed against Design-Builder by any federal, state or local governmental or quasi-governmental authority attributable to the fault or responsibility of the Design-Builder; and

**6.5.2.12** The costs of any liability, taxes, charges or contributions attributable to Design-Builder's failure to make timely disbursements to or failure to pay its Subcontractors or Design Consultants.

## **6.6 Discounts, Rebates and Refunds**

**6.6.1** Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (i) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner at least 7 days prior to the date upon which the cash discount expires, or (ii) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

**6.6.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.6.1 above shall be credited to the Owner as a deduction from the Cost of the Work.

## **6.7 Related Party Transactions and Design-Builder's Self-Performed Work.**

**6.7.1** For purposes of this Section 6.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder 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 Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

**6.7.2** If any of the costs to be reimbursed as Cost of the Work arise from a transaction between the Design-Builder and a related party, the Design-Builder 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 Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of this Agreement. If the Owner disapproves the transaction or otherwise fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party.

**6.7.3** As part of Design-Builder's written notification of a contemplated related-party transaction, as required under Section 6.7.2 above, Design-Builder shall provide to Owner responsive bids of at least 3 other non-related, qualified parties and a summary of all bids confirming that the bid of Design-Builder's related party is the lowest responsive bid. Design-Builder's notification shall provide a detailed explanation of the transaction and scope of Work



encompassed by the transaction as well as Design-Builder's rationale why Owner should authorize the requested related-party transaction.

**6.7.4** If any of the costs to be reimbursed arise from the Design-Builder's self-performance of Work, the Design-Builder shall provide written notification to the Owner of the specific scope of Work to be self-performed, including the anticipated cost to be incurred, before any such Work is performed or cost incurred. If the Owner, after such notification, authorizes the Design-Builder to self-perform such Work, then the cost incurred shall be included as a cost to be reimbursed. If the Owner disapproves or otherwise fails to authorize the Design-Builder's request to self-perform Work, the Design-Builder shall procure the Work, equipment, goods or service from a Subcontractor according to the terms of this Agreement.

**6.7.5** As part of Design-Builder's written notification of its request to self-perform Work, as required under Section 6.7.4 above, Design-Builder shall provide to Owner its detailed estimate of the cost of the Work to be self-performed, responsive bids of at least 3 other non-related, qualified parties to perform such Work, and a summary of all bids confirming that the cost of Design-Builder's self-performed Work is the lowest responsive bid. Design-Builder's notification shall provide a detailed explanation of the scope of the Work to be self-performed as well as Design-Builder's rationale why Owner should authorize Design-Builder to self-perform the requested Work.

## **6.8 The Guaranteed Maximum Price ("GMP").**

### **6.8.1 GMP Established Upon Execution of this Agreement – Not Applicable.**

### **6.8.2 GMP Established after Execution of this Agreement.**

**6.8.2.1 GMP Proposal.** As part of its Phase One Services, Design-Builder shall submit a GMP Proposal to Owner which shall include the following:

#### **6.8.2.1.1** A proposed GMP, which shall be the sum of:

- i.** Design-Builder's Fee as defined in Section 6.2.1 hereof;
- ii.** The estimated Cost of the Work as defined in Section 6.3 hereof, inclusive of Design-Builder's general conditions and any Design-Builder's Contingency as defined in Section 6.8.2.1.9 hereof; and
- iii.** If applicable, any prices established under Section 6.1.2 hereof.

**6.8.2.1.2** The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the GMP Proposal;

**6.8.2.1.3** A list of the assumptions and clarifications made by Design-Builder in the preparation of the GMP Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

**6.8.2.1.4** The Scheduled Substantial Completion Date and Scheduled Interim Milestone Dates as established under Sections 5.2.1 and 5.2.2 hereof, and a

schedule by which the Design-Builder shall achieve the Scheduled Substantial Completion Date and Scheduled Interim Milestone Dates;

**6.8.2.1.5** If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

**6.8.2.1.6** If applicable, a schedule of alternate prices;

**6.8.2.1.7** If applicable, a schedule of unit prices;

**6.8.2.1.8** If applicable, a statement of Additional Services which may be performed but which are not included in the GMP and which, if performed, shall be the basis for an increase in the GMP and/or Contract Time(s); and

**6.8.2.1.9** A Contingency in an amount suggested by Design-Builder which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents; however, the use of which shall be subject to the Owner's prior written approval. No Contingency amounts may be expended without Owner's prior written approval. By way of example, and not as a limitation, such costs may include: (i) trade buy-out differentials; (ii) overtime or acceleration; (iii) escalation of materials; (iv) Subcontractor defaults; or (v) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner written notice of any request to use the Contingency, which request shall describe in detail the events and circumstances that have given rise to Design-Builder's request and shall include a detailed estimate describing the labor, equipment and material costs to be paid from the Contingency. After receipt of Design-Builder's written notice, Owner shall have a reasonable period of time to respond to Design-Builder's request. Design-Builder shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming 3 months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency;

**6.8.2.1.10** A General Conditions Cap - Design-Builder does not guarantee any specific line item provided as part of the GMP Proposal, provided, however, that it shall guarantee the line item for its general project management and general conditions costs, in the amount set forth in the GMP Proposal ("General Conditions Cap"). Design-Builder agrees that it will be responsible for paying the applicable general conditions costs in excess of the General Conditions Cap, as well as be responsible for all costs of completing the Work which exceed the GMP, as said General Conditions Cap and the GMP may be adjusted in accordance with the Contract Documents;

**6.8.2.11** A schedule of rates for Design-Builder's design professionals performing services under the Agreement for which Design-Builder will seek reimbursement under Section 6.3.1 hereof;

**6.8.2.12** A schedule of wages or salaries and duties applicable to the Project of Design-Builder's personnel stationed at Design-Builder's principal or branch offices for whom Design Builder will seek reimbursement under Section 6.3.3 hereof; and

**6.8.2.1.13** The time limit for acceptance of the GMP Proposal.

**6.8.2.2 Review and Adjustment to GMP Proposal.** After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

**6.8.2.3 Acceptance of GMP Proposal.** If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

**6.8.2.4 Failure to Accept the GMP Proposal.** If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

**6.8.2.4.1** Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 6.8.2.3 above;

**6.8.2.4.2** Owner may terminate this Agreement for convenience in accordance with Article 8 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall not proceed further with the Work and shall await the Owner's directive.

### **6.8.3 Savings.**

**6.8.3.1** If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.2 hereof) is less than the GMP, as such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

Fifty percent (50%) to Design-Builder and Fifty percent (50%) to Owner.

**6.8.3.2** Savings shall be calculated and paid as part of Final Payment under Section 7.3 hereof, with the understanding that to the extent Design-Builder incurs costs after Final Completion which would have been payable to Design-Builder as a Cost of the Work, the

parties shall recalculate the Savings in light of the costs so incurred, and Design-Builder shall be paid by Owner accordingly.

## **Article 7**

### **Procedure for Payment**

#### **7.1 Progress Payments.**

**7.1.1** Design-Builder shall submit to Owner on the \_\_\_\_\_ (\_\_\_\_\_) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

**7.1.2** Owner shall make payment of those amounts it approves as properly payable under the Contract Documents within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

**7.1.3** If Design-Builder's Fee under Section 6.2.1 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

#### **7.2 Retainage on Progress Payments.**

**7.2.1** Owner will retain 10% from its payment of each Application for Payment provided, however, that when 50% of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional retention amounts from payment of Design-Builder's subsequent Applications for Payment. The Owner will consider reducing retainage for Subcontractors completing their work early in the Project including the project design phase.

**7.2.1.1** If after discontinuing retainage as provided in Section 7.2.1 above, the Owner determines that the Work is unsatisfactory or has fallen behind schedule, the Owner may reinstitute withholding retainage at the level set forth in Section 7.2.1 until the Design-Builder achieves Substantial Completion of the entire Work, at which time retainage will be released as provided for in this Agreement.

**7.2.2** After Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.5 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work in accordance with Section 6.5.2 of the General Conditions of Contract.

**7.3 Final Payment.** Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.6 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within 30 days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.6.2 of the General Conditions of Contract.

**7.4 Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing 5 days after payment is due at the rate of 2% per annum until paid.

- 7.5 Record Keeping and Finance Controls.** Design-Builder acknowledges that this Agreement is to be administered on an “open book” arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of 3 years after Final Payment, Owner and Owner’s accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder’s records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of 3 years after Final Payment. Such inspection shall take place at Design-Builder’s offices during normal business hours unless another location and time is agreed to by the parties.
- 7.6 Georgia Prompt Pay Act Waived.** Owner and Design-Builder expressly agree that the terms of payment set forth in this Article 7, including those relating to payment periods and rates of interest, shall control to the exclusion of any provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*, and the provisions of said Act are hereby waived and inapplicable to this Agreement.

## **Article 8**

### **Termination for Convenience**

- 8.1** Upon 10 days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. Upon receipt of Owner's written notice, Design-Builder shall cease performance of Work as directed by Owner, take measures necessary to preserve the Work already performed and protect it from damage, decay, and waste; and, except for Work directed to be performed prior to the effective date of termination, terminate all existing contracts, subcontracts, purchase orders and like obligations made in connection with the Work. In such event, Owner shall pay Design-Builder for the following:
- 8.1.1** All Work executed in accordance with the Contract Documents;
- 8.1.2** The reasonable costs and expenses attributable to such termination, including excess demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and
- 8.1.3** The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.
- 8.2** If Owner elects to terminate the Work for convenience as provided in Section 8.1 above, the compensation set forth in that section shall be Design-Builder's sole and exclusive remedy for such termination. Design-Builder acknowledges and agrees in the event of such termination it shall not be entitled to recover additional compensation or damages beyond the compensation allotted in Section 8.1, including, but not limited to, overhead and profit on Work not executed, damage to reputation, costs of lost opportunities and lost or anticipated profits on other projects or opportunities.
- 8.3** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents, or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof.

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Owner's Representatives.**

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions of Contract:

**9.1.2** Owner designates the individual listed below as Owner's Engineer, which individual has the authority and responsibility set forth in Section 3.3 of the General Conditions of Contract:

#### **9.2 Design-Builder's Representatives.**

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2 of the General Conditions of Contract:

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract:



## **Article 10**

### **Bonds and Insurance**

- 10.1 Insurance.** Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto as Exhibit B and in accordance with Article 5 of the General Conditions of Contract.
- 10.2 Bonds and Other Performance Security.** Design-Builder shall provide a performance bond and labor and material payment bond in accordance with Section 5.4 of the General Conditions of Contract on the forms attached hereto as Exhibit C.

**Article 11**  
**Other Provisions**

**11.1** Other provisions, if any, are as follows: *(Insert any additional provisions)*

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_  
*(Name of Owner)*

\_\_\_\_\_  
*(Name of Design-Builder)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Printed Name)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Title)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**OWNER'S PROJECT**  
**CRITERIA**

**EXHIBIT B**  
**INSURANCE EXHIBIT**

---

## Design-Builder's Insurance Requirements

**1.0 Design-Builder's Insurance and Minimum Limits of Liability.** Design-Builder shall at a minimum, and irrespective of any other terms of the Contract, provide and maintain in force, and, at Design-Builder's sole expense, the insurance required by this Exhibit concurrent with Design-Builder'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:**

\$1,000,000	Per Occurrence	\$5,000	Medical Expense per person
\$1,000,000	Personal and Advertising Injury	\$2,000,000	General Aggregate
\$100,000	Fire Damage	\$2,000,000	Products / Completed Operations- per Occurrence and Aggregate

**1.1.2 Coverage:**

- a. Contractual Liability insuring the obligations assumed by Design-Builder 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 Design-Builder'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. Design-Builder 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 Design-Builder fail or refuse to assume the defense of any claim that could or should be covered by the insurance required above, Design-Builder and its surety shall be liable to Design-Builder 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 Each Person**  
**\$1,000,000 Each Occurrence**

- 1.3 Workers' Compensation:** Regardless of the number of Design-Builder's employees, Design-Builder shall provide and maintain Workers' Compensation insurance covering Design-Builder 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 Design-Builder has workers not on Design-Builder's direct payroll, (e.g. leased employees, contract workers, or other workers (that could be classified as a "borrowed servant") not covered by Design-Builder's Workers Compensation insurance then, in addition to and not in lieu of Design-Builder's Workers' Compensation insurance, Design-Builder 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 Design-Builder as the Alternate Employer. Design-Builder shall maintain evidence of this coverage through Certificates of Insurance and Construction Manager shall provide copies of such certificates of insurance to Owner upon request. Anytime Design-Builder employs such workers, Design-Builder represents and warrants that: (i) Design-Builder has complete control and direction of such workers for all Work under this Subcontract (ii) that the direct employer of such workers has no authority over their control or direction, and (iii) Design-Builder 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 Design-Builder agrees that the total limits of insurance required by Design-Builder shall be primary and non-contributory in all respects to insurance by the Owner, if any. If Design-Builder 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 Design-Builder, and such coverage and limits shall not be deemed as a limitation on Design-Builder's liability under the indemnities granted Design-Builder or any other party.

**1.4 Professional Liability:** Professional Liability with a minimum limit of \$1,000,000 per claim and \$2,000,000 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 Design-Builder is liable. Such insurance shall be maintained in force Design-Builder for a minimum extended reporting period of; (i) five (5) years after final completion and Owner's acceptance of the Project, or (ii) for such longer period as may be required by the Contract Documents. Design-Builder shall require the same limits from any design professional or engineer engaged by Design-Builder on the Project.

**1.5 Environmental / Pollution Liability:** Environmental / Pollution Liability with a minimum limit of \$1,000,000 per claim and \$1,000,000 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 Design-Builder is liable. Such insurance shall be maintained in force by Construction Manager for a minimum extended reporting period of; (i) five (5) years after the date of final completion and Owner's acceptance of the Project, or (ii) for such longer period as may be required by the Contract Documents.

**1.6 Owner's and Design-Builder'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 Design-Builder's Commercial General and Umbrella Liability policies as well as waive any rights of subrogation against Owner and other parties designated by Design-Builder. [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 Design-Builder prior to the start of Design-Builder's Work and shall be effective on or before the date Design-Builder'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 Design-Builder's Work.]

**1.7 Builder's Risk Insurance:** Owner shall purchase Builder's Risk policy(ies). Design-Builder shall determine for itself the adequacy of Builder's Risk or Installation Risk coverage as it relates to Design-Builder's Work, including its materials and equipment, prior to commencement of Design-Builder's Work. Upon written request, Owner will provide Design-Builder with a copy of the Builder's Risk insurance policy. Design-Builder shall be responsible for the amount of any deductible, or loss or damage to the Work caused by Design-Builder, to the extent not reimbursed by applicable Builder's Risk insurance.

**1.8 Other Insurance:** Design-Builder 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 Design-Builder 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, Design-Builder 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, Design-Builder shall require and secure similar insurance from its contractors of every tier.
- 4.0 REPORTS OF ACCIDENT AND INJURY.** Design-Builder 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 Design-Builder's Work.
- 5.0 DEDUCTIBLES OR SELF INSURED RETENTIONS (SIR).** Design-Builder shall be responsible for payment of all deductibles or SIR applicable to Design-Builder'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 Design-Builder determines a larger deductible or self-insured retention exists without Owner's express written consent, Owner may withhold payment otherwise due Design-Builder under the Contract, in amount of such deductible or self-insured retention, until the expiration of all Design-Builder's obligations. In the event Owner makes a claim against any of Design-Builder's insurance required by this Exhibit or otherwise provided under the Contract Documents, Owner may withhold from any payment otherwise due Design-Builder an amount to reasonably protect Owner from such claim, until such claim is released or satisfied.
- 6.0 WAIVER OF SUBROGATION.** Design-Builder 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 (i) would otherwise have a duty of indemnification, contractual or otherwise, (ii) did not pay the insurance premium directly or indirectly, and (iii) whether or not such individual or entity has an insurable interest in the property damaged.
- 7.0 PRIMARY AND NON-CONTRIBUTORY.** Design-Builder 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 TERMINATION.** If Design-Builder fails to fulfill the requirements of this Exhibit, Owner may: (1) terminate the Design-Builder's employment under the Contract for default, or (2) purchase such insurance coverage at Design-Builder expense, (3) withhold from payment owed or owing Design-Builder 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.** Design-Builder agrees that all documentation required by this Exhibit shall be provided prior to the start of Design-Builder's Work. Design-Builder's failure to provide, or Owner's failure to request, such documentation shall not be construed as a waiver of any of Design-Builder's obligations under this Exhibit. If Design-Builder 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 estoppel or waiver of such requirements.

**EXHIBIT C**  
**PAYMENT &**  
**PERFORMANCE BOND**  
**EXHIBIT**

---

---

## 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.



## 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)

(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: \_\_\_\_\_

ATTEST: \_\_\_\_\_

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 of Georgia.

**EXHIBIT D**  
**DESIGN-BUILDER'S**  
**WAIVER & RELEASE**  
**UPON PAYMENT FORMS**



---

---

## Design-Builder's Conditional Claim Waiver and Release

STATE OF GEORGIA  
COUNTY OF NEWTON

The undersigned, \_\_\_\_\_ ("Design-Builder"), 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 \_\_\_\_\_ ("Project"), together with all improvements and appurtenances attendant thereto, which is located unincorporated eastern Newton County, near Covington, State of Georgia.

Upon receipt of the sum of \$\_\_\_\_\_, which represents the latest Application(s) for Payment, the Design-Builder 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 Design-Builder 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.)

Design-Builder affirms, warrants, and represents that Design-Builder 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 Design-Builder, for use at the Project through and including \_\_\_\_\_, \_\_\_\_\_ (date of Design-Builder's last prior Application(s) for Payment), and that the Design-Builder 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.)

Design-Builder 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 Design-Builder'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, Design-Builder, 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. Design-Builder 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 DESIGN-BUILDER:**

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 Design-Builder and that this document was signed under oath personally and on behalf of the Design-Builder.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

---

---

**Design-Builder's Final, Unconditional Claim Waiver and Release  
Upon Final Payment**

STATE OF GEORGIA  
COUNTY OF Newton

The undersigned, \_\_\_\_\_ ("Design-Builder"), 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 \_\_\_\_\_ ("Project"), together with all improvements and appurtenances attendant thereto, which is located unincorporated eastern Newton County, near Covington, State of Georgia.

Design-Builder represents that it has been paid in full for all labor, services, equipment and material furnished to the Project, and Design-Builder 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 Design-Builder has, may have had or may have in the future arising out of Design-Builder'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 Design-Builder at the time of execution of this Waiver and Release.

The Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder. Design-Builder 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 DESIGN-BUILDER:**

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 Design-Builder and that this document was signed under oath personally and on behalf of the Design-Builder.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_



---

# **STANDARD FORM OF GENERAL CONDITIONS OF CONTRACT BETWEEN OWNER AND DESIGN-BUILDER**

---

**Document No. 535**

Second Edition, 2010

© Design-Build Institute of America Washington, DC

## Table of Contents

Article 1 .....	33
General.....	33
1.1 Mutual Obligations .....	33
1.2 Basic Definitions .....	33
Article 2 .....	36
Design-Builder's Services and Responsibilities .....	36
2.1 General Services.....	36
2.2 Design Professional Services.....	38
2.3 Standard of Care for Design Professional Services.....	38
2.4 Design Development Services.....	38
2.5 Legal Requirements.....	39
2.6 Government Approvals and Permits.....	39
2.7 Design-Builder's Construction Phase Services.....	39
2.8 Design-Builder's Responsibility for Project Safety.....	41
2.9 Design-Builder's Warranty.....	42
2.10 Correction of Defective Work.....	42
Article 3 .....	43
Owner's Services and Responsibilities .....	43
3.1 Duty to Cooperate.....	43
3.2 Furnishing of Services and Information.....	43
3.3 Owner's Representative.....	44
3.4 Government Approvals and Permits.....	44
3.5 Owner's Separate Contractors.....	45
Article 4 .....	46
Hazardous and Differing Site Conditions.....	46
4.1 Hazardous Conditions and Differing Site Conditions.....	46
Article 5 .....	47
Insurance.....	47
5.1 Design-Builder's Insurance Requirements.....	47
5.2 Owner's Liability Insurance.....	47
Article 6 .....	48
Payment .....	48
6.1 Schedule of Values.....	48
6.2 Monthly Progress Payments.....	48

6.3	Withholding of Payments. ....	49
6.4	Design-Builder's Payment Obligations. ....	49
6.5	Substantial Completion.....	49
6.6	Final Payment.....	50
Article 7	.....	52
Indemnification	.....	52
7.1	Patent and Copyright Infringement.....	52
7.2	Indemnification.....	52
Article 8	.....	54
Time	.....	54
8.1	Obligation to Achieve the Contract Times. ....	54
8.2	Delays to the Work.....	54
8.3	Force Majeure.....	54
Article 9	.....	56
Changes to the Contract Price and Time	.....	56
9.1	Change Orders. ....	56
9.2	Work Change Directives. ....	56
9.3	Minor Changes in the Work.....	57
9.4	Contract Price Adjustments. ....	57
9.5	Emergencies.....	58
Article 10	.....	59
Contract Adjustments and Disputes	.....	59
10.1	Requests for Contract Adjustments and Relief. ....	59
10.2	Dispute Avoidance and Resolution.....	59
10.3	Duty to Continue Performance.....	60
Article 11	.....	61
Stop Work and Termination for Cause	.....	61
11.1	Owner's Right to Suspend or Stop Work.....	61
11.2	Owner's Right to Perform and Terminate for Cause.....	61
Article 12	.....	63
Electronic Data	.....	63
12.2	Transmission of Electronic Data.....	63
12.3	Electronic Data Protocol. ....	63
Article 13	.....	65
Miscellaneous	.....	65
13.1	Confidential Information.....	65

13.2	Assignment. ....	65
13.3	Successorship. ....	66
13.4	Governing Law. ....	66
13.5	Severability. ....	66
13.6	No Waiver. ....	66
13.7	Headings. ....	66
13.8	Notice. ....	66
13.9	Amendments. ....	66
13.10	Drug-Free Workplace. ....	66
13.11	Design-Builder’s Safety Representative .....	67
13.12	No Third Party Rights .....	69



## **Article 1**

### **General**

#### **1.1 Mutual Obligations**

**1.1.1** Owner and *Design-Builder* commit at all times to cooperate fully with each other, and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

#### **1.2 Basic Definitions**

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price* (2010 Edition).

**1.2.2** *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the “Basis of Design Documents.”

**1.2.3** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by the Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both the Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

**1.2.4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.5** *Design-Build Team* is comprised of the Design-Builder, the Design Consultant, and key Subcontractors identified by the Design-Builder.

**1.2.6** *Design Consultant* is a qualified, licensed, design professional in the State of Georgia who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, design professional licensed in the State of Georgia who is not an employee of the Design Consultant, but is retained by the Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

**1.2.7** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under Section 6.5 and the submission of all documents set forth in Section 6.6.2.

**1.2.8** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order as set forth in Section 8.3.

**1.2.9** *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form*

of *General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

**1.2.10** *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.

**1.2.11** *GMP Proposal* means that proposal developed by Design-Builder in accordance with Section 6.8 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price*.

**1.2.12** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.13** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders, and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.14** *Owner's Representative* will assist the Owner in the administration of the Design-Build Contract including, but not limited to, the following tasks: preliminary design services, design and construction phase services, resident services during construction, and construction administration.

**1.2.15** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site, and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and other Project-specific technical materials and requirements. The Owner's Project Criteria are set forth in Exhibit A to the Agreement.

**1.2.16** *Site* is the land or premises on which the Project is located.

**1.2.17** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.18** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.19** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents, so that Owner can occupy and use the Project or a portion thereof for its intended purposes and necessary certificates can be issued such as a temporary or final certificate of occupancy for the building permits.

**1.2.20** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

**1.2.21** *Newton County Water and Sewerage Authority (NCWSA)* will be referred herein as the Authority or as the Owner.

**1.2.22** *Design-Builder* may also be referred to herein the Contract Documents herein as the Proposer or as the Contractor.

**1.2.23** *Date of Commencement* will also be referred to herein the Contract Documents as ‘Notice to Proceed.’

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

**2.1.1** The Design-Builder's services are broken into two phases as follows:

**2.1.1.1 Phase One Services – Pre-construction:** Generally, consists of preliminary engineering, geotechnical investigations, and design development as may be necessary to produce 80% complete Construction Documents for permit submittals, as well as preparation, in close collaboration with the Owner, of a proposed price and schedule to provide a fully complete and operating Project, meeting Owner's Project Criteria. The proposed price and schedule include the Project's design (developed to the Owner's required level of completion), a Guaranteed Maximum Price, Project schedule, and supporting documentation, such as detailed open-book costing for the Guaranteed Maximum Price. Phase One Services also include the following:

Develop the Project execution plan, including Project schedule;

Perform engineering studies to support design development and cost estimating. Previous studies should be used where feasible;

Produce the basis-of-design report;

Attend / coordinate Project scoping meetings, as needed, and produce report identifying all Project regulatory / permitting agency coordination activities required;

In conjunction with the Owner, develop the engineering design documents (including preparing and submitting intermediate design review packages) and conduct value-engineering activities for the preparation of a Project final scope, GMP proposal, and schedule;

Prepare a Project cost model and provide detailed cost estimates as the design and design alternatives are advanced;

Identify Project permitting requirements, initiate certain permitting activities and acquire permits necessary for performance of Phase Two Services;

Submit the GMP Proposal in accordance with Section 6.8 of the Agreement.

**2.1.1.2 Phase Two Services – Construction:** Provided the Owner accepts Design-Builder's GMP Proposal, Design Builder's Phase Two Services generally consist of completing the Project's final design, permitting, construction, commissioning and performance testing as follows:

Complete final design of Project and develop Final Construction Documents;

Procure equipment, materials, and Subcontractors;

Secure necessary permits;

Construct the Project in accordance with this Agreement;

Conduct startup, commissioning, and performance testing;

Provide warranty coverage; and

Otherwise provide whatever services or Work as required by the Contract Documents to provide Owner with a complete and fully operational Project.

**2.1.2** Provided the Owner accepts Design-Builder's GMP Proposal, Design Builder's Phase Two Services will include construction of storm water detention ponds, demolition of existing building, and security fence on Owner's existing campus site with other improvements required under Owner's Project Criteria.

**2.1.2.1** Phase Two Services, Part I - Storm water: includes constructing storm water retention and detention ponds, in addition to installing storm water drainage system along the western and central parts of the campus. Design-Builder shall achieve Substantial Completion of Part I within 210 calendar days after the Date of Commencement. Design-Builder will provide all design, permitting, field trades, construction, performance testing, commissioning and start-up services as may be required to complete the Part I construction.

**2.1.2.2** Phase Two Services, Part II – Demolition & Fixtures: includes demolishing existing one-story maintenance building and constructing (i) a parking lot containing an estimated 50 parking spaces, (ii) a security fence with automatic card accessible gates with a vegetative partition. Design-Builder shall achieve Substantial Completion of Part II within 210 calendar days after the Date of Commencement. Design-Builder will provide all design, permitting, field trades, construction, performance testing, commissioning and start-up services as may be required to complete the Part I construction.

**2.1.3** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.4** Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, including an update of Design-Builder's schedule prepared in accordance with Section 2.1.3, indicating the actual progress of the Work against Design-Builder's plan for execution of the Work, (ii) whether the Work is proceeding within the parameters of the Guaranteed Maximum Price, including an update indicating areas of potential overruns and savings, (iii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iv) whether health and safety issues exist in connection with the Work; (v) status of the contingency account to the extent provided for in the Standard Form of Agreement Between Owner and Design-Builder - Cost Plus Fee with an Option for a Guaranteed Maximum Price; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

**2.1.5** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least 3 days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall be in critical path format, indicate the dates for the start and completion of the various stages of Work, including the dates when Owner's information and approvals are required to enable Design-Builder to achieve the Contract

Time(s) and clearly indicate the critical path and identify the Work activities on the critical path. The schedule shall be periodically updated as required in Section 2.1.2 and revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

**2.1.6** The parties will meet within 7 days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

## **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide thoroughly qualified, design professionals licensed in the State of Georgia employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the highest standard of professional care and skill used by members of the design profession practicing under similar conditions at the same time and locality of the Project.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams, and specifications setting forth the Project requirements and shall be included in Design-Builder's schedule provided in accordance with Section 2.1.3. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in

Section 2.4.1 above. The Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit 1 set of approved Construction Documents, in digital format, to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim design submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim design submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements.**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and / or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

**2.6.1** Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges, and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services.**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors, the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill, and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences, and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and / or Contract

Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and / or time of performance.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including, but not limited to, any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of any Work it self-performs and that of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall cause each subcontract agreement to contain a provision calling for the assignment of the subcontract by Design-Builder to Owner. Each subcontract agreement for a portion of the Work is assigned by the Design-Builder to Owner provided that:

**2.7.6.1** Assignment effective only after termination of the Contract by Owner for cause and only for those subcontract agreements in which the Owner accepts by notifying the Subcontractor and Design-Builder in writing; and

**2.7.6.2** Assignment is subject to the prior rights of surety, if any, obligated under bond relating to the Contract.

**2.7.7** Design-Builder shall keep the Site reasonably free from debris, trash, and construction wastes to permit Design-Builder to perform its construction services efficiently, safely, and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

**2.7.7.1** Painting contractors may not discharge into the municipal storm drain system (storm water pipes, catch basins, drainage ditches, and similar conveyances) any wastewater resulting from the cleaning of painting equipment or the removal of paint from structures. If solvents or other potentially hazardous products are used to clean painting equipment, the resulting wastewater may be hazardous waste and must be properly disposed of or recycled.

**2.7.7.2** For jobs involving new taps into the sanitary sewer system, contractors must verify that, in no uncertain terms, connections are into the sanitary sewer system and not the municipal storm drain system (storm water pipes, catch basins, drainage ditches, and similar conveyances). Tests using tracing dye or smoke are the preferred verification methods; however, a combination of site drawings, visual observation and / or other methods may be adequate.

**2.7.7.3** Concrete contractors must use designated concrete washout areas at worksites. Pouring leftover concrete or rinsing concrete residue off of vehicles / equipment where it may enter the municipal storm drain system (storm water pipes, catch basins, drainage ditches, and similar conveyances) is strictly prohibited.

**2.7.7.4** Contract companies that provide waste management services must provide waste



bins that help minimize storm water pollution. Items that must be in place include lids / covers and drain plugs. Additionally, the bins should be as leak-proof as possible (i.e., no holes from corrosion or damage). At locations where a waste bin is found to not meet these specifications, the waste management contractor should do their best to provide a suitable bin when requested by city personnel.

**2.7.8** In an effort to raise awareness of sediment and erosion control requirements and issues, the Owner requires that the Design-Builder's Site Superintendent possess a valid Level 1A Certified Personnel Card (Red Card) from Georgia Soil and Water Conservation Commission. The Design-Builder will submit a copy of each required employee's certificate to the Owner. The Superintendent's certificate must be on file prior to Notice to Proceed. Ground disturbing activities will be prohibited until the requirements of this section are fulfilled.

**2.7.9** In the event that a governmental or quasi-governmental entity having jurisdiction over the Project or Site, including any regulatory agency, determines that Design-Builder or any of its Subcontractors has violated any Legal Requirements imposing environmental standards, requirements, or law upon the Work, Design-Builder assumes full liability and responsibility for such violation, correcting such violation, and subsequent enforcement issued by such governmental or quasi-governmental entity. The Owner reserves the right to terminate the Agreement if it can be confirmed through reasonable evidence that Design-Builder or any of its Subcontractors violated any environmental Legal Requirements.

## **2.8 Design-Builder's Responsibility for Project Safety.**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Notwithstanding any Owner-specific safety requirements set forth in the Contract Documents, Design-Builder remains solely responsible for Project Safety and compliance with all Legal Requirements relating to safety. Design-Builder specifically acknowledges that any Owner-specific requirements set forth in the Contract Documents or otherwise imposed on Design-Builder's performance of Work shall not give rise to any duty or obligation on the Owner for Project Safety or compliance with any Legal Requirements relating to safety. Design-Builder will immediately report in writing any safety-related injury, loss, damage, or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way

to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages, or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or within such longer period to the extent required by any specific warranty included in the Contract Documents. Design-Builder shall be responsible for all costs including redesign and reconstruction costs incurred by Owner to correct any of the Work.

**2.10.2** Design-Builder shall, within 7 days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such 7 day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all costs incurred by Owner in performing such correction, including all fees from attorneys, architects, engineers, and other professionals incurred by Owner. If the nonconforming Work creates an emergency requiring an immediate response, the 7 day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

## **Article 3**

### **Owner's Services and Responsibilities**

#### **3.1 Duty to Cooperate.**

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

**3.1.3** Owner shall give Design-Builder timely notice of any Work Owner notices to be defective or not in compliance with the Contract Documents.

#### **3.2 Furnishing of Services and Information.**

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to reasonably rely upon in performing the Work:

**3.2.1.1** Surveys describing the property, boundaries, topography, and reference points for use during construction, including existing service and utility lines;

**3.2.1.2** To the extent available, existing geotechnical information describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site. Notwithstanding any such information the Owner may provide, Design-Builder shall be responsible for interpretation of existing records and assumes responsibility for any geotechnical or subsurface conditions or uncertainties, whether or not such conditions are disclosed in any geotechnical information or surveys provided to Design-Builder by Owner;

**3.2.1.3** Temporary and permanent easements, zoning, and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**3.2.1.4** A legal description of the Site;

**3.2.1.5** To the extent available, record drawings of any existing structures at the Site; and

**3.2.1.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. The Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

### **3.3 Owner's Representative**

**3.3.1** The Owner's Representative will assist the Owner in the administration of the Contract Documents including, but not limited to, the following tasks: preliminary design services, design and construction phase services, Owner services during construction, and supplemental services. The Owner's Representative shall communicate regularly with the Design-Builder and the Owner and Design-Builder shall endeavor to communicate with each other through the Owner's Representative in matters arising out of or relating to the Contract Documents. The Owner's Representative shall have authority to act on behalf of the Owner only to the extent expressly granted in the Agreement and these General Conditions. The Owner's Representative shall have the authority:

**3.3.1.1** to reject Work that does not conform to the Construction Documents;

**3.3.1.2** to review and approve, or take other appropriate action upon, Design-Builder's shop drawings, product data and samples, but only for the limited purpose of checking for conformance with the design concept of the Contract Documents;

**3.3.1.3** to make minor revisions to the Work that do not result in a change in the Contract Time or Guaranteed Maximum Price as set forth in Section 9.3; and

**3.3.1.4** to suspend or stop Work in accordance with Section 11.1.

**3.3.1.5** Approve payment for Design-Builder's Applications for Payment.

**3.3.2** The Owner's Representative shall not have authority to:

**3.3.2.1** approve or modify the Basis of Design Documents;

**3.3.2.2** approve or modify Design-Builder's interim design submissions;

**3.3.2.3** approve or modify the Construction Documents, except as described in Section 3.3.1.3;

**3.3.2.4** modify the Owner's Project Criteria;

**3.3.2.5** approve or modify the GMP Exhibit or GMP Proposal;

**3.3.2.6** agree to or approve any modifications, amendments, or Work Change Directives or Change Orders to the Contract Documents, except for minor revisions to the Work as provided for in Section 3.3.1.3; or

**3.3.2.7** declare Substantial Completion or final completion of the Project.

### **3.4 Government Approvals and Permits.**

**3.4.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges, and inspection fees set forth in the Owner's Permit List attached as an exhibit to the Agreement.

**3.4.2** Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals, and licenses that are Design-Builder's responsibility.

### **3.5 Owner's Separate Contractors.**

**3.5.1** Owner shall be entitled to self-perform any work related to the Work through separate Contractors. Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

### **Hazardous and Differing Site Conditions**

#### **4.1 Hazardous Conditions and Differing Site Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in the Guaranteed Maximum Price and / or Contract Time(s) to the extent Design-Builder's cost and / or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors, or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend, and hold harmless Owner and Owner's officers, directors, employees, and agents, including Owner's Representative, from and against all claims, losses, damages, liabilities, and expenses, including attorneys' fees, the fees of consultants and experts and all costs and expenses of litigation, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

## **Article 5**

### **Insurance**

#### **5.1 Design-Builder's Insurance Requirements.**

**5.1.1** Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit attached to the Agreement as Exhibit B. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

**5.1.2** Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until the two-year correction period in Section 2.10 has expired and final payment is made to Design-Builder and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least 30 days prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by the Design-Builder with reasonable promptness according to the Design-Builder's information and belief.

**5.1.4** Owner shall be named as an additional insured under any liability insurance policy.

#### **5.2 Owner's Liability Insurance.**

**5.2.1** Owner, in its discretion, may procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance necessary to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

#### **5.3 Payment and Performance Bonds**

**5.3.1** Design Builder shall provide payment and performance bonds meeting the requirements of O.C.G.A. §§ 36-91-70; 36-91-90. Design Builder shall provide such bonds on the forms attached to the Agreement as Exhibit C.

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

**6.1.1** Unless required by the Owner upon execution of this Agreement, within 10 days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work, (iii) segregate as a separate category the Design-Builder's general conditions and include values for all items comprising the general conditions; (iv) include a separate category for Design-Builder's fee, and (v) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

**6.1.2** The Owner will timely review and approve the schedule of values so as not to delay the submission of the Design-Builder's first application for payment. The Owner and Design-Builder shall timely resolve any differences so as not to delay the Design-Builder's submission of its first application for payment.

#### **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval an accurate and complete Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be based upon the Schedule of Values approved by the Owner and be accompanied by all supporting documentation required by the Contract Documents and / or established at the meeting required by Section 2.1.4 hereof. The Application for Payment shall include the percentage of completion of the divisions of the Work and Design-Builder's general conditions identified in the Schedule of Values and shall allocate the GMP based on those percentages together with the Design-Builder's fee, payment for equipment and materials, less previous payments and retainage.

**6.2.1.1** With each Application for Payment submitted by Design-Builder, except for its Final Application for Payment, Design-Builder shall submit a fully executed Conditional Claim Waiver and Release Upon Progress Payment form, a copy of which is attached to the Agreement and included in Exhibit D. Design-Builder's submittal of a fully executed Conditional Claim Waiver and Release Upon Progress Payment in accordance with this section shall be an express condition precedent to Owner's obligation to make payment to Design-Builder in response to Design-Builder's Application for Payment.

**6.2.1.2** With each Application for Payment, the Design-Builder shall submit a manifest billing including documentation supporting all costs for which Design-Builder seeks payment, including but not limited to, payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed progress payments already received by the Design-Builder, less that portion of those payments attributable to the Design-Builder's Fee, plus payrolls for the period covered by the present Application for Payment.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the



equipment and materials free and clear of all liens and encumbrances.

**6.2.3** All discounts offered by Subcontractor, Sub-Subcontractors and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

**6.2.4** The Application for Payment shall constitute Design-Builder's representation that the Work described herein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

### **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, Owner will notify Design-Builder in writing at least 5 days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

### **6.4 Design-Builder's Payment Obligations.**

**6.4.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their Work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.2 hereof.

### **6.5 Substantial Completion.**

**6.5.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within 5 days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify it is Substantially Complete, in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities, and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the

## Certificate of Substantial Completion.

**6.5.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to 200% of the reasonable value of all remaining, incomplete, or defective items of Work as noted in the Certificate of Substantial Completion, as determined by Owner, plus all other amounts Owner is entitled to withhold pursuant to Section 6.3 above. Owner shall make payment of such retained amounts to Design-Builder within 30 days of Design-Builder's submittal of an accurate and complete Application for Payment for the retained amounts to be released.

**6.5.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.5.1 above, (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

## **6.6 Final Payment.**

**6.6.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion and its final accounting as required by Section 6.6.2.2 substantiates the Cost of the Work for which Design-Builder seeks payment.

**6.6.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information, the provision of all of which is an express condition to Owner's obligation to make final payment to Design-Builder:

**6.6.2.1** A fully executed Final, Unconditional Claim Waiver and Release upon Final Payment form, a copy of which is attached to the Agreement and included in Exhibit D;

**6.6.2.2** A final accounting for the Cost of the Work in a form and such detail as is acceptable to the Owner and its auditors;

**6.6.2.3** Consent of Design-Builder's surety, if any, to final payment;

**6.6.2.4** All operating manuals, warranties, and other deliverables required by the Contract Documents;

**6.6.2.5** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents; and

**6.6.2.6** As-built drawings.

**6.6.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests, (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion and (iii) the terms of any special warranties required by the Contract Documents. Acceptance of payment by the Design-Builder constitutes a waiver of all claims by Design-Builder except those claims previously made in writing by Design-Builder and which are identified by Design-Builder as unsettled.

**6.6.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the Punch List if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein, and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient Work until such Work is completed.

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

**7.1.1** Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information, and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages, losses, expenses, and costs, including but not limited to all attorneys' fees, the fees of consultants and experts, and costs and expenses of litigation incurred by Owner or awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim, or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim, or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify, and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify, and hold harmless Owner in Section 7.1.1 above.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

#### **7.2 Indemnification**

**7.2.1 Design Builder's Performance.** To the fullest extent permitted by law, Design-Builder shall indemnify, defend, and hold harmless Owner (and other entities identified in the Agreement to be indemnified by Design-Builder, including Owner's Representative), all of their political subdivisions, affiliates, parents, subsidiaries, elected officials, appointed officials, members, stockholders, officers, directors, employees, representatives, agents, insurers, successors, and assigns (all of which are hereinafter collectively referred to as "Indemnitees"), from and against all claims, damages, losses, costs, and expenses, including but not limited to all attorneys', paralegal, consultants' and experts' fees, legal expenses and dispute resolution costs (collectively "Legal Expenses"), arising out of or resulting from the performance of Design-Builder's Work; provided, any such claim, damage, loss, cost or expense: (i) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than direct damage to Design-Builder's Work itself), including the loss of use resulting therefrom, and is caused or alleged to be caused in whole or in any part by any act or omission of Design-Builder or anyone directly or indirectly employed by Design-Builder or anyone for whose acts or omissions Design-Builder may be liable, regardless of whether it is also caused in part by a party indemnified hereunder; or (ii) arises

out of or relates to Design-Builder's performance under this Agreement, or results from any claimed failure of Design-Builder, or anyone directly or indirectly employed by Design-Builder or anyone for whose acts or omissions Design-Builder may be liable, to properly fulfill Design-Builder's obligations under this Agreement. This indemnity obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist under law except to the extent that it is caused by the sole negligence of any party indemnified hereunder in which case this obligation shall not apply relative to such indemnified party.

**7.2.2 No Limitation Upon Liability.** In any and all claims against Indemnitees by any worker of Subcontractor, anyone directly or indirectly employed by Subcontractor, or anyone for whose acts or omissions Subcontractor may be liable, the indemnification obligations under this Section 7.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**7.2.3 Compliance with Laws.** Design-Builder is bound by, and, at its own cost, shall comply with all Legal Requirements, including, but not limited to, all applicable federal, state and local codes, laws, ordinances and regulations, including but not limited to laws pertaining to equal employment opportunity, social security, unemployment compensation, workers' compensation, immigration compliance, tax, safety, and building codes. Design-Builder shall indemnify, defend, and hold harmless Indemnitees with respect to all claims, fines, penalties, damages, losses, costs and expenses including Legal Expenses attributable to the failure or claimed failure of Design-Builder, or its workers, agents, Payees, to comply with all Legal Requirements.

**7.2.4 Consideration.** Included in the Contract Price is the sum of \$100.00 as specific consideration for the indemnity obligations provided under this Section 7.2.

## **Article 8**

### **Time**

#### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

#### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Hazardous Conditions, unanticipated inclement weather conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Guaranteed Maximum Price provided, however, that the Guaranteed Maximum Price shall not be adjusted for unanticipated inclement weather conditions or Force Majeure Events unless otherwise provided in the Agreement.

#### **8.3 Force Majeure**

**8.3.1** Neither party shall be liable for any failure or delay in the performance of its obligation pursuant to the Contract Documents, and such failure or delay shall not be deemed a default or grounds for termination hereunder if all of the following conditions are satisfied:

**8.3.2** If such failure or delay could not have been anticipated and prevented by reasonable precautions;

**8.3.3** If such failure or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and

**8.3.4** If and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

**8.3.5** An event, which satisfies all of the conditions set forth above, shall be referred to as a "Force Majeure Event." Upon the occurrence of a Force Majeure Event, the affected party shall be excused from any further performance of those of its obligations, which are affected by the Force Majeure Event for as long as (i) such Force Majeure Event continues and (ii) the affected party continues to use reasonable efforts to mitigate the effect of the Force Majeure Event and recommence performance whenever and to whatever extent possible.

**8.3.6** Upon the occurrence of a Force Majeure Event, the affected party shall promptly notify the other by telephone (to be confirmed by written notice within 5 days of the inception of the failure or delay) of the occurrence of a Force Majeure Event and shall describe in reasonable detail the nature of the Force Majeure Event.

**8.3.7** Notwithstanding anything contained herein to the contrary, strikes, unavailability or

shortage of labor or workforce, slow-downs, walkouts, lockouts, and industrial disputes affecting the workforce of Design-Builder or its Subcontractors shall not constitute “Force Majeure Events” and are not excused under this provision.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Guaranteed Maximum Price; and

**9.1.1.3** The extent of the adjustment, if any, to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** An executed Change Order constitutes a full and final settlement and accord and satisfaction of all effects of the changes described and included in the Change Order upon any and all aspects of the Contract Documents and compensates Design-Builder fully for such changes. Accordingly, except as specifically described and included in a Change Order,

**9.1.3.1** Design-Builder expressly waives and releases any and all right to make a claim or demand or to take any action or proceeding for any other consequences resulting from, arising out of, or related to the Change Order, whether the consequences result directly or indirectly from the changes described and included therein; and

**9.1.3.2** Design-Builder expressly waives and releases any claim it may have against the Owner for

- i. any adjustment in the schedule, including but not limited to the Scheduled Substantial Completion Date, Scheduled Interim Milestone Dates or final completion date, or
- ii. any additional compensation or damages, resulting from, arising out of, or related to, the changes described and included herein, including, but not limited to, any claim for impact or damages due to delay, disruption, hindrance, interference, inefficiencies, or extra work arising out of, resulting from, or related to, the changes described and included therein, including, but not limited to, any effect that such changes may have on the unchanged portion of the Work or schedule.

#### **9.2 Work Change Directives.**

**9.2.1** Owner may, by Work 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. A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment, if any, in the Guaranteed Maximum Price and / or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement. Design-Builder will promptly proceed with the change in the Work during those



negotiations.

### **9.3 Minor Changes in the Work.**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Guaranteed Maximum Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder. Owner may also order minor changes in the Work.

### **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in the Guaranteed Maximum Price resulting from a change in the Work shall be determined by one or more of the following methods:

**9.4.1.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

**9.4.1.2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

**9.4.1.3** Costs, fees, and any other markups set forth in the Agreement; or

**9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work as demonstrated by invoices, payrolls, and other like documentation of Cost of the Work paid by Design-Builder plus the following percentages of the various portions of the Cost of the Work:

**9.4.1.4.1** For payroll costs for employees in the direct employ of Design-Builder in the performance of the Work and costs of all materials and equipment furnished and incorporated in the Work, the Design-Builder's fee shall be fifteen percent;

**9.4.1.4.2** For payments made by the Design-Builder to the Subcontractors for Work performed or furnished by Subcontractors, the Design-Builder's fee shall be five percent.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, the parties may negotiate an equitable adjustment.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed and (ii) specifying Owner's interpretation

of the services that are to be performed.

## **9.5 Emergencies.**

**9.5.1** In any emergency affecting the safety of persons and / or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury, or loss. Any change in the Guaranteed Maximum Price and / or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

## **Article 10**

### **Contract Adjustments and Disputes**

#### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If Design-Builder believes that it is entitled to an adjustment in the Guaranteed Maximum Price and / or Contract Time(s) from Owner for any event arising out of or related to the Work or Project, Design-Builder shall provide written notice to the Owner stating in reasonable detail the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed 14 days, after the occurrence giving rise to the claim for relief. Such notice shall include sufficient information to advise the Owner of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. No later than 30 days after the event giving rise to Design-Builder's claim for adjustment of the Guaranteed Maximum Price and / or Contract Time(s), Design-Builder shall provide Owner with a second notice of its claim for relief setting forth in detail its cost estimate and / or proposed schedule revision, which shall include such supporting documentation and detail as Owner may require to facilitate its review and response. The notices required by this section are express conditions precedent to Design-Builder's right to file a claim for adjustment of the Guaranteed Maximum Price and / or Contract Time(s) for events arising out of or related to the Work or the Project and Design-Builder's failure to give the written notices required by this section shall result in Design-Builder's waiver and release of its claim.

**10.1.2** No adjustment in the Guaranteed Maximum Price or Contract Time(s) shall be made for any suspension, delay, or interruption of the Work resulting from the fault or negligence of Design-Builder or from any action of the elements or bad weather unless such weather conditions are abnormal for climatic region in which the Project is located and for the time of year; nor shall an adjustment be made hereunder where it is excluded under any other provisions of the Contract Documents.

#### **10.2 Dispute Avoidance and Resolution.**

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional, and expeditious manner so as to avoid unnecessary losses, delays, and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative who shall convene a dispute resolution conference at the Owner's request. In the event of a claim asserted by Design-Builder, such conference shall be convened within 30 days of Design Builder's second written notice required under Section 10.1.1, provided Design-Builder has provided Owner with information and documentation sufficient to meet the requirements of that section and to otherwise allow the Owner to reasonably review and respond to Design-Builder's claim, unless the Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than 30 days after such a request is made, to attempt to resolve such dispute or

disagreement. 5 days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting as provided in Section 10.2.3 the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, within 30 days of the conclusion of the meeting of Senior Representatives, the parties shall submit the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association (“AAA”) pursuant to its Construction Industry Mediation Rules in effect as of the effective date of this Agreement. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by the Owner and Design-Builder and consistent with the mediator’s schedule, the mediation shall commence within 90 days of the submission of the dispute to mediation.

**10.2.5** If after engaging in the dispute resolution process set forth in Sections 10.2.1 through 10.2.4, the parties are unable to resolve their dispute or disagreement, each party shall be free to file such actions and seek such relief as it deems appropriate in the Superior Court of Newton County. The parties expressly agree that the Superior Court of Newton County shall be the sole and exclusive venue for any action by either party seeking relief or recovery for any event, claim, dispute or disagreement arising out of the Contract Documents, not resolved through negotiations or mediation as provided for in this Section 10.2. The parties agree that except in the instance where a party refuses to participate in the dispute resolution process set forth in Sections 10.2.1 through 10.2.4, such dispute resolution process shall be a condition precedent to filing any action or seeking any relief or remedy in the Superior Court of Newton County.

### **10.3 Duty to Continue Performance.**

**10.3.1** Design-Builder shall continue to perform the Work pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

## **Article 11**

### **Stop Work and Termination for Cause**

#### **11.1 Owner's Right to Suspend or Stop Work.**

**11.1.1** The Owner shall have the authority to suspend or stop the Work wholly or in part by written order, without cause and for its convenience, for such periods as - may be necessary. The Owner may also suspend or stop Work under this section for cause, including, but not limited to, to conditions Owner considers unfavorable for the suitable prosecution of the Work; or for failure on the part of the Design-Builder to correct conditions unsafe for workers or for the general public; or for Design-Builder's failure to carry out orders given or to perform any requirements under the Contract Documents. No provision of the Contract Documents shall be construed under any circumstances to create any obligation of the Owner to exercise its authority or right suspend or stop the Work under this section for the benefit of the Design-Builder. If Design-Builder believes it is entitled to an adjustment to the Guaranteed Maximum Price or Contract Time(s) due to any action undertaken by the Owner to suspend or stop Work under this section, Design-Builder must assert a claim in accordance with Section 10.1.1. Failure by Design-Builder to meet the requirements of Section 10.1.1 in asserting such a claim shall result in waiver and release of Design-Builder's claim.

#### **11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder is adjudged bankrupt or insolvent, or if Design-Builder makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the Design-Builder or for any of his property, or if he files a petition to take advantage of any debtor's act or to reorganize under bankruptcy or persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials and equipment required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, (vi) abide by the authority of the Owner's Representative, or otherwise violates any provision of the Contract Documents or (vii) perform its obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured within 7 days of Design-Builder's receipt of such notice. If Design-Builder fails to cure such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional 7-day period. If Design-Builder, within such second 7-day period, fails to cure such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all designs, drawings, materials, equipment, scaffolds, tools, appliances, other items, and Design-Builder's subcontracts, which have been purchased, provided, or contracted for the performance of the Work, all of which Design-Builder hereby transfers, assigns, and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment, and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred

by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also, without limitation, losses, damages, costs and expense, including all attorneys' fees, the fees and costs of design professionals, consultants and experts, and all other costs and expenses of litigation, incurred by Owner in connection with the re-procurement and the assertion and defense of claims arising from Design-Builder's default.

**11.2.4** When the Owner terminates the Agreement pursuant to this Section 11.2, said termination shall not affect any right of the Owner against the Design-Builder then existing or which may thereafter accrue.

**11.2.5** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Article 8 of the Agreement.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Owner's Representative, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Design-Builder shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and / or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated, or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **12.3 Electronic Data Protocol.**

The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.1** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.2** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.3** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular

purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.



## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project. Design-Builder acknowledges that Owner is a governmental entity and is subject to the public records and open meetings laws of the state of Georgia. Accordingly, Owner's duty to maintain confidentiality is subject to its duties under those laws.

**13.1.2** All or substantial portions of the following documents may not be considered to be public records pursuant to applicable provisions of Georgia law: Design-Builder's and Owner's work product under the Contract Documents; and all plans, drawings, and other documents containing security plans and arrangements and / or detailed plans and drawings of any facility of the Owner. Such work product, security arrangements, and / or detailed plans and drawings are herein referenced as Sensitive Document(s). Without limiting the foregoing, it is expressly understood and agreed that Sensitive Document(s) is not limited to documents related to this Agreement and includes any and all documents herein described concerning any facility of the Owner regardless of the type of facility and regardless of the manner in which the Design-Builder acquired possession of such documents. The Owner retains sole authority and discretion to determine whether all or any portion of any Sensitive Document is a public record pursuant to applicable provisions of Georgia law. Under no circumstances will the Design-Builder provide the original or copy of any portion of any Sensitive Document (without regard to the status of such Sensitive Document as in preliminary, draft, or final form) to any person or entity unless directed by the Owner or unless reasonably necessary to satisfy Design-Builder obligations pursuant to this contract. The Design-Builder will maintain and implement such rules and procedures governing the conduct of its officers, employees, agents and subcontractors and the maintenance, handling and use of Sensitive Documents as may be reasonably necessary to prevent the release of any Sensitive Document in violation of this provision. Such rules and procedures will be subject to review by the Owner and such changes as the Owner determines to be reasonably necessary, including without limitation maintaining a log identifying any Sensitive Document provided to any person or entity that includes at a minimum, identification of the Sensitive Document provided, name of person releasing the Sensitive Document, name of person receiving the Sensitive Document, reason for releasing Sensitive Document, and date Sensitive Document released.

**13.1.3** Without exception, every person or entity receiving a Sensitive Document must agree not to copy or release such Sensitive Document to any other person or entity, unless otherwise approved by the Owner in writing. Such log need not include the release of any document to an officer or employee of the Design-Builder or to any employee of the Owner. A violation of any provision of this section is a material violation of this Agreement and will be the basis for termination of this Agreement for cause, in accordance with Section 11.2 hereof, notwithstanding any other provision of this Agreement to the contrary.

#### **13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer, or sublet any portion or part of the Work or the obligations required by the Contract

Documents.

### **13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors, and assigns.

### **13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the place of the Project, without giving effect to its conflict of law principles.

### **13.5 Severability.**

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

### **13.6 No Waiver.**

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

### **13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### **13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice, (ii) 4 days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement, or (iii) if transmitted by facsimile, by the time stated in a machine generated confirmation that notice was received at the facsimile number of the intended recipient, or finally, via email confirmation.

### **13.9 Amendments.**

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party. Design-Builder specifically acknowledges that Owner's Representative is not authorized to change, alter, or amend the Contract Documents except as may be specifically provided in Section 3.1.1.

### **13.10 Drug-Free Workplace.**

**13.10.1** The Owner is a drug-free workplace employer. The Owner requires construction

contractors to provide a drug-free workplace in the performance of any Owner contract.

**13.10.2** In order to be eligible to submit a Proposal for an Owner construction contract, a prospective contractor must certify that it will, if awarded the contract, provide a drug-free workplace during the performance of the contract. This requirement is met by:

- i. notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the workplace and specifying the actions that will be taken for violations of such prohibition;
- ii. establishing a drug-free awareness program to inform employees about (i) the dangers of drug abuse in the workplace, (ii) the contractor's policy of maintaining a drug-free workplace, (iii) any available drug counseling, rehabilitation, and employee assistance programs, and (iv) the penalties that may be imposed upon employees for drug abuse violations;
- iii. notifying each employee as a condition of employment, the employee will (i) abide by the terms of the prohibition outlined in (a) above, and (ii) notify the contractor of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;
- iv. notifying the Owner within 10 days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;
- v. imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation or abuse program by, an employee convicted of drug crime;
- vi. making a good faith effort to continue to maintain a drug-free workplace for employees; and
- vii. requiring any party to which it subcontracts any portion of the work under the contract to comply with the provisions of (i)–(vii).

**13.10.3** If the prospective Design-Builder is an individual, the drug-free workplace requirement is met by not engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the performance of the contract.

By submitting a Proposal, the Design-Builder certifies that it will comply with the Owner's drug-free workplace requirement. A false certification or the failure to comply with the above drug-free workplace requirements during the performance of a contract shall be grounds for suspension, termination or debarment.

## **13.11 Design-Builder's Safety Representative**

**13.11.1** The Design-Builder shall be required to designate a qualified and experienced safety representative for the Project Site. This individual shall be responsible for explaining compliance requirements to the Design-Builder's employees, maintaining and supervising safety precautions and programs, conducting weekly safety inspections of the Site and providing a copy of the report to the Owner.

**13.11.2** The Design-Builder shall at all times perform the Work under the Contract Documents in a safe and proper manner and in compliance with all applicable ordinances, statutes, rules and

regulations concerning safety, including but not limited to, such applicable statutes, rules and regulations known as or issued pursuant to, the Occupational Safety and Health Act ("OSHA") (hereinafter "Safety Standards"). Without limiting the foregoing in any manner, safety standards concerning trenching and excavation are particularly important. The Design-Builder shall, at its own expense, strictly adhere to all pertinent safety standards, rules and OSHA regulations required or recommended by governmental or quasi-governmental authorities having jurisdiction. The Design-Builder hereby acknowledges that it has its own safety program for all Work covered by or performed under the Contract Documents. The Design-Builder agrees to conduct its own frequent and regular inspections of all Work covered by or performed under the Contract Documents at the Site to verify compliance with the Design-Builder safety program and all applicable Safety Standards. The Design-Builder and the Owner acknowledge and agree that the Owner has no control, responsibility or authority over the Design-Builder or the Design-Builder's employees or Subcontractors with regard to the safety and health conditions or compliance with applicable Safety Standards relating to or arising out of the Design-Builder's Work or the performance of any Work covered by the Contract Documents. The Design-Builder has the sole responsibility and authority for ensuring that any and all hazardous conditions relating to or arising out of the Design-Builder's Work are corrected and for complying with all applicable Safety Standards at all times.

**13.11.3** With regard to the Design-Builder's Work or any Work covered by or performed under the Contract Documents, the Owner is not the controlling employer or controlling entity for the purpose of identifying violations or applicable Safety Standards, detecting hazardous conditions or ensuring that hazardous conditions or violations of applicable Safety Standards are corrected.

**13.11.4** Without limiting the foregoing, the Owner's Representative or the authorized Inspector(s) may, but are not contractually obligated to, bring Design-Builder violations of the applicable Safety Standards to the attention of the Design-Builder for correction by the Design-Builder. If the Design-Builder fails to correct violations of applicable Safety Standards, the Owner's Representative or its authorized Inspector(s) may, but are not contractually obligated to, take such actions as it deems appropriate to notify governmental or quasi-governmental authorities having jurisdiction over the Design-Builder's compliance with applicable Safety Standards. The provisions of this sub-paragraph shall be in addition to, and not in limitation of, other provisions of this contract for the enforcement of the terms of this contract.

- i. The Design-Builder shall notify the Owner's Representative, or his / her designee, immediately of any serious accident, injury or fatality.
- ii. The Design-Builder shall immediately notify the Owner's Representative or his / her designee of any OSHA inspection.
- iii. The Design-Builder shall notify the Owner's Representative of any unusual hazards created by the Work or found during construction.
- iv. The Design-Builder shall provide to the Owner's Representative a copy of all Work permits, if requested. Permits issued will include confined space entry, lockout / tag out, blasting, excavations, etc. The Design-Builder shall provide to the Owner a copy of a written safety program to meet the needs of the job (i.e. hazard communication, excavation, trenching, confined space, etc.). In addition, the Design-Builder will provide the following:
  - v. A copy of their drug and alcohol abuse program,
  - vi. Fire protection and emergency evacuation plan,

- vii. Medical services—regarding worker’s compensation medical services and first aid on the job site,
- viii. Personal protective equipment (PPE)—determine personal protective equipment needs and documentation of PPE assessment. The Design-Builder shall maintain good housekeeping (i.e. clean work areas, clear access, barricaded dangerous areas).

#### **13.12 No Third Party Rights**

This Agreement is entered into by and between the parties hereto for their exclusive benefit. The parties do not intend to create or establish by this Agreement any third party beneficiary status or rights, and no such third-party shall be entitled to enforce any right or obligation or enjoy any benefit created or established by this Agreement.

## Appendix C – Project Description and Scope of Services

## Exhibit 1 – Project Description

The intent of the Project Description is to describe the components for which the Design-Builder will be responsible.

Exhibit 3, contained herein, is the Owner's conceptual plan describing the project to be delivered. The Owner desires to complete all of the work shown on Exhibit 3, and defined herein under an agreement with the Design-Builder. The Project is divided into 2 Phases as described below.

### Phase I – Pre-Construction Phase Services:

Phase I Services includes the following activities:

- Survey;
- Planning;
- Permitting;
- Engineering and Design; and,
- Development of a Guaranteed Maximum Price for future construction.

Moreover, the site design will include boundary and topography survey work needed to provide a base plan; geotechnical analysis of site with regards to soil bearing capacity, location of rock and / or unsuitable base materials; development of site plans and erosion control plans; the design of additional detention basins and associated structures and the provision of all necessary hydrology studies; design of storm systems needed to service entire campus site; design of landscape planting and irrigation system; design of exterior security and pedestrian system lighting. A site plan must be prepared which clearly depicts the harmonious integration of the detention pond within the current and future campus site. The site design shall conform to all local, state, and Federal laws, i.e., the Georgia Storm Water Management Manual and the Manual for Erosion and Sediment Control in Georgia.

**The Owner will award subsequent Phases as an Amendment to the Agreement executed for Phase I Services.**

### Phase II – Construction Phase Services: (Future Amendment, for Reference Only)

Storm Water Detention Ponds: Storm water detention pond activities include, but are not limited to, the following:

- Construction of storm drains;
- Grading site to drain surface water at drainage structures and points;
- Developing and constructing 3 detention ponds;
- Constructing a vehicle wash-down station with grit collector structure;

Demolition and Paving: Demolition and Pavement activities include, but are not limited to, the following:

- Demolishing existing maintenance building;
- Removing demolished building waste from the site;
- Construct security fence, lighting, around site with key-card access at pre-identified locations
- Paving parking areas designed to handle current and future employees at three pre-determined locations
- Constructing drives from proposed employee parking to Brown Bridge and Lower River Roads
- Planting vegetation to act as a partition around security fence





## Exhibit 2 – Design-Builder’s Scope of Services

The Design-Builder will be an independent contractor to the Owner to implement the Project. This Scope of Services is intended to provide a general summary of the tasks expected of the Design-Builder for the Project. A detailed Scope of Services will be further developed and refined with the selected Design-Builder and included in the Agreement to be executed between the Owner and the Design-Builder.

### Phase I – Pre-Construction Services:

#### **A. Pre-Construction Phase:**

1. Prepare a Design and 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 planning, design, permitting and construction phase milestone activities. The schedule should include all survey, planning, design, permitting, 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, project procurement schedule, and installation and construction completion.
3. As this procurement is defined by the Owner as Progressive Design-Build, the Design-Builder team shall provide for review project design documents (drawings, specifications) at key project milestones (Design Development, 50% and 80%) during Phase I Services. The Project Designer shall work collaboratively with the Owner during the Pre-Construction Phase to incorporate the survey, planning, engineering, permitting, and operational approaches expected by the Owner. The Project Designer will work collaboratively with the Builder to incorporate the Builder’s recommendations on constructability, sequence of construction, maintenance of campus operations, construction duration, materials of construction, procurement strategy, and other factors that may influence project costs, performance, or quality.
4. 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 Design-Builder.
5. Conduct monthly meetings with the Owner including the Project Designer before construction. Provide updates to Project Schedule and Construction Management Plan.
6. Prepare a Permitting Plan that identifies all construction-related permits that must be obtained by the Design-Builder as well as those permits that are the responsibility of the Owner.
7. Prepare and submit all local and state permits required to construct said facilities. Pay all fees for said permits. The Authority will waive any permit fees required for connection to Authority facilities (water or sewer).
8. Provide updates regarding the status of permits at each design milestone review meeting and identify timelines on project schedule.
9. Prepare a Procurement Plan meeting the requirements of applicable procurement policies to obtain bids and firm quotations from 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.

10. 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.

#### **B. Preparation of Guaranteed Maximum Price (GMP)**

1. Prepare a tentative Guaranteed Maximum Price (GMP) proposal package including labor, materials, and firm quotations from suppliers, subcontractors, allowances, general conditions, fee, contingency, and all assumptions using the design documents prepared by the Project Designer to be included in the Competitively Sealed Proposal.
2. After being awarded Phase I, negotiate the GMP in good faith with the Owner.
3. Develop Final GMP proposal document with accompanying construction drawings and project technical specifications.

### **Phase II Services – Final Procurement, and Construction (To be authorized by Amendment to Phase I Agreement):**

#### **A. Construction Phase Services**

1. Executes Notice of Award with Owner and execute subcontractor agreement(s), if applicable.
2. Construct said facilities in accordance with approved drawings and permits developed under Phase I – Pre-construction Services.
3. Provide and maintain on-site staff for all required construction management, administration, and self-performance of construction.
4. Establish and maintain coordinating procedures between all parties.
5. Develop and maintain a detailed schedule including delivery, approvals, inspection, testing, construction and occupancy.
6. Conduct and record project meetings with key subcontractors, Project Designer, Owner, and other members of the Project Team as needed to deliver the project. Design-Builder shall assume minimum bi-weekly meetings including the Owner.
7. 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.
8. Maintain records and submit bi-weekly reports and monthly reports to the Owner.
9. Establish and maintain a program to monitor the quality of construction and ensure conformity to plans.
10. Establish and maintain a health and safety program.
11. Develop a system and provide cost control through progress payment review and verifications according to the approved schedule of values.
12. Develop and maintain Record Drawings for the duration of the Project.
13. Coordinate post-completion activities, including the assembly of guarantees, manuals, closeout documents, training, regulatory approvals and the Owner's final acceptance.
14. Coordinate and monitor the resolution of remaining "punch-list" items with the Owner.

**B. Project Closeout / Warranty:**

1. Submit record drawings with “as-constructed” survey in digital format for approval by the Project Designer and the Owner.
2. Assist in transition to operation by the Owner.
3. Receive, record, and address all Warranty issues.
4. Design-Builder enters a 1-year Maintenance Bond Period with the Owner.
5. Resolve all Warranty issues in accordance with the terms of the Contract and to the satisfaction of the Project Designer and the Owner.

Exhibit 3 – Owner's Concept Plan

**Owner's Concept Plan to shall be provided upon  
registration.**