

REQUEST FOR PROPOSAL



EAST NEWTON WATER TRANSMISSION IMPROVEMENTS

June 21, 2021

Newton County Water & Sewerage Authority

www.ncwsa.us

Request for Proposal

EAST NEWTON WATER TRANSMISSION IMPROVEMENTS

ADVERTISEMENT

Summary: Newton County Water & Sewerage Authority (NCWSA), also known as the Authority or Owner, is requesting Competitive Proposals for Design-Build Services for the eventual construction of water transmission and storage facilities. The Project procurement is envisioned to be progressive – design-build, consisting of, but not limited to,

- Planning, permitting, easement acquisition, subsurface investigation, costing, engineering, design, linear construction, site development, inspection, construction and GEFA administration, commissioning; and,
- Disciplines including ecology, geotechnical, civil, mechanical, architectural, structural, electrical, landscape; and,
- Specific engineering tasks including modeling, sizing, routing, linear design, and site design, constructability reviews, value engineering, and cost estimating.

Design-Build Services shall include both Phase I Pre-Construction Services and Phase II Construction Services. Phase I services are professional services of sufficient detail to allow the Offeror to develop a Guaranteed Maximum Price for consideration by the Owner. If a Guaranteed Maximum Price is accepted by the Owner, Phase II – Construction Services will begin after negotiation of Contract Amendment.

The Project is located between Covington and Social Circle, Georgia, on various roadways ending within the Stanton Springs Technology Park.

Funding: The Owner will fund the work with loan proceeds from the Georgia Environmental Finance Authority. As such, all work procured and performed must comply with applicable federal procurement and labor rules, including Disadvantaged Business Enterprise utilization, Equal Employment Opportunity, and the Davis Bacon Act.

Also, the Project must incorporate iron and steel products produced in the United States as described in the American Iron and Steel Requirement.

Solicitation: The legal authority for this solicitation is defined under Georgia Law (O.C.G.A. 36-91-2). This Request for Proposals (RFP) for Progressive Design-Build Services invites Competitive Proposals from qualified firms according to the requirements set forth in this RFP, including the format and content guidelines specified. Proposals will be reviewed and evaluated by the NCWSA selection team. The selection team will rank the Responses in the order of most advantageous to NCWSA, taking into consideration the evaluation factors set forth in the RFP. The evaluation factors shall be the basis on which the final selection / award decision is made. Upon completion of the evaluation process, NCWSA will contact all Offerors; those most qualified may be interviewed or enter discussions toward Project award.

The Owner shall have the authority to reject all proposals or any proposal that is nonresponsive or not responsible and to waive technicalities and informalities. This RFP is subject to revision after the date of issuance by written addenda. Any such addenda will be distributed directly to acknowledged Offerors via email, with confirmation requested.

Obtaining Documents: The RFP and further information may be found on NCWSA's Procurement webpage located at <https://ncwsa.us/departments/purchasing>. After review of the RFP, interested firms may register to receive the project documents by completing and emailing the registration form included in the Appendices. Project documents may be downloaded after payment of a non-refundable \$300.00 fee to offset reproduction, administrative, and technology costs via check only. Please contact Mrs. Lindsey Chambers, email: lc@ncwsa.us; or call (770) 385-3923 for questions pertaining to registration.

Pre-Submittal Meeting: A mandatory pre-submittal meeting will be held in the Board Room at the NCWSA Office at 11325 Brown Bridge Road, Covington, GA 30016. See calendar below for date and time. A project overview will be presented with questions and answer session to provide additional context.

Proposal Security: This procurement contains a pricing element; therefore, a 5% bond or cashier's check is a condition of this RFP. Later, the successful Offeror shall also obtain and present performance and payment bonds covering the Phase II Construction Services before Notice to Proceed for construction is issued. All bonds must be with a surety licensed to do business in Georgia and listed on the Treasury Department's most current list (Circular 570 as amended). The Surety must have a minimum "A" rating of performance and a financial strength of at least 5 times the contract price as listed in the most current publication of Best's Key Rating Guide for Property Casualty."

Open Records: All materials submitted in connection with this RFP will be public documents and subject to O.C.G.A. 50-18-71 (Georgia Open Records Act) and the open records policies of the NCWSA. Proprietary information or trade secrets must be noted as such. Please veil personal information on driver's licenses, passports, including birth dates and license number.

Permits, Lands, Easements and Rights-of-Way: As this procurement is for design-build services, the Owner has not obtained all the required permits, or all the lands needed on which to construct the improvements. Within this RFP, documentation for a portion of the permits, lands, or easements that have been obtained are provided.

The Project Designer will prepare necessary applications and supporting documents for all Federal, State, and County permits before the completion of Phase I Services. The Owner will pay associated fees associated with said permits. The selected Design-Builder may be asked to assist with Land Agent assistance to obtain easements not already obtained. The Owner will pay all final costs to property owners for land acquisition including permanent and construction easements or fee simple acquisition. The Design-Builder will be required to obtain all building permits for Phase II Services and pay all fees for same.

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SECTION 1: GENERAL INFORMATION

Project Overview: NCWSA desires to reinforce system working pressure and improve reserve storage for the eastern industrial corridor in unincorporated eastern Newton County, near the Stanton Springs Technology Park in Social Circle, Georgia. Our concept is to construct a new transmission main and water storage reservoir. Figure 1 in the Appendix describes the conceptual project components.



The project should provide:

- Stable and sustainable distribution system working pressure,
- An optimized, reserve of finished water to meet industrial corridor demands,
- Sufficient supply to meet 2050 industrial and commercial demands.

Previous engineering studies and designs have described recommended technical solution(s). However, a comprehensive, coordinated plan that combines the planning, modeling, design, and subsequent implementation, is needed to ensure we have considered all areas, including water quality, and have uncovered and addressed any unintended consequences.

Bridging documents including drawings, studies and reports will be provided as part of the Appendices (after registration) along with other relevant documents.

As the Owner is considering Georgia Environmental Finance Authority Drinking Water SRF funding, EPD (Environmental Protection Division) will review the planning and environmental information documents developed for Drinking Water State Revolving Fund (DWSRF) projects. Consideration and mitigation of negative environmental consequences that may occur as a direct result of the construction of each DWSRF-funded project must be considered by the State. The following State Environmental Review Process (SERP) will be used by Georgia to determine whether the proposed DWSRF project will have a significant impact on the environment, and consequently, whether a Categorical Exclusion (CE), Notice of No Significant Impact (NONSI) or Environmental Impact Statement (EIS) will need to be prepared. The EPD will ensure compliance with all applicable State acts, rules, guidelines, and orders related to the implementation of the DWSRF State Environmental Review Process (SERP). We note that preparation of an EID or EIS is not necessary for a project that is eligible for and receives a CE.

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

The Design-Builder (DB) will contract with the Owner to perform Phase I Services (pre-construction). If awarded Phase I Services, the DB will provide professional engineering services of sufficient detail to

develop a Guaranteed Maximum Price (GMP) for the Project. Later, Phase II Services, including construction and post-construction phase services, may be negotiated as an amendment to the original agreement.

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

Project Scope of Services

The Scope of Services for the Project is outlined in the Appendices.

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.
- Furnishing existing studies, drawings, utility locates, plans, specifications, shop drawings, data, and other information that will assist the Design-Builder in the Project.
- Reviewing work products, deliverable, and responses timely to the Design-Builder.
- Paying property owners for temporary or construction easements.
- Paying for land disturbance permit fees
- Furnishing reasonable amount of water or sewer for Design-Builder's construction activities
- Funding the Project and rendering timely compensation.

Responsibilities of the Design-Builder

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

- Provide timely engineering studies, estimating, permitting, designs, and construction services.
- Obtain all construction permits, inspections, and code compliances applicable to the Project.
- Execute the final design scope in accordance with the Contract Documents.
- Provide Land Agent services as applicable to the linear routing of the project.
- Prosecute the contract requirements in accordance with GEFA funding requirements.
- Construct work to applicable local, state, and federal requirements.
- Keep the Owner's premises free from waste and material accumulation caused by the Project.
- Maintain safe, clean, workable conditions for Design-Builder's team
- Protect all existing buildings, drives, and landscaping.
- Locate, excavate, and protect all buried utilities and facilities within the confines of the Project.

SECTION 2: PROCUREMENT PROCESS

Acknowledgement of RFP

Interested Offerors shall acknowledge with registration form after receipt of the RFP. Identify and provide full contact information for the firm's primary point of contact for any future documents, notices, and associated addenda.

Only those firms registering with NCWSA will receive subsequent addenda.

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

Communications

The Owner's 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 reference this RFP:

Owner Contact:

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

Please note that verbal communications with the Owner's Contact or other individuals are not binding. Except for 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 Offeror.



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

Clarifications and Addenda

Offerors shall review the requirements of this RFP. Requests for Information shall clearly indicate the section or statement in the RFP which requires clarification. Questions shall be emailed to the Owner's Contact. Clarifications or modifications to this RFP will be made only by written addenda and distributed only to those registered Offerors.

Addenda must be acknowledged and returned on the Acknowledgement Form contained in this RFP.

Schedule

The planned procurement schedule is as follows:

Issue RFP:	June 21, 2021
Deadline to Register	July 7, 2021
Pre-submittal Meeting:	July 7, 2021; 10:00 AM
Last Day for RFIs:	Aug 11, 2021; 4:00 PM
Last Day for Addendums	Aug 17, 2021; 4:00 PM
Submit Proposals:	Aug 20, 2021; 4:00 PM
Award:	Sep 15, 2021



SECTION 3: SUBMITTAL REQUIREMENTS

Submittal Date

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

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

An authorized officer of the firm must sign on behalf of the firm. Said agent shall furnish and sign all forms, affidavits, or letters requiring signature.

Format

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

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

Content

Letter of Interest: Provide a one (1) page (maximum) letter of interest describing how the Authority will benefit with your firm as its Design-Builder on this major expansion of our water system. Consider this Letter as an Executive Summary.

Use the twenty (20) pages to demonstrate how your team, qualifications, and proven delivery approach, exceeds our needs as we continue our capital improvements program. We want to select a Design-Builder that will deliver a legacy-type project worthy of presenting to others in the future.

Qualifications

Offerors should demonstrate a minimum of ten (10) years of management team experience in Design-Build (or other collaborative project delivery methodology), and direct self-performance of linear,

storage, and other water infrastructure projects for municipal, public, or private agencies. Experience may be from other firms.

As the Project may extend over more than one year, continuity with your team's key members is critical. We find it very helpful if the Project Manager for Phase I Services can remain as the Project Manager for subsequent Phases.

Experience

Describe the experience of the firm and / or team members on water / wastewater projects including the components and Design-Build tasks described in the Scope of Services. Submit descriptions of reference projects to demonstrate relevant experience.

Owner references provided in Relevant Projects will be contacted to verify Offeror's project experience and performance. We will contact references including, but not limited to, those listed by the Offeror, or additional references discovered during the selection process.

The Project Reference Questionnaire is in the Appendices; we will utilize this form when we interview references from the Relevant Projects or others discovered during the selection process.

A desirable Team will have proven experience delivering linear water transmission / storage projects in the Design-Build or other alternative delivery category. As important as the construction, the engineering and design tasks included in this Scope of Services are critical to performance and cost. Desired Experience should meet the following:



- Within the last five (5) years, the Offeror should have successfully managed / constructed a minimum of \$75 million in public works and infrastructure improvements funded by State Revolving Fund, SPLOST, Revenue Bonds, other government financing or combination thereof. Offerors should have a minimum of 5 years of progressive project management and construction experience in water and wastewater infrastructure projects.
- Also, within the last fifteen (15) years, the Offeror's management team will highlight five (5) relevant projects, at least three (3) of which were procured through alternative delivery including Design-Build, Progressive Design-Build, or CMAR. Each project must have included design and construction of linear infrastructure, pumping stations, plant, electrical and control systems, and / or water storage reservoirs. Project engineering and design components should include routing, modeling, sizing, and permitting of linear and storage assets. As the project includes potential pipeline routing, assistance with acquiring easements or rights-of-way would be a plus.
- Due to the complexity of the site and the schedule needs of our industrial customers adjacent to the project site, the Owner requests that the Design-Builder self-perform at least 60% of the Construction Services.
- The Offeror's history of self-performance on construction services should be described in the project descriptions.

- The Offeror shall provide evidence from its Surety of single project bonding capacity of \$20 million or higher.

Experience: Relevant Projects

Although we are interested in alternative delivery experience, for traditional design-bid-build, provide the following. Also, the five (5) relevant project descriptions shall contain the following information:

- Owner
- Demonstration of relevance to the Authority's needs
- Owner contact information (including email address)
- Injury free (or not)
- Description of procurement method
- Contract value, GMP or final construction cost
- Schedule compliance and year of completion
- Verifiable details on the pre-construction and construction phase services
- Percentage of your firm's self-performance
- As applicable, description of funding mechanism and role of the Team in support of Owner reimbursement

Relevant Project Descriptions may be presented in the Appendices.

Safety

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

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

Project Approach

Demonstrate your firm's understanding and approach including:

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

Resumes

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

Cost Proposal

In the Appendices, provide the Offeror's cost proposal for providing Phase I Services – Development of the GMP and requested components of the Phase II – Construction Services in the required format.

The proposed fees or prices will be based on the General Conditions and Cost-Of-Work matrix provided.

Licensure

Offerors must provide current forms of licensure. Include the following items in the Appendices:

Business License

Georgia Utility Contractor's License

Engineering License (As applicable, provide JV partner or subcontractor that will serve as project designer(s))

Certificates of Insurance

In the Appendices, provide certificate(s) of insurance demonstrating is existing coverage for, at a minimum, professional liability (E&O), commercial general liability, commercial automobile liability, workers' compensation, employer's liability, and any associated umbrella coverage.

The Owner's proposed insurance requirements are included in the proposed Design-Build Agreement in the Appendices.

Forms & Affidavits

Provide / return the following items in Appendix E, including:

- Acknowledgement of Receipt of Addenda
- Resumes (as needed)
- Relevant Project Descriptions (as needed)
- Cost Proposal
- Proposal Security (Bond)
- Firm's comments, if any, on the proposed agreement.
- Contractor's Licenses
- Business License
- Georgia Utility Contractor's License
- Design-Builder's Affidavit (E-Verify)
- Sub-Contractor's Affidavit (Project Designer)
- SAVE Affidavit
- W-9



SECTION 4: EVALUATION AND SELECTION

Evaluation Factors

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

Evaluation Criteria	Value
Team and Qualifications	20
Experience	20
Project Management Approach	15
Cost Proposal	30
Self-Performance Capability	5
Value Added Services	5
Safety Record	5

Selection Process

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

After evaluation and recommendations for selection, the Owner will notify Offerors. NCWSA may or may not schedule interviews at this point with one or more Offerors. The top ranked Offeror will be either selected for contract award for Phase I Services or provided the opportunity to negotiate the final terms of the agreement. If the Owner determines that the top-ranked Offeror’s proposed final terms are not advantageous to the Owner, the Owner may choose to either select or negotiate with the next-highest ranked Offeror.

SECTION 5: APPENDICES

APPENDIX A – Project Description, Criteria, and Scope of Services

Project Description

NCWSA wishes to improve water transmission and storage capacity in the Stanton Springs Technology Park. Design of a transmission main was begun in 2017 with easement acquisition initiated in 2020. Separate hydraulic studies projected sizing on the pipeline.

This design-build project should provide:

- Stable and sustainable distribution system working pressure,
- An optimized, reserve of finished water to meet industrial corridor demands,
- Sufficient supply to meet 2050 industrial and commercial demands.

Previous engineering studies and designs describe recommended technical solution(s). However, a comprehensive, coordinated plan that combines the planning, modeling, design, and subsequent implementation, is needed to ensure we have considered all areas, including water quality, optimum sizing, reasonable and sustainable operating pressure, and efficient storage volume. Also, we want to ensure we have uncovered and addressed any unintended consequences of this major expansion of our water system.

The primary components of the water transmission improvements are projected to include:

- Approximately 22,500-feet of 16 to 24-inch water pipeline from Cornish Creek WTP to its termination at State Route 11 connection.
- 1 or 2 MG elevated storage reservoir to be located within or near the Stanton Springs Technology Park, Social Circle, GA
- Approximately 6,200-feet of 16-inch water pipeline along Shire Parkway as shown on Figure 2.

Bridging documents for the DB's use in preparing the DB Proposal include the following:

- Figures 1, 2, 2a, 3
- Paine Crossing Transmission Main (Construction Drawings), Carter & Sloope, Inc.; October 2019
- Technical Memorandum (Report), Freese & Nichols, Inc., May 12, 2021
- Temporary Easement for Shire Parkway Tank Site: Joint Development Authority, May 26, 2021
- Recorded Easements: All temporary and temporary construction easements currently recorded.
- Newton County Strategic Water Plan - Water Distribution System Evaluation (Report); Carter & Sloope, Inc., January 2021
- Newton County Strategic Water Plan – Forecasts and Capacity Evaluations (Report); Carter & Sloope, Inc., May 14, 2019.

After DB Selection:

- NCWSA Water Model: InfoWater Model & Datasets Updated to 12-22-2020
- Record drawings for other pipelines, as needed.

Design-Builder's Scope of Services

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

I. Phase I Services:

A. General

1. Prepare a Project Management Plan for the entire project that considers the Owner's schedule, budget, design, and construction requirements for the project, including alternatives for sequencing.
2. Provide a third-party project controls platform, such as Procore, or similar project server that will be used to store and exchange information between the Owner, Project Designer, and DB. This web-based platform should be used throughout all contracted Phases of the Project including Pre-construction, Construction, Start-up, and Commissioning.
3. Prepare and maintain a project schedule in collaboration with the Project Designer (PD) including design, permitting and construction phase milestone activities. Include all pre-construction, procurement, construction, and post-construction activities. Refine as the project design progresses. Define on the schedule and include estimated start and end dates for each activity. Include time requirements for sequences and durations, milestones dates for receipt and approval of design documents, receipt of regulatory approvals and permits, preparation and processing of shop drawings and samples, delivery schedule of materials or equipment requiring long-lead time procurement, project procurement schedule, construction, substantial completion, commissioning closeout documentation, and final completion.

B. Design

1. Manage the project design including coordination and control of the project team to meet project objectives.
2. Conduct and lead meetings with Authority. Conduct monthly meetings with the Owner and Project Designer before construction. Provide updates to Project Schedule and Project Management Plan.
3. Prepare agendas and minutes of regularly scheduled project meetings.
4. Conduct technical workshops with the Authority.
5. Develop required Environmental Planning Document in support of DWSRF Funding decision.
6. Provide planning, permitting, easement acquisition, subsurface investigation, geotechnical, costing, design, site development, ecology, civil, mechanical, landscape architectural, structural, electrical, instrumentation, interiors (carpentry for tank base space), exterior (site) lighting, landscape.
7. Provide specific engineering tasks including modeling, sizing, routing, linear design, site design, constructability reviews, value engineering, and cost estimating for the facilities.
8. Prepare Basis of Design (BOD) and coordinate review and approval by Authority, to include development of project specifications.
9. Prepare renderings for potential use of interior space in the base of elevated composite water storage tank.

10. Draft plans and specifications at the 60% and 90% design.
11. Design the facilities to be constructed within approved budget.
12. Redesign: Modify design drawings as needed at 60 & 90% reviews.
13. Incorporate comments from Authority in response to 60 & 90% submittals and from land disturbance permitting review.
14. Prepare and obtain EPD concurrence of plans and specifications (as applicable).
15. Incorporate comments from EPD as needed in response to plans and approval process.
16. Prepare for and assist with GEFA funding approval, if needed.
17. Develop and obtain approval of an Erosion, Sedimentation and Pollution Control Plan and Land Disturbance Permit from Local Issuing Agency.
18. Prepare and submit Georgia and Newton County DOT encroachment permits.
19. Assist with public meetings, as applicable.

C. Pre-Construction:

1. Review project design documents (drawings, specifications) at key project milestones (90%) and provide recommendations with respect to constructability, sequence of construction, maintenance, construction duration, materials of construction, procurement strategy, and other factors that may influence project costs, performance, or quality.
2. Provide Value Engineering recommendations to Owner and Project Designer, including cost and constructability reviews of alternate routings, sizing, materials of construction, and systems that meet the Project Designer's intent.
3. Support the Owner's efforts to procure key materials or equipment integral to the Project Design. This effort would entail negotiating firm quotations and preparing for issue of Purchase Orders on long lead-time equipment.
4. Prepare and maintain a cost model defining the estimate of the construction cost including a report identifying variances from the project budget. 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 DB.
5. Prepare and maintain a permitting plan that identifies all construction-related permits that must be obtained by the DB and those permits that are the responsibility of the Owner.
6. Provide updates regarding the status of permits at each design milestone review meeting and identify timelines on project schedule.
7. Prepare a Procurement Plan meeting the requirements of applicable procurement policies to obtain bids and firm quotations from equipment vendors, suppliers, and subcontractors for construction of the work. The Plan will identify assessment tools and scoring criteria for selection, participation goals, recommended bid packages, and the process for integrating Owner-selected and pre-negotiated equipment, if any, into the Project. The plan will identify long-lead items, and other items that may affect the project schedule.
8. Establish Project Safety Plan and Protocols. Conduct workshops with the Owner, PD, and other associated parties to instill safe Project Sites well before ground-breaking.
9. Prepare Start-up and Sequencing Plan that identifies an approach for commissioning the new water main, systems, and storage facilities while

maintaining existing water service during construction and start-up. Incorporate these plans into the project schedule and cost models.

D. Preparation of Guaranteed Maximum Price (GMP)

1. Prepare a (GMP) proposal package including labor, materials, bids and firm quotations from equipment suppliers, subcontractors, allowances, general conditions, fee, contingency, and all assumptions using the Final design package prepared by the PD.
2. Participate in GMP negotiations with the Owner.
3. Develop Final Guaranteed Maximum Price proposal document.
4. Execute Amendment No. 1 to the Design-Build Agreement adding Phase II Services to the project.

II. Phase II Services

A. Construction Services

1. As requested, provide three (3) hard copy full-size sets of contract documents. Provide half-size drawings as needed.
2. Provide digital copies of all contract documents in PDF format.
3. Organize, identify, file, and distribute routine written project correspondence including shop drawings, requests for information, change orders, pay applications, on the 3rd party digital PM platform.
4. Prepare and maintain shop drawing submittal log and status. Review shop drawing and material submittals.
5. Project Manager shall conduct monthly construction progress meetings and special construction meetings as needed. Respond to issues raised at meetings.
6. Provide Resident Project Representative for eight (8) hours per workday to observe construction progress and monitor for compliance with contract documents.
7. Construct all facilities contracted for in accordance with approved construction drawings, specifications, and manufacturer's instructions.
8. Achieve Substantial Completion.
9. With RPR, develop punch-list of remaining work items or deficiencies.
10. Address Owner / RPR's list of remaining work items.

B. Commissioning

1. Provide start-up and commissioning services including:
2. Demonstrate correct operation of all systems, valves, appurtenances.
3. Start-up all pressure settings on valves, instruments.
4. Test and gain manufacturer's signoffs as applicable.
5. Achieve Final Completion.
6. Prepare record drawings based upon field-run survey by Professional Land Surveyor and red-line mark-ups provided by the DB.
7. Provide stable digital media containing AutoCAD format and PDF of all record drawings, approved shop drawings, materials of construction, and manufacturer's product information.

APPENDIX B – Proposed Design-Build Agreement

Note: Terms in the proposed agreement are subject to negotiation. The attached agreement does not necessarily contain all required state and federal provisions and said provisions may be added as necessary during subsequent negotiations. The requirements of and Special Conditions or Funding Requirements (Found in Appendices) may be incorporated into the agreement, along with any other applicable state and federal requirements.

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

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This **AGREEMENT** is made as of the _____ day of _____
in the year of 2021, by and between the following parties, for services in connection with the Project
identified below:

OWNER:

(Name and address)

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

DESIGN-BUILDER:

(Name and address)

PROJECT:

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

East Newton Water Transmission Improvements
Covington – Social Circle, Georgia 30025

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

Article 1

Scope of Work

1.1 Design-Builder shall perform all design and construction services, and provide all material, equipment, tools, and labor, necessary to complete the Work described in and reasonably inferable from the Contract Documents.

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.1 and C.2 – Payment and Performance Bond Exhibits; and

2.1.3.4 Exhibit D – Design-Builder’s Waiver and Release Upon Payment Forms.

2.1.4 The Special State and Federal Required Conditions of Contract;

2.1.5 The General Conditions of Contract;

2.1.6 Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract; and

2.1.7 The Owner’s Request for Proposals and Design-Builder’s Response.

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 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. Owner and Design-Builder expressly agree and acknowledge that Addendum #1 "Advertisement" paragraphs 1 and 2 and "Instructions" paragraph 3, and Addendum #3 paragraph 21, are inconsistent with and have been superseded by the other Contract Documents.

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").

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.

4.3.2 Reserved.

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.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within ten (10) days of Design-Builder's receipt of Owner's Notice to Proceed on Phase 1 ("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 shall be achieved by a date to be specified in the GMP Proposal (if accepted) ("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 180 days from Notice to Proceed;

5.2.2.2 Phase Two Services, Design-Builder shall achieve Substantial Completion by a date to be specified in the GMP Proposal (if accepted); and

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.

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 Substantial Completion Date 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 Substantial Completion dates and, therefore, do not constitute a penalty or forfeiture. Design Builder agrees that if Substantial Completion of the entire Work is not attained by the Scheduled Substantial Completion Date in accordance with the date set forth in Section 5.2.2 above (the "LD Dates"), for each such failure Design-Builder shall pay Owner Five Hundred Dollars (\$500.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Dates.

Design-Builder understands that if Final Completion is not achieved within Forty-Five (45) calendar days of the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within Forty-Five (45) calendar days of the Scheduled Substantial Completion Date, Design-Builder shall pay to

Owner Five Hundred_Dollars (\$500.00), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

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 Phase 2 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.

6.2 Design-Builder's Fee.

Design-Builder's Fee shall consist of the Phase I Fee described in Section 6.2.1 below, plus the Phase II Fee described in Section 6.2.2 below.

6.2.1 Owner shall pay Design-Builder the lump-sum price of for Design-Builder's performance of the Phase One Services, which shall include preparation of 80% Construction Documents and preparation of the GMP Proposal. Design-Builder shall not be entitled to any additional compensation (including any payments for the Cost of the Work) for Phase One Services.

6.2.2 Design-Builder's Phase II Fee shall be a fixed lump-sum fee, determined at the time the GMP is set. The basis for calculating the Design-Builder's Phase II Fee shall be a percentage of total estimated construction costs. This percentage shall be X%, subject to potential negotiation during the GMP setting phase. Once set, the Design-Builder's Phase II Fee shall be adjusted in accordance with Section 6.2.3 below.

6.2.3 Design-Builder's Phase II Fee will be adjusted as follows for any changes in the Work:

6.2.3.1 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 X percent (X%) 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.

6.2.3.2 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 Phase II 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. 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:

6.3.1 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 based on 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.

6.3.2 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.

6.3.3 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.

6.3.4 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.

6.3.5 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.

6.3.6 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.

6.3.7 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.

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

6.3.9 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.

6.3.10 Costs of removal of debris and waste from the Site.

6.3.11 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.

6.3.12 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.

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

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

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

6.3.16 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.

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

6.3.18 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.

6.3.19 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.

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

6.3.21 Accounting and data processing costs related to the Work.

6.3.22 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, shall be set forth in the GMP Proposal and included within the GMP.

6.4.2 Design-Builder and Owner will work together to identify 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, 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 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 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 (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner at least seven (7) days prior to the date upon which the cash discount expires, or (2) 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 three (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 three (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 hereof; and

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.

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, which approval will not be unreasonably withheld. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) Subcontractor defaults; or (e) 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; (f) Insurance deductibles, including any amounts expended by Design Consultant satisfying liabilities or risks self-insured (this supersedes any contrary provisions in the Cost Proposal Form attached to the RFP). 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 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 three (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 more than 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;

6.8.2.1.11 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;

6.8.2.1.12 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 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 considering 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 first 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 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 For each Phase of the Work, Owner may retain five percent (5%) from its payment of each Application for Payment provided, however, that when fifty percent (50%) of the Work in the applicable Phase 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 for that Phase. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project. Owner's election to forego retention on Phase 1 shall not be deemed waiver of the right to impose retainage for Phase 2.

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 thirty (30) days after Owner's receipt of the Final Application for Payment, if 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 payments, shall bear interest commencing five (5) days after payment is due at the rate of two percent (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 three (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 three (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 Where Inconsistent. 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 contradictory provisions set forth in the Georgia Prompt Pay Act, O.C.G.A. § 13-11-1, *et seq.*; otherwise, the provisions of said Act are applicable to this Agreement.

Article 8

Termination for Convenience

8.1 Upon ten (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 that 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: James Brown, Water Resources Director.

9.1.2 Owner designates the Firm listed below as Owner's Representative, which individual has the authority and responsibility set forth in Section 3.3 of the General Conditions of Contract: Carter & Sloope, Inc., Macon, Georgia.

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)*

11.1.1 E-verify. Pursuant to O.C.G.A. § 13-10-91, the Owner shall not enter a contract for the physical performance of services unless:

(1) the Design-Builder shall provide evidence on an Owner-provided affidavit form, attached as "Exhibit D" to the Owner's Request for Proposals, that it and its subcontractors have registered with, are authorized to use and use 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, and that they will continue to use the federal work authorization program throughout the contract period, or

(2) the Design-Builder provides evidence that it is not required to provide an affidavit because it is an individual licensed pursuant to Title 26 or Title 43 or by the State Bar of Georgia and is in good standing; or

(3) In accordance with O.C.G.A. § 13-10-91(b)(5), if Design-Builder is an individual that currently has no employees and does not intend to hire any employees for purposes of satisfying or completing the terms and conditions of the Contract Documents, Design-Builder shall provide a copy of Design-Builder's state issued driver's license or state issued identification card in lieu of providing an E-Verify affidavit.

The Design-Builder hereby verifies that it has, prior to executing this Agreement, executed the necessary notarized affidavit referenced in sub-subsection (1) above, and submitted such affidavit to Owner or provided the Owner with evidence that it is an individual not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above, or provided City with the appropriate state issued identification as noted in sub-subsection (3) above. Further, Design-Builder hereby agrees to comply with the requirements of the federal Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, O.C.G.A. § 13-10-91 and Georgia Department of Labor Rule 300-10-1-.02.

In the event the Design-Builder employs or contracts with any subcontractor(s) in connection with the Contract Documents, the Design-Builder agrees to secure from such subcontractor(s) attestation of the subcontractor's compliance with O.C.G.A. § 13-10-91 and Rule 300-10-1-.02 by the subcontractor's execution of the Owner-provided affidavit form, attached as "Exhibit D" to the Owner's Request for Proposals, which subcontractor affidavit shall become part of the contractor/subcontractor agreement, or evidence that the subcontractor is not required to provide such an affidavit because it is licensed and in good standing as noted in sub-subsection (2) above; or, in the case of a sole proprietor subcontractor, a copy of subcontractor's state issued driver's license or state issued identification card as noted in sub-subsection (3) above. Design-

Builder agrees to provide a completed copy of the above-required materials to the Owner within five (5) business days of receipt from any subcontractor.

Where Design-Builder is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Owner or its designee shall be authorized to conduct an inspection of the Design-Builder's and Design-Builder's subcontractors' verification process at any time to determine that the verification was correct and complete. The Design-Builder and Design-Builder's subcontractors shall retain all documents and records of their respective verification process for a period of five (5) years following completion of the contract. Further, where Design-Builder is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Owner or its designee shall further be authorized to conduct periodic inspections to ensure that Design-Builder and Design-Builder's subcontractors do not employ unauthorized aliens on Owner contracts. By entering a contract with the Owner, the Design-Builder and Design-Builder's subcontractors agree to cooperate with any such investigation by making their records and personnel available upon reasonable notice for inspection and questioning. Where Design-Builder or Design-Builder's subcontractors are found to have employed an unauthorized alien, the Owner or its designee may report same to the Department of Homeland Security. The Design-Builder's failure to cooperate with the investigation may be sanctioned by termination of the contract, and the Design-Builder shall be liable for all damages and delays occasioned by the Owner thereby.

As required by Ga. Rules and Regulations 300-10-01.03, Design-Builder agrees that the employee-number category designated below is applicable to the Design-Builder. [DESIGNATE/MARK APPROPRIATE CATEGORY]

_____ 500 or more employees.

_____ 100 or more employees.

_____ Fewer than 100 employees.

As required by Ga. Rules and Regulations 300-10-01.03, Design-Builder hereby agrees that, in the event Design-Builder employs or contracts with any subcontractor(s) in connection with the Contract Documents and where the subcontractor is required to provide an affidavit pursuant to O.C.G.A. § 13-10-91, the Design-Builder will secure from the subcontractor(s) such subcontractor(s)' indication of the above employee-number category that is applicable to the subcontractor.

The above requirements shall be in addition to the requirements of State and federal law and shall be construed to be in conformity with those laws.

11.1.2 Title VI In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the Design-Builder agrees that, during performance of the Contract Documents, Design-Builder, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, sex, age or disability. In addition, Design-Builder agrees to comply with all applicable implementing regulations and shall include the provisions of this paragraph in every subcontract for services contemplated under the Contract Documents.

11.1.3 Automatic Termination and Renewal. If the term of the parties' agreement continues beyond the calendar year in which this Agreement is executed, the parties' agreement, as required by O.C.G.A. § 36-60-13, shall terminate absolutely and without further obligation on the part of the Owner on December 31 each calendar year of the term, and shall automatically renew on January 1 of each subsequent calendar year absent the Owner's provision of written notice of non-renewal to Design-Builder at least thirty (30) calendar days prior to the end of the then current calendar year. Title to any supplies, materials, equipment, or other personal property shall remain in Design-Builder until fully paid for by the Owner. Non-renewal by the Owner under this paragraph shall be deemed a "Termination for Convenience" and subject to the provisions applicable to such terminations, including the provisions in Article 8 of the Agreement.

11.1.4 Indemnity. The parties specifically agree that all indemnification obligations set forth in the Contract Documents (including general conditions) are to be construed consistently with the requirements of Georgia law, including O.C.G.A. § 13-8-2, and that should any indemnification obligation set forth in the Contract Documents be found inconsistent with Georgia law, the obligation should be reformed to achieve consistency with the law rather than being stricken entirely.

11.1.5 Survival. All sections of the Contract Documents which by their nature should survive termination will survive termination, including, without limitation, confidentiality obligations, warranties, and insurance maintenance requirements.

11.1.6 Immunity; No Personal Liability. Nothing contained in the Contract Documents shall be construed to be a waiver of the Owner's sovereign immunity or any individual's qualified good faith or official immunities. Nothing herein shall be construed as creating any individual or personal liability on the part of any of Owner's elected or appointed officials, officers, boards, commissions, employees, representatives, consultants, servants, agents, attorneys, or volunteers.

11.1.7 Contractors Assisting with Procurement. The terms of this subsection shall apply, if at all, only as applicable. As required by O.C.G.A. § 36-80-28, if the Contract Documents require the Design-Builder to prepare, develop, or draft specifications or requirements for a solicitation (including bids, requests for proposals, procurement orders, or purchase orders) or to serve in a consultative role during a bid or proposal evaluation or negotiation process: (a) the Design-Builder shall avoid any appearance of impropriety and shall follow all ethics and conflict-of-interest policies and procedures of the Owner; (b) the Design-Builder shall immediately disclose to the Owner any material transaction or relationship, including, but not limited to, that of the Design-Builder, the Design-Builder's employees, or the Design-Builder's agents or subsidiaries, that reasonably could be expected to give rise to a conflict of interest, including, but not limited to, past, present, or known prospective engagements, involvement in litigation or other dispute, client relationships, or other business or financial interest, and shall immediately disclose any material transaction or relationship subsequently discovered during the pendency of the Contract Documents; and (c) the Design-Builder agrees and acknowledges that any violation or threatened violation of this paragraph may cause irreparable injury to the Owner, entitling the Owner to seek injunctive relief in addition to all other legal remedies.

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:

Newton County Water & Sewerage Authority
(Name of Owner)

(Name of Design-Builder)

(Signature)

(Signature)

Michael A. Hopkins
(Printed Name)

(Printed Name)

Executive Director
(Title)

(Title)

Date: _____

Date: _____

Approved as to Form:

(Counsel for NCWSA)

(Date)

EXHIBIT A

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:

\$20,000,000	Per Occurrence	\$5,000	Medical Expense per person
\$20,000,000	Personal and Advertising Injury	\$20,000,000	General Aggregate
\$100,000	Fire Damage	\$20,000,000	Products / Completed Operations-per Occurrence and Aggregate

1.1.2 Coverage:

- a. Contractual Liability insuring the obligations assumed by 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 the affiliates, parents, subsidiaries, officials, directors, employees, successors, assigns, representatives, and volunteers of each of them, shall be named as Additional Insureds on all Design-Builder'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 Design-Builder; 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 Combined Single Limit

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 Design-Builder shall provide copies of such certificates of insurance to Design-Builder upon request. Anytime Design-Builder employs such workers, Design-Builder represents and warrants that: (1) Design-Builder has complete control and direction of such workers for all Work under this Subcontract (2) that the direct employer of such workers has no authority over their control or direction, and (3) 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 \$10,000,000 per claim and \$10,000,000 aggregate covering claims arising out of the performance of professional engineering, architecture, or other professional services under the Contract and caused by errors, omissions, or acts for which Design-Builder is liable. Such insurance shall be maintained in force by Design-Builder for a minimum extended reporting period of; (a) five (5) years after final completion and Owner’s acceptance of the Project, or (b) for such longer period as may be required by the Contract Documents. 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 \$10,000,000 per claim and \$10,000,000 aggregate covering claims arising out of the release, discharge or use of pollutants or hazardous materials, and including the development of microbial matter (fungae) for which Design-Builder is liable. Such insurance shall be maintained in force by Design-Builder for a minimum extended reporting period of; (a) five (5) years after the date of final completion and Owner’s acceptance of the Project, or (b) for such longer period as may be required by the Contract Documents.

1.6 Owner’s and 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 Design-Builder’s Commercial General and Umbrella

/ Excess Liability policies and waive any rights of subrogation against Owner and other parties designated by Design-Builder.] 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 Design-Builder 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 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 or five (5) days prior to the start of Design-Builder's Work, whichever is earlier, 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 (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether 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** 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's 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 e stopple or waiver of such requirements.

EXHIBIT B

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

STATE OF GEORGIA

COUNTY OF _____

The undersigned, ("Design-Builder"), has been engaged under contract with Newton County Water & Sewerage Authority, Covington, Georgia ("Owner") to furnish certain materials, equipment, services, and/or labor for the design and construction of improvements known as the Design-Build Services for 2021 East Newton Water Transmission Improvements ("Project"), together with all improvements and appurtenances attendant thereto, which is located in Covington and Social Circle, Georgia 30025, Newton and Walton County, 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 known to the Design-Builder at the time of execution of this Waiver and Release.

The Design-Builder further represents that all 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 Design-Builder;
- Labor, materials, equipment, and supplies furnished by others to the Design-Builder; 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 all loss, claims, damages, costs, or expense, of any nature whatsoever, including all attorneys' fees, and the fees of consultants, experts, and other professionals, arising out of any claims or demands made by any of its employers, laborers, materialmen, subcontractors, and consultants, of any tier, for materials, services, equipment, and labor supplied to the Project.

FOR DESIGN-BUILDER:

Applicable to Application for Payment Nos. All

Signed: _____

Print Name: _____

Title: _____

Date: _____

Attest:

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:

EXHIBIT C

Design-Builder's Conditional Claim Waiver and Release Upon Progress Payment

STATE OF GEORGIA

COUNTY OF _____

The undersigned, ("Design-Builder"), has been engaged under contract with Newton County Water & Sewerage Authority, Covington, Georgia ("Owner") to furnish certain materials, equipment, services, and/or labor for the design and construction of improvements known as the Design-Build Services for East Newton Water Transmission Improvements ("Project"), together with all improvements and appurtenances attendant thereto, which is located at Covington and Social Circle, Georgia 30025, Newton and Walton County, State of Georgia.

Upon receipt of the sum of \$ _____, 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 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 loss, claims, damages, costs or expense, of any nature whatsoever, including all attorneys' fees, and the fees of consultants, experts and other professionals, arising out of any claims or demands made by any of its employees, laborers, materialmen, subcontractors and consultants, of any tier, for materials, services, equipment and 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.

[SIGNATURE ON FOLLOWING PAGE]

FOR DESIGN-BUILDER:

Applicable to Application for Payment Nos. _____

Signed: _____

Print Name: _____

Title: _____

Date: _____

Attest:

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:

EXHIBIT D

Performance Bond

STATE OF GEORGIA
COUNTY OF NEWTON

BOND NO.: _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as

Principal, (hereinafter known as Contractor), and we, _____, as Surety, do hereby acknowledge ourselves indebted and firmly bound and held unto the Newton County Water & Sewerage Authority (hereinafter known as Owner) for use and benefit of those entitled thereto, in the sum of

_____ Dollars (\$ _____),

for the payment of which will and truly to be made, in lawful money of the United States of America, we do hereby bind ourselves, successors, assigns, heirs and personal representatives, jointly and severally, firmly by these presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Owner has engaged the said Contractor for the sum of

_____ Dollars (\$ _____)

for the construction of improvements known as the **East Newton Water Transmission Improvements**.

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.

Payment Bond

STATE OF GEORGIA
COUNTY OF NEWTON

BOND NO.: _____

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 **East
Newton Transmission System Improvements**, 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)

Title: _____ (SEAL)

Note: Attestation for a corporation must be by the corporate secretary; for a partnership by another partner; for an individual by a notary.

SURETY: _____

By: _____

Name: _____
(Please Print)

Title: _____

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.

**GENERAL CONDITIONS OF
CONTRACT BETWEEN OWNER
AND DESIGN-BUILDER**

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Article 1

General

1.1 Mutual Obligations

1.1.1 *Owner and Design-Builder* always commit to cooperate fully with each other and proceed based on 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 The Owner's Project Criteria, the assumptions and clarifications discussed in Section 6.8.2.1.3 of the Agreement, and additional documents developed by the Design Consultant in the design phase.

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 employed or 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 *Reserved.*

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; development of the Request for Qualifications and subsequent shortlisting; development of the Request for Proposals and subsequent proposal evaluation and Design-Builder selection; design and construction phase services; resident services during construction; and supplemental services. James Brown, Water Resources Director will serve as the Owner's Representative on the current Project.

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 LEED® or other sustainable design criteria 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 and the Engineer's Certification for Georgia EPD.

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.

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 I Services – Generally consists of preliminary engineering, geotechnical investigations and design development as may be necessary to produce 80% complete Construction Documents for the Project, 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 I Services also include the following:

All "Phase I" services identified in the Owner's Request for Proposal (as clarified by any applicable addenda);

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 supplemental Basis of Design Documents;

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 One Services;

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

2.1.1.2 Phase Two Services – 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:

All Phase II Services identified in the Owner's Request for Proposals (as clarified by any applicable addenda);

Complete final design of Project and develop 100% Construction Documents;

Procure equipment and Subcontractors;

Secure necessary permits;

Construct the Project in accordance with this Agreement;

Conduct startup, commissioning, and performance testing;

Provide operator training;

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 water pipelines and storage facilities with other improvements required under Owner's Project Criteria.

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 three (3) days prior to the meeting contemplated by Section 2.1.6 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 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 seven (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 through 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 ordinary 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. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design 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 meeting 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 one set of approved Construction Documents 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 Design-Builder shall be primarily responsible for identifying, and preparing suitable application materials for, all necessary permits, approvals, and licenses required for the prosecution of the Work for any government or quasi-government entity having jurisdiction over the Project. The Owner will cooperate and assist with the permitting process and will sign and submit applications when requested by the Design-Builder. Provided that Design-Builder's application materials comply with applicable legal requirements and if Design-Builder reasonably addresses any objections raised by permitting authorities, the Owner assumes the risk of permit denial by the

applicable permitting authorities. Design-Builder will be responsible for the cost of its business license and related fees pertaining to business qualifications. Owner shall be responsible for paying any project-specific (e.g., environmental approval) application fees, government charges, and inspection fees, and shall waive its charges and fees pertaining to the project.

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 always 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 (stormwater 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.

2.7.8.3 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 (stormwater 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.

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

2.7.8.5 Contract companies that provide waste management services must provide waste bins that help minimize stormwater 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.

2.7.9 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.

2.7.10 If 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 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. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner not caused by Design-Builder. 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 two years 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 seven (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 seven (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 of attorneys, architects, engineers, and other professionals incurred by Owner. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.10.3 The two-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.

2.11 Assistance with Tax Savings and Refunds

2.11.1 Design-Builder agrees to cooperate with and, at Owner's request, assist Owner with obtaining, any sales and use tax refunds that may be applicable to any portions of the Work.

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 that 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 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 that 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 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, development of the Request for Proposals, subsequent proposal evaluation and Design-Builder selection, 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 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 See Section 2.6.

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 to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous 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 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 and Bonds**

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 thirty (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 and Owner's Representative shall be named as an additional insured under any liability insurance policy other than professional errors & omissions liability.

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 Project.

5.3 Payment and Performance Bonds

5.3.1 Before beginning any construction work, Design Builder shall provide payment and performance bonds for the construction 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.

5.3.2 If the GMP is adjusted upwards because of a Changer Order, Design-Builder shall increase the bond amounts accordingly to match the GMP; the price of any such adjustment may be included in the cost of the Change Order.

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Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all 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 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 because of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (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 Right to Stop Work and Interest.

6.4.1 If Owner fails to timely pay Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in 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 five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that 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 thirty (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, if 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 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 a ll 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 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 of 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 reasonable attorneys', paralegal, consultants' and experts' fees, legal expenses and dispute resolution costs (collectively "Liabilities"), arising out of or resulting from the performance of Design-Builder's Work; provided, any such claim, damage, loss, cost or expense: (1) 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 (2) 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. For construction work, the obligations of this paragraph will not require indemnification for Liabilities to the proportional extent harm is caused by or resulting from the negligence of an Indemnitee. For engineering, architectural, or land surveying services work, Design-Builder will not be required to defend the Owner and its indemnity obligation shall be limited to damages, losses, or

expenses to the extent caused by or resulting from the negligence, recklessness, or intentionally wrongful conduct of the Design-Builder or other persons employed or utilized by the Design-Builder in the performance of the Contract Documents. 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 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.

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, inclement weather conditions substantially different from average, 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 inclement weather conditions substantially different from average or Force Majeure Events unless otherwise provided in the Agreement.

8.3 Force Majeure

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 the following conditions are satisfied:

- a. If such failure or delay could not have been anticipated and prevented by reasonable precautions;
- b. If such failure or delay cannot reasonably be circumvented by the non-performing party using alternate sources, work-around plans, or other means; and

- c. 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.

An event, which satisfies all 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 (a) such Force Majeure Event continues and (b) 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.

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 five (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.

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 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 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 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 2) Design-Builder expressly waives and releases any claim it may have against the Owner for a) any adjustment in the schedule, including but not limited to the Scheduled Substantial Completion Date, Scheduled Interim Milestone Dates or final completion date, or b) 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 Contract 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 ten 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 fourteen (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 thirty (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 always communicate regularly with each other 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 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 thirty (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 thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (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** The provisions of this paragraph shall be applicable only to disputes reasonably valued at greater than \$250,000. If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives 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. 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 ninety (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 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.

10.4 CONSEQUENTIAL DAMAGES.

10.4.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTIONS 10.4.2 AND 10.4.3 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.4.2 The consequential damages limitation set forth in Section 10.4.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward

Design-Builder for some damages that might otherwise be deemed to be consequential.

10.4.3 The consequential damages limitation set forth in Section 10.4.1 above shall not apply to the extent such damages are covered by insurance required by the Contract Documents.

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, 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 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 he 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 seven (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 seven (7) day period. If Design-Builder, within such second seven (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.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

11.3.1.1 Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

11.3.1.2 Owner's failure to pay undisputed amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

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.

12.3.1 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.

12.3.2 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.

12.3.3 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.

12.3.4 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. Design-Builder is also subject to the public records laws of the State of Georgia with respect to certain Project-related documents. Accordingly, the parties' duty to maintain confidentiality is subject to their duties under those laws.

13.1.2 All or substantial portions of the following documents may not 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 all documents herein described concerning any facility of the Owner regardless of the type of facility and regardless of the way 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. 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.

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. 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) four (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.

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

The Owner is a drug-free workplace employer. Newton County requires construction contractors to provide a drug-free workplace in the performance of any Owner contract.

To be eligible to submit a Bid 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:

- (A) 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;
- (B) 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;
- (C) notifying each employee that 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;

- (D) notifying the Owner within ten days after receiving from an employee a notice of a criminal drug statute conviction or after otherwise receiving actual notice of such conviction;
- (E) imposing a sanction on, or requiring the satisfactory participation in a drug counseling, rehabilitation, or abuse program by, an employee convicted of drug crime;
- (F) making a good faith effort to continue to maintain a drug-free workplace for employees; and
- (G) requiring any party to which it subcontracts any portion of the work under the contract to comply with the provisions of (A)–(F).

If the prospective contractor 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 bid, a prospective contractor 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

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.

The Design-Builder shall always 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 regarding 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 all hazardous conditions relating to or arising out of the Design-Builder's Work are corrected and for always complying with all applicable Safety Standards.

Regarding 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.

Without limiting the foregoing, the Owner's Representative, Newton County's Code Enforcement Officer, 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 Newton County's Code Enforcement Officer, 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.

The Design-Builder shall notify the Owner's Representative, or his / her designee, immediately of any serious accident, injury, or fatality.

The Design-Builder shall immediately notify the Owner's Representative or his/her designee of any OSHA inspection.

The Design-Builder shall notify the Owner's Representative of any unusual hazards created by the Work or found during construction.

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 / tagout, 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:

- A copy of their drug and alcohol abuse program,
- Fire protection and emergency evacuation plan,
- Medical services—regarding worker's compensation medical services and first aid on the job site,
- 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 - Supplemental General Conditions for Federally Assisted Contracts

GEORGIA ENVIRONMENTAL FINANCE AUTHORITY

SUPPLEMENTAL GENERAL CONDITIONS

for

FEDERALLY ASSISTED STATE REVOLVING FUND CONSTRUCTION CONTRACTS

May 9, 2014

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

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

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INSTRUCTIONS & GENERAL REQUIREMENTS

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

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

A. Before beginning the work of any contract:

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

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

B. During the performance of the contract:

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

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

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

DBE COMPLIANCE FORM

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

Loan Recipient _____

SRF Loan Number _____

PRIME CONTRACTOR'S AND OWNER'S CERTIFICATIONS:

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

(Prime Contractor signature)

Date _____

(Printed name and title)

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

(Signature of Owner or Owner's representative)

Date _____

(Printed name and title)

CONTACT INFORMATION

Owner contact _____

Owner phone number & email _____

Consulting Engineer contact _____

Consulting Engineer phone number & email _____

Proposed Prime Contractor _____

Prime Contractor contact _____

Prime Contractor phone number & email _____

Proposed total contract amount \$ _____

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

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

CONTINUED ON NEXT PAGE

Please submit the following with the DBE Compliance Form:

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

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

END OF DBE COMPLIANCE FORM



DBE COMPLIANCE CHECKLIST

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

Loan Recipient _____

SRF Loan Number _____

Include in Package Submittal

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

Uncommitted Trades

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Documentation of Good Faith Efforts

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

SIX GOOD FAITH EFFORTS

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

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

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

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

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

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

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

RESOURCES FOR IDENTIFYING DBE SUBCONTRACTORS

RESOURCES FOR IDENTIFYING DBE SUBCONTRACTOR'S FOR DIRECT SOLICITATION:

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

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

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

DeKalb County, Georgia
Office of Purchasing and Contracting
(404) 371-4730

<http://dekalbsbe.info/wordpress1/wp-content/uploads/2016/05/DeKalbCountyCertifiedVendorsListMay10-2016-Final2.pdf>

Fulton County, Georgia
Purchasing and Contract Compliance
(404) 612-5800

<http://www.fultoncountyga.gov/fcpccd-local-business-directory>

Metropolitan Atlanta Rapid Transit Authority (MARTA)
Disadvantaged Business Enterprise Program
(404) 848-4656

<https://marta.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=8663&TN=marta>

United States Environmental Protection Agency
http://www.epa.gov/osbp/dbe_team.htm

Teree Henderson
National DBE Program Coordinator
(202) 566-2222
henderson.teree@epa.gov

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

NOTES:

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

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

Proposed Prime Contractor
Proposed Subcontractor

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

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

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

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

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

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

PRINTED NAME & TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR OR SUBCONTRACTOR

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

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

Proposed Prime Contractor
Proposed Subcontractor

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

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

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

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

PRINTED NAME & TITLE OF AUTHORIZED REPRESENTATIVE OF CONTRACTOR OR SUBCONTRACTOR

SIGNATURE OF AUTHORIZED REPRESENTATIVE

DATE

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

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

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

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

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

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

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

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

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

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

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

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

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

Disadvantaged Business Enterprise (DBE) Program DBE Subcontractor Utilization Form

This form is intended to capture the prime contractor's actual and/or anticipated use of identified certified DBE¹ subcontractors² and the estimated dollar amount of each subcontract. An EPA Financial Assistance Agreement Recipient must require its prime contractors to complete this form and include it in the bid or proposal package. Prime contractors should also maintain a copy of this form on file.

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

I have identified potential DBE certified subcontractors	___ YES	___ NO
--	---------	--------

If yes, please complete the table below. If no, please explain:

Subcontractor Name/ Company Name	Company Address/ Phone/ Email	Est. Dollar Amt	Currently DBE Certified?

Continue
on back
if needed

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

CHANGES TO APPROVED SUBCONTRACTORS FORM

Loan Recipient _____ SRF Loan Number _____

CERTIFICATIONS:

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

 (Prime Contractor signature) Date _____

 (Printed name and title)

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

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

 (Printed name and title)

GENERAL INFORMATION:

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

Subcontractor Name::	Trade
Reason Terminated or Replaced	

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

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

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

DBE ANNUAL REPORT
FORM (5700-52A)

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

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

SPECIAL PROVISIONS

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

BONDS

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

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

SPECIAL NOTICE TO BIDDERS

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

EQUAL EMPLOYMENT OPPORTUNITY NOTICE

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

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

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

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

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

EEO Construction Contract Specifications (Executive Order 11246)

EEO Specifications:

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

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

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

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

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

Davis-Bacon and Related Acts

Labor Standards Provisions for Federally Assisted Contracts

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

(1) Minimum wages.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

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

(4) Apprentices and trainees--

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

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

(5) Compliance Verification:

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

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

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

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

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

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

INSERT WAGE RATE DETERMINATION HERE

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

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

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

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

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

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

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

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

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

Fair Labor Standards Act Minimum Wage poster is found at:

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

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

“EEO Is the Law” poster is found at:

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

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

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

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

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

OSHA poster is found at:

<http://www.osha.gov/Publications/osha3165low-res.pdf>
(English)

<http://www.osha.gov/Publications/osha3167.pdf>
(Spanish)

CERTIFIED PAYROLL REVIEW CHECKLIST

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

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

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

Payroll Information Checklist:

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

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

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

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

Compliance Review Checklist (for field reviews):

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

REVIEWED BY:	DATE
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APPENDIX D – American Iron and Steel Special Conditions and Information

GEORGIA ENVIRONMENTAL FINANCE AUTHORITY

AMERICAN IRON AND STEEL

SPECIAL CONDITIONS AND INFORMATION

For

FEDERALLY ASSISTED

STATE REVOLVING LOAN FUND

CONSTRUCTION CONTRACTS

April 11, 2014

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

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

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Appendix 2 – Sample Certifications for Manufacturer Certification	GEFA/AIS-8
Appendix 3 – P.L. 113-76, Consolidated Appropriations Act, 2014	GEFA/AIS-11

GENERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

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

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

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

Appendix 1 – Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix 2 – Sample Certifications Step Certification

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

Date

Company Name
Company Address
City, State Zip

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

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

List of items, products and/or materials:

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

Signed by company representative

Appendix 2 – Sample Certifications

Final manufacturer certification

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

Date

Company Name
Company Address
City, State Zip

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

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

List of items, products and/or materials:

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

Signed by company representative

Appendix 2 – Sample Certifications Contractor De Minimis Report

Owner: (Owner Name)

SRF Project No: (SRF Number)

Project Description: (Contract title or brief description)

Date: (Date of report)

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

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

Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Category or Item	\$1,000.00
Total Permanent Materials	\$10,000.00

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

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

	COST	COMPLIANT (Yes/No)
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
Category or Item	\$100.00	Yes
<u>Total De Minimis Items</u>	<u>\$500.00</u>	<u>Yes</u>

INVOICES ATTACHED FOR DE MINIMIS ITEMS.

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

The Act states:

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

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

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

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

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

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

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

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

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

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

APPENDIX E – Proposed Contracting Documents

Note: Documents to be provided to Registered Offerors or Vendors.

APPENDIX F – Required Forms and Affidavits

RFP Registration Form

Date: _____

Name of Firm: _____

Primary Point of Contact (One Person Only): _____

Phone Number: _____

Email: _____

Please mail \$300 non-refundable check made to Newton County Water & Sewerage Authority.
Attention: Lindsey Chambers, NCWSA, Engineering Department, 11325 Brown Bridge Road,
Covington, GA 30016. Please email photo of check to lc@ncwsa.us so that we may release
Documents right away. Documents will be uploaded to secure server with an invitation for download
to the primary point of contact.

Date Sent: _____

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 _____, 2021

Company name: _____

Printed Name

Signature

Title

(Corporate Seal)

Project Reference Questionnaire

How did Contractor / Team perform during this project?

Were project goals and expectations met?

Was Project financially successful?

Did Contractor / Team perform the work in accordance with applicable OSHA standards?

Did Contractor enter mediation, arbitration, or legal action, against your organization? If yes, please explain.

Did your organization enter mediation, arbitration, or legal action, against Contractor? If yes, please explain.

Were there any bond or warranty claims on this project?

Describe any additional information that would be useful to an Owner.

Cost Proposal

General Conditions and Cost of Work Matrix

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

- Fixed Costs for General Conditions Work, fixed, lump sum, generally independent of schedule duration.
 - Reimbursable Costs for General Conditions Work, generally dependent on schedule duration,
 - Direct Construction Costs, to be developed as part of the GMP development.
- and,
- Builder's Fee, expressed as percent of Cost of Work.

Owner's Definitions: **Cost of Work = Columns 1+ 2+ 3**
GMP = Cost of Work + Column 4.
Total Project Cost = GMP + Column 5

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

**REQUEST FOR PROPOSAL
JUNE 18, 2021**

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

**REQUEST FOR PROPOSAL
JUNE 18, 2021**

No.	Item	1. Fixed Cost General Conditions	2. Reimbursed Cost for General Conditions	3. Direct Construction Costs	4. Builder's or Percent Fee %	5. By NCWSA
53.	Temporary Parking	X				
54.	Temporary Power Consumption		X			
55.	Temp. Facilities & Controls: Temporary Power Service	X				
56.	Temporary Sanitary Facilities	X				
57.	Temporary Water Consumption					X
58.	Temporary Water Service Connection					X
59.	Temporary Weather Protection		X			
60.	Vehicles	X				
61.	Warranty – Correcting Defective Work				X	
62.	Waste Management (Office waste)		X			
63.	Travel and per diem for home office and project management staff	X				
64.	Insurance Deductibles				X	
65.	Temporary, permanent easements, fee simple properties for pipelines and tank.					X
66.	Fees for permitting included LDP, USACE					X
67.	Access easements and laydown areas for benefit of constructor			X		

Cost Proposal

Under the terms and conditions contained in the RFP and its accompanying Agreement, the undersigned proposes to contract with the Newton County Water and Sewerage Authority to provide the following design and portions of the construction phase services for the indicated prices or rates. Phase I - Preconstruction Services is defined as the Design Builder's price to work collaboratively with the Owner, develop the design and the Guaranteed Maximum Price (GMP) to construct said improvements. Phase II - Construction Services is defined as the D-B's price to finalize the design, if applicable, and construct the project. An amendment describing the GMP with the final negotiated, terms, conditions, and qualifications of the scope of construction would be offered to the DB.

This RFP requires Proposal Security to be included with the response. a bond or cashier's check in the amount of 5% of the Cost Proposal is acceptable. The final executed contract will include payment and performance bonds as part of the Contracting Documents.

To meet the Owner's requirements for Competitive Sealed Proposals as defined in O.C.G.A. 36-91-2, the D-B shall provide its firm prices for the following services:

- A. Phase I Preconstruction Services: \$ _____ Dollars
- B. Phase II General Conditions: (Fixed, Column No. 1) \$ _____ Dollars
- C. Phase II General Conditions: (Reimbursable, Column No. 2) \$ _____ Dollars
- D. Total, A, B, and C: \$ _____ Dollars
- E. Alternate 1: Break-out cost (deduct) for deletion of total labor, administrative, and project management costs for D-B's compliance with the conditions and requirements found in the DWSRF Funding Requirements and Appendix C and D. We ask for this in the event of a change in the funding method.
\$ _____ Dollars
- F. Builder's Fee %: Builder's Fee will be expressed as a percentage and allocated as defined in Column 4. This percentage fee will apply to the Construction Services Phase (Phase II) and changes to the Work that occur or are required during Phase II:

Phase II - Construction Phase Services: Builder's Fee: _____ %
Percent

By: _____
Signature

Firm or Company: _____
Name of Organization

Date: _____

Bid Bond

STATE OF GEORGIA
COUNTY OF NEWTON

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as

Principal, and _____, as Surety, are held and firmly bound unto the Newton County Water & Sewerage Authority, in the sum of Five Percent (5%) of Principal's Bid lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted to the Newton County Water & Sewerage Authority's project entitled **East Newton Water Transmission Improvements**.

NOW THEREFORE, the conditions of this obligation are such that if the Bid be accepted, the Principal shall, within fifteen (15) days after receipt of conformed Contract Documents, execute a Contract in accordance with the Bid upon the terms, conditions and prices set forth therein, and in the form and manner required by the Contract Documents and execute sufficient and satisfactory separate Performance and Payment Bonds payable to the Owner, each in an amount of 100 percent of the total Contract Price, in form satisfactory to the Owner, then this obligation shall be void; otherwise, it shall be and remain in full force and effect in law; and the Surety shall, upon failure of the Principal to comply with any or all of the foregoing requirements within the time specified above, immediately pay to the aforesaid Owner, upon demand, the amount hereof in good and lawful money of the United States of America, not as a penalty, but as liquidated damages.

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 Principal 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__).

DESIGN-BUILDER - PRINCIPAL: _____

By: _____
(Signature on File)

Address: _____

Phone: _____

Attest: _____
(Signature on File)

Title: _____

(SEAL)

Note: Attest for a corporation must be by the corporate secretary; for a partnership by another partner; for an individual by a notary.

SURETY: _____

By: _____

(Signature on File)

Title: _____

Phone: _____

Attest: _____

(Signature on File)

Title: _____

(SEAL)

Note: Surety companies executing bonds must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the Project is located.

Resident agent in state in which Work is to be performed:

Name: _____

Address: _____

Phone: _____

Design-Builder's Affidavit of Employment Eligibility

STATE OF GEORGIA, NEWTON COUNTY

By executing this affidavit, the undersigned Design-Builder 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 _____, 2021, 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 _____, 2021

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 _____, 2021, 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 _____, 2021.

**REQUEST FOR PROPOSAL
JUNE 18, 2021**

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 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 _____, 2021 in _____ (City),
_____ (State).

Signature of Applicant

Printed Name of Applicant

Subscribed and sworn before me on this the _____ day of _____, 2021.

Notary Public

My Commission Expires: _____

