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

### **1.2 Basic Definitions**

**1.2.1** *Agreement or Contract* refers to the executed contract between Owner and Design-Builder.

**1.2.2** *Basis of Design Documents* are as follows: For these General Conditions, the Basis of Design Documents are the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any.

**1.2.2.1** *Change* means any change in the Work authorized by the City in writing, including Field Changes, Change Directives, Work Authorizations, or Change Orders.

**1.2.2.2** *Change Directive* means a written order prepared by the City and signed by the City directing a Change in the Work prior to or absent an agreement on adjustment, if any, in the Agreement Price or Agreement Time, or both.

**1.2.2.3** *Change Order* means a written agreement signed by the Owner and Design-Builder establishing their written agreement upon all of the following: (1) the change in the Work that includes the addition or reduction of Work; (2) the amount of the adjustment, if any, in the Contract Price; and (3) the extent of adjustment, if any, in the Contract Time(s). A Change Order does not include a Field Change, Work Authorization, or Change Directive.

**1.2.2.4** *City* refers to the City of Atlanta, State of Georgia in the United States of America.

**1.2.2.5** *City Representative* has the meaning set forth in Section 3.4.

**1.2.2.6** *Confidential Information* means information concerning the City which is not generally known to the public and is not subject to public disclosure through the Georgia Open Records Act.

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

**1.2.6.1** *Field Change* means a Change in the Work that that does not require an adjustment in the overall Contract Price, overall Contract Time(s), established budget line items or quantities, or use of allowance items or contingency funds, which is required as a result of field conditions that require such adjustments. A Field Change does not include a Work Authorization, a Change Order or a Change Directive and must be agreed upon in writing and executed by an authorized City representative and the Design-Builder.

**1.2.7** *Final Completion* is the date on which the City has beneficial use of the Project, all Work is finally completed to the satisfaction of the City, and the City has confirmed in writing that Design-Builder has achieved Final Completion. The requirements of Final Completion shall also include but not be limited to, any items identified in the punch list prepared under Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

**1.2.8** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.9** *General Conditions of Contract* refer to these General Conditions of Contract between Owner and the Design-Builder.

**1.2.10** *Contractor or Design-Builder* means any Firm, partnership, corporation, joint venture, limited liability company ("LLC") or any combination thereof who enters into an Agreement with the City. This excludes Subcontractors/Sub-consultants.

**1.2.11** Omitted.

**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.

**1.2.12.1** *Key Personnel* means the personnel of Design-Builder identified in Article 2.1.

**1.2.12.2** *Key Subcontractors* means the Subcontractors identified in Article 2.1.

**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.

**1.2.13.1** *Owner* means the City of Atlanta, a municipal corporation of the State of Georgia in the United States of America.

**1.2.14** *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 may also include the scope of work and Specifications, the drawings and reports, special conditions, appendices to the Agreement, and the other requirements of the Contract Documents.

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

**1.2.16** *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.

**1.2.17** *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.

**1.2.18** *Substantial Completion* or *Substantially Complete* means the date on which the Work is sufficiently complete in accordance with the Contract Documents so that Owner (i) can occupy and has use of the Project for its intended purposes, (ii) the Design Builder has fulfilled all requirements for Substantial Completion set forth in Article 6, and (iii) the City's authorized representative has confirmed in writing that the Project has achieved Substantial Completion.

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

**1.2.20** *Work Authorization* means a written order executed by the City and Design-Builder, which authorizes utilization of an allowance or contingency item, as may be permitted and defined by the Contract Documents. Work Authorization(s) are used to document a Change in the Work that adds, changes or removes scope of work from the Contract but does not change the Contract Time(s) or the Contract Price. A Work Authorization does not include a Change Order, a Field Change or a Change Directive.

**1.2.21** *Work Product* has the meaning set forth in Section 3.2.

## **Article 2**

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

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

**2.1.1** 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. The following persons are identified by the Design-Builder as its key personnel that will provide the Work required by the Contract Documents (Proponents may provide documentation with equivalent information to augment forms.):

**2.1.1.1** Key Personnel:

**2.1.1.2** Key Subcontractors:

**2.1.1.3** Design-Builder shall not transfer, reassign or replace Key Personnel and/or Key Subcontractors identified in Articles 2.1.1. and 2.1.1.2, except as the result of retirement, voluntary resignation, involuntary termination for cause in Design-Builder's sole discretion, illness, disability, or death, during the term of this Agreement without the prior written approval from the Owner.

**2.1.2** 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, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work;; and (iv) 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).

**2.1.3** 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 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall 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). The schedule shall be 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.

#### **2.1.4 Omitted**

### **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals 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 within the Contract Time(s). Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

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

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the highest degree of 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. 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 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.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in a design review meeting and recorded in the meetings minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit approved Construction Documents to Owner prior to commencement of construction and provide copies of such approved Construction Documents to Owner.

**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, Owner may direct Design-Builder to 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. 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** Unless otherwise directed by the Contract Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** In the event Owner elects to obtain certain permits directly, Design-Builder shall provide reasonable assistance to Owner in obtaining those permits.

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

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

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

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

**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 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 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.

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

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

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. 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. 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 agrees to assign to the Owner at the time of Substantial Completion of the Work all manufacturer's warranties relating to the Work, and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

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

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period



of one year from the date of Substantial Completion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.10.2** Design-Builder shall, within three (3) 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 three (3) day period, Owner, in addition to any other remedies provided under the Contract Documents, may commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder and its surety shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the three (3) day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents. Additionally, the warranties set forth in this Article 2 and elsewhere in the Contract Documents shall survive Final Completion of the Work. All warranties identified in the Contract Documents are in addition to the rights, remedies, and redress that the City has at law or in equity, and none of Design-Builder's warranties shall be deemed a sole or exclusive remedy to the City.

## **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. Design-Builder shall provide Owner with at least fourteen (14) days for Owner's review of any such submissions and documents, unless a shorter review period is otherwise agreed to by Owner.

**3.1.3** Omitted.

#### **3.2 Ownership of Work Product.**

**3.2.1 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 the property of the City upon payment therefore. The City shall retain the ownership and intellectual property interests of the Work Product, including copyright interests associated with the Work Product.

**3.2.2 Non-Disclosure Requirements.** Due to the sensitive nature of the Project, Design-Builder acknowledges and agrees that it must implement and maintain adequate safeguards to reduce unnecessary distribution of drawings, specifications, and other documents, as well as electronic data generated or received by Design-Builder under this Agreement or relating to the Project ("Materials"). Design-Builder shall limit the distribution of Materials to those third parties involved in the design, pricing, permitting, or construction of the Project. The Design-Builder shall incorporate the non-disclosure requirements of this Article 4.2 in all of its subcontracts and sub-consultant agreements.

### **3.3 Financial Information.**

3.3.1 Omitted.

3.3.2 Omitted.

### **3.4 Owner's Representative.**

3.4.1 The City will have the authority to designate a representative (the "City Representative" or "City Engineer") who may: serve as primary interface and the single-point of communication for the provision of the Work; have day-to-day interaction with Design-Builder to address issues relating to this Agreement; and to the extent provided under the Code, have the authority to execute any additional documents or Change Orders on behalf of City. Any Work, document, or item to be submitted or prepared by Design-Builder hereunder shall be subject to the review of the City Representative. The City Representative may disapprove of any submission, if in the City Representative's reasonable opinion, the Work, document or item is not in accordance with the requirements of the Contract Documents or sound professional principles, or is impractical, uneconomical or unsuited for the purposes for which the Work, document or item is intended. If any of the said items or any portion thereof are so disapproved, Design-Builder shall revise and/or correct the Work such that it meets the approval of the City Representative at no additional cost to the City.

### **3.5 Government Approvals and Permits.**

3.5.1 Omitted.

3.5.2 Owner may provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility. No action or refusal to act by the City in connection with the provision of permits, approvals, or licenses related to the Work will relieve Design-Builder from any of its obligations under the Contract Documents. The Design-Builder acknowledges and agrees that any action or refusal to act by the City in connection with the provision of permits, approvals, or licenses related to the Work cannot serve as the basis of a claim for adjustment of the Contract Price and/or the Contract Time(s) and Design-Builder waives and releases any such claims.

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

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

## **Article 4**

### **Hazardous Conditions and Investigation of Site Conditions**

#### **4.1 Hazardous Conditions.**

4.1.1 Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner immediately and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site. Design-Builder agrees to take necessary measures to ensure that the Hazardous Conditions are remediated or rendered harmless and will also take necessary measures to mitigate the Hazardous Conditions as directed by an Owner directed containment and remediation plan.

**4.1.2** Omitted.

**4.1.3** Omitted.

**4.1.4** Subject to the limitations set forth in Article 8 of these General Conditions, Design Builder shall have the right to request an extension of the Contract Time(s) and an adjustment in the Contract Price in accordance with the requirements of Articles 9 and 10 of the General Conditions in the event that a Hazardous Condition, which was not caused by Design-Builder or anyone for whom it is responsible, impacts the critical path of Design Builder's schedule.

**4.1.5** Omitted.

**4.1.6** 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 from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, 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.

**4.1.7** Design-Builder shall give all notices and comply with all Legal Requirements bearing on the safety of persons or property or their protection from damage, injury, or loss.

**4.1.8** Design-Builder shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

**4.1.9** When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, Design-Builder shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

**4.1.10** Design-Builder shall promptly remedy all damage or loss to any property caused in whole or in part by Design-Builder, any Subcontractor, any sub-tier contractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, except damage or loss attributable solely to the acts or omissions of the City or anyone directly or indirectly employed by any of them in any way, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of Design-Builder.

**4.1.11** Design-Builder shall not load or permit any part of the Work to be loaded so as to endanger its safety.

**4.1.12** In any emergency affecting the safety of persons or property, Design-Builder shall act, at Design-Builder's discretion, to prevent threatened damage, injury or loss.

## **4.2 Design-Builder's Investigation of Site Conditions**

Design-Builder acknowledges that it has taken steps necessary to ascertain the nature and location of the Work and that it has investigated and satisfied itself as to the general and local conditions which can affect the Work and its costs. The Design-Builder also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered or difficulties or access insofar as this information is ascertainable from an inspection of the Site, and available documents, including all information from exploratory or geotechnical work done by the Owner (if any) and its design consultants (if any) as well as from the Contract Documents. The Design-Builder has the right to request permission from the City to make any additional tests necessary to assure itself that the site conditions are satisfactory for the Work contemplated by the Contract Documents. The City agrees not to unreasonably withhold permission for any additional testing requested by Design-Builder.

### **4.3 Design-Builder's Analysis of Owner's Project Criteria and the Contract Documents**

Before presenting its proposal to the City, and continuously after the execution of the Agreement, Design-Builder shall carefully study and compare the Owner's Project Criteria and other Contract Documents and shall at once report any error, ambiguity, inconsistency or omission that may be discovered, including any requirement which may be contrary to Legal Requirements. By submitting its proposal for the Agreement and the Work under it, Design-Builder agrees that the Contract Documents, along with any supplementary written instructions issued by or through the City that have become a part of the Contract Documents, appear accurate, consistent, and complete. No claims shall be made by Design-Builder based on claims of defects, errors, omissions, ambiguities or inconsistencies in the Owner's Project Criteria or other Contract Documents which were reasonably discoverable by a review of the Contract Documents and correlation thereof with the actual conditions at the Site. No observation of the City or its representatives, and no inspections, tests or approvals shall relieve Design-Builder from its obligation to perform its obligations in accordance with the Contract Documents. The Design-Builder acknowledges that the City is relying upon the Design-Builder's expertise as a qualified design professional and contractor. Accordingly, Design-Builder represents and warrants that it has determined, by its own investigation, research, and professional judgment that all the conditions affecting the Work and materials to be furnished and by signature of this Agreement represents and warrants that it shall perform the Work in accordance with the Contract Documents within the Contract Time(s) for the Contract Price.

THE CITY, ITS AGENTS AND EMPLOYEES MAKE NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO DESIGN-BUILDER CONCERNING THE CONTRACT DOCUMENTS. By the execution hereof, Design-Builder further acknowledges and represents that it has received, reviewed and carefully examined the Contract Documents, has found them to be accurate, adequate, consistent, coordinated and sufficient for design and construction, and that Design-Builder has not, does not, and will not rely upon any representations or warranties by the City concerning such documents as no such representations or warranties have been or are hereby made. Design-Builder acknowledges and agrees that its obligation to design and construct the Work in accordance with the Contract Documents is not in any way altered or affected by the observations or inspections of the City. Further, Design-Builder acknowledges and agrees that any warranty periods included herein merely set forth the time period during which Design-Builder is contractually required to specifically perform corrective work and that these warranty periods are not and shall not be construed to be exclusive remedies of the City. Instead, Design-Builder acknowledges and agrees that it shall be liable to the City for the cost of correcting Work not performed in accordance with the Contract Documents for the full period of the applicable statute of limitations.

## **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 Appendix B Insurance and Bonding Requirements.

**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** Omitted.

**5.1.4** Professional liability insurance required by Appendix B shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project. Such policies shall be provided prior to the commencement of any design services

hereunder.

**5.2** Omitted

**5.3** Omitted

**5.4 Bonds and Other Performance Security.**

**5.4.1** Design-Builder shall furnish a Performance Bond and a Labor and Material Payment Bond each in the penal amount of at least the Contract Price. The bonds must meet all applicable statutory requirements, be provided substantially in the form required by Appendix B, and must be issued by a surety that is reasonably acceptable to Owner and licensed in the State of Georgia. Design-Builder shall provide the bonds to Owner prior to commencement of Work and as a condition precedent to any payment that would otherwise be due to Design-Builder.

**5.4.2** Omitted.

**5.5 Insurance and Bonding Requirements are not a Limit of Design-Builder's Liability.**

Design-Builder acknowledges and agrees that the insurance and bonding required by this Article 5 and other applicable Contract Documents shall not serve as a limitation of Design-Builder's liability to the City.

## **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 of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts, (ii) include values for all items comprising the Work and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

**6.1.2** Omitted.

**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 its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** Owner shall make payment within forty-five days after Owner's receipt and approval 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.

**6.2.3** Design-Builder acknowledges and agrees that all payments related to this Agreement are subject to the limitations set forth in Article 6.3.

**6.2.4** The Application for Payment shall constitute Design-Builder's representation that the

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

**6.2.5** Owner will retain five percent (5%) of each gross value of the work completed from each Application for Payment as retainage. At the discretion of the City and with the approval of Design-Builder, the retainage of each Subcontractor may be released separately as the Subcontractor completes his or her Work. Upon receipt of written request from Design-Builder, the City may, in its unilateral discretion, reduce retainage to Design-Builder for payment of retainage to Subcontractors who have completed their Work. If such retainage is released, Design-Builder shall furnish the City with an affidavit certifying that all monies due the Subcontractor(s) have been paid. If the City determines that the released retainage has not been paid to the Subcontractor(s), the amount released shall be reinstated. The City may, in its unilateral discretion, elect to reduce Design-Builder's retainage and that of Subcontractors who have not completed all their Work if the City believes it to be in its interest to do so. If reduced, the City may reinstate five percent (5%) withholding if it believes it necessary or desirable to do so. Design-Builder agrees that the City is free to do so. If, after discontinuing the retention, the City determines that the Work is unsatisfactory or has fallen behind schedule, retention may be resumed at the previous level. If retention is resumed, Design-Builder and Subcontractors shall be entitled to resume withholding retainage accordingly. At substantial completion of the work and as the City determines the work to be reasonably satisfactory, Design-Builder may invoice for the outstanding retainage. If at that time there are any remaining incomplete items, an amount equal to 200 percent of the value of each item as determined by the City shall be withheld until such item or items are completed.

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

**6.3.1** The City may decline to approve payment and may withhold any payment, in whole or in part because of: (a) defective work not remedied; (b) third party claims filed or reasonable evidence indicating probable filing of such claims; (c) failure of the Design-Builder to promptly make payments to Subcontractors or its Design Consultants; (d) reasonable evidence that the Work cannot be completed for the Contract Price; (e) reasonable evidence that the Work will not be completed within the Contract Time(s); (f) failure to carry out the Work in accordance with the requirements of the Contract Documents; (g) failure to comply with the insurance and bonding requirements of the Contract Documents; (h) Design-Builder's insolvency or reasonable evidence that Design-Builder fails to pay its debts as they come due; (i) Liquidated Damages owed the City; or (j) a material failure of the Design-Builder to comply with any of the requirements of the Contract Documents.

**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 Interest.**

**6.4.1** The Contract Documents completely supersede the Georgia Prompt Pay Act as it relates to Owner payments and any modifications or successors to the Georgia Prompt Pay Act to the fullest extent allowed by law. Design-Builder acknowledges and agrees that payment shall be in accordance with the provisions of the Agreement and expressly waives its right to assert entitlement under O.C.G.A. § 13-1-11, *et. seq.* to the fullest extent permitted by law. Should the City fail to issue payment for undisputed amounts within ninety (90) days of approval, annual interest on the payment amount may accrue at the Prime Rate, plus one percent (1%). The Prime Rate shall be based on that published in the Wall Street Journal on the first business day of January or June, whichever has most recently passed, of the current year.

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

**6.5.1** 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 7.3 hereof.

## **6.6 Substantial Completion.**

**6.6.1** 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 ten (10) 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 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.

**6.6.2** 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 the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete.

## **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information to the City:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

**6.7.2.2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

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

**6.7.2.4** All operating manuals, shop drawings, daily reports, warranties and other deliverables and Construction Documents required by the Contract Documents;

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

**6.7.2.6** as-built drawings and CAD drawings of the completed Work; and

**6.7.2.7** all training manuals, test reports, pre-construction and post-construction CCTVs, payroll reports, process control sheets, documentation substantiating that all defective and/or non-conforming Work has been remedied including correction of all Work identified as "MCNR" or "make corrections noted and re-submit," as well as submissions for systems and equipment, and Design-Builder has provided all required training to the Owner for competent operation and maintenance of the Work.

**6.7.3** No payment(s) made, payment application(s) approved, partial use of the Work, or complete use of the Work by the City shall be deemed an acceptance of Work that does not conform to the requirements of the Contract Documents.

**6.7.4** No money shall be paid by the City upon any claim, debt, demand or account whatsoever, to any person, firm, or corporation who is in arrears to the City for taxes, or any other debt or claim, and the City shall be entitled to counterclaim and/or offset any such debt, claim, demand or account in the amount of taxes so in arrears or other debts or claims of the City, and no assignment or transfer of such debt, claim, demand, or account after the said taxes are due or after any such debt or claim is asserted by the City, shall affect the right of the City to so offset the said taxes, debts, or other obligations against the same. Design-Builder agrees that the City shall be allowed to setoff and recoup any claim or demand that it may have against Design-Builder (or any of its constituent members if Design-Builder is a joint venture) whether such claim or demand is liquidated or unliquidated. Design-Builder further agrees that in the event it assigns or sells any amounts due or to become due under this Agreement, notice to the City of such assignment or sale shall not affect the City's rights of setoff or recoupment against Design-Builder for claims subsequently arising from this Agreement or any other contract with the City. Any assignee or purchaser of any amounts due Design-Builder under this Agreement shall be bound to these provisions and shall assume the risk of subsequently arising claims of setoff or recoupment.

**6.7.5 Record Keeping and Finance Controls.** With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, 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 Work performed on a cost basis in accordance with the Contract Documents, 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.

## **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 and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.



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

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

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

**7.2** Omitted.

**7.3 Payment Claim Indemnification.**

**7.3.1** Design-Builder acknowledges that neither it nor any of its Subcontractors or Design Consultants have lien rights on public property. Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder and its surety liable for costs and expenses incurred, including attorneys' fees.

**7.4 Design-Builder's General Indemnification.**

**7.4.1** Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) to the extent resulting from or caused by the negligent acts or omissions, recklessness or intentional wrongful conduct of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.2** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligation set forth in Section 7.4.1 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

**7.5** Omitted.

## **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 Design-Builder shall be entitled to an extension of the time for completion only, and shall not be entitled to any additional payment on account of such delay. Without limiting the foregoing, the Design-Builder shall not be entitled to payment or compensation of any kind from Owner for direct, consequential, indirect or impact damages, including but not limited to costs of acceleration arising because of hindrance or delay from any cause whatsoever, whether such hindrances or delays be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery by the Design-Builder of damages for hindrances or delays due solely to fraud or bad faith on part of the Owner or its agents.

**8.2.2 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..

**8.2.3 Damages For Delay, Acceleration, and Time Impacts.** The extension of Contract Time specifically provided for in Article 8.2.1 shall be the Design-Builder's sole and exclusive remedy for delay, except to the extent specifically allowed herein. In the event the Design-Builder is delayed in the performance of the Work due solely to the fraud or bad faith of the Owner, then Design-Builder shall be entitled to an adjustment to the Contract Price for the direct job-site related costs (including General Conditions costs) incurred in performing the delayed Work if such delay (i) is not due to the fault, error, omission, or negligence of Design-Builder, its Design Consultant, Subcontractors, Design Consultants, or any others for whom Design-Builder is responsible, (ii) directly affects the performance of Work that is on the critical path of the construction schedule, (iii) was not reasonably foreseeable, (iv) would otherwise cause the Design-Builder to achieve Substantial Completion of the entire Work beyond the Scheduled Substantial Completion Date, and (v) cannot otherwise be reduced or eliminated by a work around plan or resequencing of the schedule at no extra cost to Design-Builder. In no instance shall Owner be liable for the following time-related costs or damages: (1) profit on any delay, acceleration, or impact costs, (2) loss of anticipated profit, (3) indirect expenses, (4) home office overhead, (5) consequential damages, including without limitation, loss of bonding capacity, loss of bidding opportunities, lost use of personnel, and insolvency, and (6) any claims preparation costs, expenses or consultant fees.

## **Article 9**

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

Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Field Change, Work Authorization, or Change Directive.

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

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed

by Owner and Design-Builder, stating their agreement upon all of the following:

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

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment 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. All Change Orders shall be inclusive of all sales, use, consumer, and other taxes mandated by applicable Legal Requirements.

**9.1.3** Omitted.

## **9.2 Change Directives.**

**9.2.1** A Change Directive is a written order prepared and signed by the City directing a Change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s). Upon receipt of a Change Directive from the City, Design-Builder shall promptly proceed with the performance of the Change in the Work.

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

## **9.3 Work Authorizations**

When directed by the City through a Work Authorization, the Design-Builder will perform Work that is expressly or generally contemplated under any allowance or contingency items designated by the Contract Documents, which may include a Change for the addition of Work that does not result in an increase in the overall Contract Price. Work Authorizations may include Work items that are not necessarily shown in the Contract Documents, but may be necessary for the successful completion of the Project. The performance of the Work Authorization items must conform to the standards of the Contract Documents. The funding for Work Authorizations is an allowance or contingency item only and not a compensable pay item. The City will retain ownership of any such funds not used after the completion of the Work and the Design-Builder will have no claim to such funds. The Work shall be assigned and directed by the City in writing. Measurement, payment, invoicing and pricing of adjustments for Work Authorizations will be in accordance with the Contract Documents.

**9.3.1 Field Changes** Design-Builder and the City may mutually agree in writing to a Field Change that modifies or adjusts the location of Work established by the Contract Documents provided that such modification or adjustment does not require an adjustment in the overall Contract Price, overall Contract Time(s), budget line items or quantities, or use of allowance items or contingency funds, which are required as a result of field conditions that require such adjustments. Design-Builder and the City shall promptly update all applicable Contract Documents to reflect the implementation of a Field Change upon written agreement to a Field Change by the City and Design-Builder.

## **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in Contract 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 Contract Documents 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 Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, overhead and profit shall be reduced in accordance with Article 6 of the Agreement. . Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

**9.4.2** If the quantities originally contemplated under the Contract Documents are materially changed so that application of such unit prices to quantities of the Work performed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted. For purposes of this Section 9.4.2, a change in quantities may be considered material if such change is greater than or equal to forty percent (40%) more than the quantities set forth in the Contract Documents.

**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 Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

## **9.6 Written Change Order Requirement**

**9.6.1** Except as permitted in Article 9.2 regarding Change Directives, and notwithstanding the provisions of Article 10, an increase in the Contract Price or the Contract Time(s) shall be allowed only by a Change Order signed by Owner and either (1) requested by Design-Builder in writing in advance of performing the Work involved or affected or (2) otherwise agreed to in writing by Owner. The failure of Design-Builder to request in writing a Change Order in advance of performing the work affected or involved, whenever reasonably practicable to do so, prevents the Owner from considering cost and time saving measures and alternatives, and therefore shall be a waiver and release of any claim by Design-Builder for an increase in the Contract Price or the Contract Time(s). No eliminations, additions, or alterations shall be made in the Work except upon written order of the City. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the City has been unjustly enriched by any alteration or addition to the Work, shall be the basis of any claim for an increase in any amounts due under the Contract Documents or an increase in any time period provided for in the Contract Documents. No action, conduct, omission, prior failure, or course of

dealing by the City shall waive, modify, change, or alter the requirement that Change Orders, Field Changes, Work Authorizations and Change Directives must be in writing signed by the City, and that written Change Orders are the exclusive methods for effecting any adjustment to the Contract Price or Contract Time(s). Design-Builder understands and agrees that the Contract Price and Contract Time(s) cannot be changed by implication, oral contracts, verbal directives, actions, inactions, course of conduct, or constructive change order. Design-Builder shall be under no obligation to perform pursuant to an oral directive to perform work in addition to the Project scope excepting the case of an emergency threatening personal injury or property damage. Design-Builder acknowledges and agrees that no one in the City's organization has the authority to order Changes without a signed writing.

## **9.7 Accord and Satisfaction**

**9.7.1** Agreement on any Change Order, Field Change, or Work Authorization shall constitute a final settlement and an accord and satisfaction of all costs and changes to the Contract Price and Contract Time(s) relating to or arising out of the Change in the Work that is the subject of the Change, including but not limited to all claims for direct and indirect costs, impacts, overtime, accelerations, inefficiencies, compression, trade stacking, delays, interference, lost productivity, additional work, and the effect or accumulation of the changed work on any other Work or activities.

# **Article 10**

## **Contract Adjustments and Disputes**

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

**10.1.1** Subject to the limitations set forth in Articles 8 and 9, Design-Builder shall provide written notice to the City of any claim for extension of the Contract Time(s) or modification of the Contract Price within seven (7) calendar days of the occurrence of the event giving rise to the claim, as well as (a) a narrative statement describing the amount and factual bases of the claim; (b) the precise number of days, if any, claimed as a result of any delay or impact to the Work; and (c) a detailed calculation of the precise amount of additional compensation claimed, if any, with any documentation supporting the claim. The failure of the Design-Builder to file any claim within the time limits prescribed herein or in the form or manner as required hereby shall be deemed a material prejudice to the interests of the City and shall constitute a waiver and release of the claim and the right to file or thereafter prosecute the same.

### **10.2 Mediation.**

**10.2.1** In the event of any controversy, claim, dispute or other matter in question arising out of or relating to this Agreement of the breach thereof or otherwise in connection with the Project to which this Agreement pertains, at the City's sole and exclusive option the parties shall, if the City so elects and as an express condition precedent to any party to this Agreement commencing legal action against the other relating to or arising out of the dispute, mediate the dispute utilizing a mutually agreeable mediator. Prior to commencing any legal action against the City, Design-Builder must either mediate the dispute, at the City's election, or obtain a written waiver from the City of its right to mediate.

**10.2.2** Omitted.

**10.2.3** Omitted.

**10.2.4** Omitted.

### **10.3 Arbitration at the City's Election.**

**10.3.1** At the Owner's sole election, any claim arising out of or related to the Agreement shall be subject either to binding arbitration or litigation at the City's option. Prior to arbitration or litigation, the parties shall endeavor to resolve claims or disputes in accordance with the terms of this Agreement.

**10.3.2** If Claims are not resolved by negotiation, mediation, or otherwise, and the Owner elects arbitration, the arbitration shall be held in Atlanta, Georgia and shall be submitted to one of the following arbitration services: 1) JAMS in accordance with the JAMS Engineering and Construction Rules & Procedures currently then in effect; 2) Miles Mediation and Arbitration in accordance with the Miles Construction Arbitration Rules & Procedures, then in effect; 3) Henning Mediation and Arbitration Service in accordance with the Henning Rules for Arbitration then in effect; or 4) such other similar rules and organization as the Owner may elect. The demand for arbitration shall be in writing and filed with the appropriate organization selected by the Owner and shall be served on the other party to the Contract. The agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof. In any arbitration or litigation, the arbitrators or the Court shall have the jurisdiction to award the City costs, arbitrator fees, expert fees, and attorneys' fees, and the arbitrators or the Court shall award all such fees to the City if it is the prevailing party.

**10.3.3** Except at Owner's sole discretion and with its consent, no arbitration or litigation arising out of or relating to the Agreement shall include, by consolidation or joinder or in any other manner, any other person or entity, including but not limited to the Design Consultant and its employees and consultants, any Subcontractors, and any other separate contractors or suppliers. The Owner's consent or election to allow consolidation or joinder or shall not constitute consent to arbitration of any claim not subject to arbitration pursuant to this Agreement.

**10.3.4** Any award rendered by an arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### **10.4 Litigation if Arbitration Not Elected.**

**10.4.1** If the Owner does not elect arbitration, any claims shall be resolved in Fulton County, Georgia Superior Court. Design-Builder hereby submits to the jurisdiction and venue of Fulton County, Georgia, and waives all defenses based on a lack of jurisdiction and/or venue. Design-Builder acknowledges that this Agreement was negotiated, at least in part, in Fulton County, Georgia. In any arbitration or litigation, the arbitrators or the court shall have the jurisdiction to award the City costs, arbitrator fees, expert fees, and attorneys' fees, and the arbitrators or the court shall award all such fees to the City if it is the prevailing party. For purposes of this Section 10.4.1, the City shall be the "prevailing party" if it is successful on the material issues of the dispute, even if the City was not successful on all issues.

#### **10.5 Duty to Continue Performance.**

**10.5.1** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work pending the final resolution of any dispute or disagreement between Design-Builder and Owner. Design-Builder's failure or refusal to work through disputes in accordance with this Article 10.5 shall be deemed a material default under this Agreement, which will entitle the City immediately rely upon Design-Builder's sureties to cure said default.

#### **10.6 CONSEQUENTIAL DAMAGES.**

**10.6.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.6.2 AND ARTICLE 11 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, LOST PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.6.2** The consequential damages limitation set forth in Section 10.6.1 above is not intended to affect the payment of liquidated damages set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner for some damages that might otherwise be deemed to be consequential.

## **Article 11**

### **Stop Work and Termination**

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

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work.

**11.1.2** Subject to the limitations of Articles 8 and 9, Design-Builder is entitled to seek an adjustment of the Contract Time(s) if it has been adversely impacted by any suspension of stoppage of the Work by Owner.

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

**11.2.1** If Design-Builder fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials 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, or (vi) perform material 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 within seven (7) days, 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 materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided 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. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder and its sureties 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 losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, which costs and expenses are not subject to the waiver of consequential damages set forth in Section 10.6 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with Section 11.3.

### **11.3 Termination for Convenience.**

**11.3.1** The City shall have the right to terminate this Agreement without cause upon fourteen (14) calendar days' written notice to Design-Builder. In the event of such termination for the City's convenience, Design-Builder's recovery against Owner shall be limited to Work performed through the date of termination, calculated on a percent complete basis, together with any retainage withheld, as well as Design Builder's reasonable demobilization costs, if applicable. Design-Builder shall not be entitled to any other or further recovery against Owner, including, but not limited to, anticipated profit on work not performed. In no event shall Design-Builder be entitled to a "cost-plus" recovery from Owner.

### **11.4 Termination for Lack of Appropriations.**

**11.4.1** If, during any year of this Agreement, legislation establishing an Annual Maximum Payment Amount for the following year is not enacted, this Agreement will terminate in its entirety on the last day of the Term for which an Annual Maximum Payment Amount has been legislatively authorized; provided, however, that Task Orders funded out of a previously legislatively authorized Annual Maximum Payment Amount may continue beyond such termination date.

### **11.5 Bankruptcy of Design-Builder.**

**11.5.1** If Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code, such event may impair or frustrate the Design-Builder's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**11.5.1.1** The Design-Builder, its trustee or other successor, shall furnish, upon request of the Owner, adequate assurance of the ability of the Design-Builder to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**11.5.1.2** The Design-Builder shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action. If the Design-Builder fails to comply with its foregoing obligations, the Owner shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the Owner under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the Owner to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code.

## **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, 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. Each party 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** Design-Builder agrees to preserve as strictly confidential all Confidential Information for two (2) years following the expiration or termination of this Agreement; provided, however, that Design Builder's obligation for Confidential Information that constitutes trade secrets pursuant to applicable law will continue for so long as such Confidential Information continues to constitute a trade secret under applicable law. Any Confidential Information that may be deemed Sensitive Security Information by the Department of Homeland Security or any other similar Confidential Information related to security will be considered trade secrets. Upon request by City, Design Builder will return any trade secrets to City. Design Builder agrees to hold the Confidential Information of the City in trust and confidence and will not disclose it to any person, or use it (directly or indirectly) for its own benefit or the benefit of any other person other than in the performance of its obligations under this Agreement. Design Builder will be entitled to disclose any Confidential Information if compelled to do so pursuant to: (i) a subpoena; (ii) judicial or administrative order; or (iii) any other requirement imposed upon it by applicable law. Prior to making such a disclosure, to the extent allowed pursuant to applicable law, the Design Builder shall provide the City with thirty six (36) hours prior notice by facsimile of its intent to disclose, describing the content of the information to be disclosed and providing a copy of the pleading, instrument, document, communication or other written item compelling disclosure or, if not in writing, a detailed description of the nature of the communication compelling disclosure with the name, address, phone number and facsimile number of the person requesting disclosure.

**13.2 Successorship.**

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

**13.3 Governing Law.**

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

**13.4 Notice.**

**13.4.1** 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.

**13.5 Amendments.**

**13.5.1** 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.

**13.6 Release of Quasi-Contractual Claims.**

**13.6.1** Design-Builder acknowledges and agrees that it may be adequately compensated in money damages for any claims arising from performance of the Contract Documents. Accordingly, Design-Builder waives and releases any right to assert a claim for *quantum meruit*, unjust enrichment, and any other equitable or quasi-contractual claim for relief that may be available under applicable law.

**13.7 No Construction Against the Drafter.**

**13.7.1** No presumption of any applicable law relating to the interpretation of contracts against the drafter shall apply to this Agreement.

**13.8 Illegal Immigration Reform and Enforcement Act**

**13.8.1** For the entire Term of this Contract, Contractor must comply with the Illegal Immigration Reform and Enforcement Act of 2011 ("Act") (O.C.G.A. §13-10-90 et seq.), as it may be amended from time to time, including but not limited to, obtaining affidavits from Contractor's Subcontractors and sub-Subcontractors demonstrating their participation in the E-Verify Program for the duration of their contract with Contractor . Contractor shall further include the obligation to obtain affidavits demonstrating E-Verify participation in its subcontracts with all of Contractor's Subcontractors and sub-Subcontractors that perform all or part of the Services in this Contract. For additional information on the E-Verify program or to enroll in the program, go to <https://e-verify.uscis.gov/enroll>.

**13.9 City of Atlanta Ordinances.**

**13.9.1** Contractor shall be bound by the provisions of all City of Atlanta Ordinances. It is Contractor's responsibility to be aware of and adhere to all existing or future ordinances that are in effect during the performance of this Contract.

**13.10 Sec. 2-1109 Compliance with Federal Requirements.**

**13.10.1** When the procurement or real estate transaction involves the expenditure of federal assistance or contract funds, the procurement or real estate transaction shall be conducted in accordance with any applicable mandatory federal law and authorized regulations which are not reflected in this Article. Notwithstanding, where federal assistance or contract funds are used in a procurement or real estate transaction, requirements that are more restrictive than federal requirements shall be followed.

**13.11 Contingent Fees Prohibited.**

**13.11.1** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor to solicit or secure this Agreement; and that it has not paid or agreed to pay any person, company, association, corporation, individual or firm, other than a bona fide employee working for Contractor any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the above warranty and upon a finding after notice and hearing, the City shall have the right to terminate this Agreement without liability and, at its discretion, to deduct from the Agreement price or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

**13.12 Ethics in Contracting.**

**13.12.1 Prohibition Against Contracting with Predatory or High Cost Lenders.** By execution of this Contract, Contractor, or its authorized agent, certifies, under penalty of perjury, that this Contract is made by a Person or business entity that is neither a predatory lender nor a high cost lender, nor is Contractor an affiliate of a predatory lender or a high cost lender, as defined by City Code of Ordinances §58-102. The undersigned Contractor, or authorized agent, further certifies that he/she is an agent duly authorized to sign this certification on behalf of the Contractor. Any Person or business entity that provides a false affidavit shall be subject to any or all of the following penalties:

- 1) Withholding of ten percent (10%) of all future payments under the involved contract until it is determined that the Person, or business entity, is in compliance with this section.
- 2) Withholding of all future payments under the involved contract until it is determined that the Person, or business entity, is in compliance with this section.
- 3) Cancellation of the Contract.

**13.12.2 Fraud and Misrepresentation.** Any written or oral information provided by Contractor, directly or indirectly related to the performance of the Services required by this Contract, constitutes material representations upon which the City relies for the requirements of the Contract and compliance with local, State and federal laws, rules and regulations. Contractor agrees to notify the City immediately of any information provided to the City that it knows and/or believes to be false and/or erroneous and immediately provide correct information to the City and take corrective action. Contractor further agrees to notify the City immediately of any actions or information that it believes would constitute fraud or misrepresentation to the City in performance of this Contract, whether or not such information actually constitutes fraud and/or misrepresentations, by contacting the Integrity Line 1-800-884-0911. Contractor agrees to place signage provided by the City regarding the Integrity Line at the location to which Contractor employees report to perform the Services required by this Contract. Contractor acknowledges and agrees that a finding of fraud or other impropriety on the part of Contractor or any Contractor personnel may result in suspension or debarment of Contractor; and the City may pursue any other actions or remedies that the City may deem appropriate. Contractor agrees to include this clause in its subcontracts and take appropriate measures to ensure compliance with this provision.

**13.12.3. Gratuities and Kickbacks.** In accordance with the City Code of Ordinances, §2-1484, as may be amended, it shall be unethical for any Person to offer, give or agree to give any employee or former employee or for any employee or former employee to solicit, demand, accept or agree to accept from another Person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal there for. Additionally, it shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a Subcontractor under a contract to the prime contractor or higher tier Subcontractor or any Person associated therewith as an inducement for the award of a subcontract or order.

**13.12.4. Labor Trafficking Prohibitions.**

**13.12.4.1.** Pursuant to O.C.G.A. §16-5-46, Contractor agrees that Contractor, its employees, directors, officers, owners, Subcontractors, vendors, Suppliers, agents and affiliates shall not engage in Human Trafficking including, but not limited to: (a) using forced labor, (b) engaging in misleading or fraudulent recruitment practices, (c) charging recruitment fees, (d) destroying, concealing, confiscating, or otherwise denying employee access to the employee's identification documents, (f) failing to provide an employment agreement (if required) in an employee's native tongue and prior to the employee's departure from his/her place of origin. Contractor agrees to cooperate fully with and provide reasonable access to any agency or governmental authority conducting investigations into actual or alleged violations of this section, self-report activities that are inconsistent with or otherwise violate the provisions of this section or any other Applicable Law or regulation.

**13.12.4.2.** Contractor agrees that Contractor, its Subcontractors, vendors and Suppliers shall create and post a formal compliance plan at (a) at any and all locations at which Contractor engages in business and/or locations at which Contractor may have employees on Site and/or (b) on any website owned by or maintained for the benefit of Contractor. Contractor agrees to maintain a formal compliance plan including, as appropriate an employee awareness program about United States and State of Georgia anti-trafficking policy and preventative procedures. Each contractor and Subcontractor must formally certify it has a compliance plan in place, due diligence was conducted, the absence of misconduct, and that, if misconduct was observed, that appropriate remediation and referral actions were taken.

**13.12.4.3.** Any violation of the provisions contained herein, in whole or in part, may result in(a) suspension of this Contract and/or any other existing agreements with Contractor and/or any current or future payments or compensation required pursuant to this Contract, (b) termination of this Contract or any existing, pending or future agreements with Contractor, (c) debarment, as defined under 48 C.F.R. 9.406-2, City of Atlanta Code of Ordinances Section 2-1623 and/or (d) any other claims, actions, remedies, judgments, fees or costs as allowed in accordance with any Applicable Law, now or hereafter in effect.

**13.13 City Equal Employment Opportunity ("EEO") Provision.** Contractor shall comply with City Code of Ordinances §§2-1200 and 2-1414 as follows during the performance of the Agreement:

**13.13.1** Contractor shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following: Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated. Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

**13.13.2** Contractor shall, in all solicitations or advertisements for employees, placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.

**13.13.3** Contractor shall send to each labor union or representative of workers with which Contractor may have a collective bargaining Agreement or other contract or understanding a notice advising the labor union or workers' representative of Contractor's commitments under the equal employment opportunity program of the City and under the City Code of Ordinances and shall post copies of the notice in conspicuous places available to employees and applicants for employment. Contractor shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.

**13.13.4** Contractor shall furnish all information and reports required by the contract compliance officer pursuant to the City Code of Ordinances, and shall permit access to the books, records, and accounts of Contractor during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.

**13.13.5** Contractor shall take such action with respect to any Subcontractor as the City may direct as a means of enforcing the provisions of the EEO provisions herein, including penalties and sanctions for noncompliance; provided, however, that in the event Contractor becomes involved in or is threatened with litigation as a result of such direction by the City, the City will enter into such litigation as is necessary to protect the interest of the City and to effectuate the equal employment opportunity program of the City; and, in the case of contracts receiving federal assistance, Contractor or the City may request the United States to enter into such litigation to protect the interests of the United States.

**13.13.6** Contractor and its Subcontractors, if any, shall file compliance reports at reasonable times and intervals with the City in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of Contractor and its Subcontractors.

**13.13.7** Contractor shall include these EEO provisions in every subcontract or purchase order so that such provisions will be binding upon each Subcontractor or vendor.

**13.13.8** A finding, as hereinafter provided, that a refusal by Contractor or Subcontractor to comply with any portion of this program, as herein provided and described, may subject the offending Party to any or all of the following penalties:

- a) Withholding from Contractor in violation all future payments under the involved contract until it is determined that Contractor or Subcontractor is in compliance with the provisions of the contract;
- b) Refusal of all future Bids for any contract with the City of Atlanta or any of its departments or divisions until such time as Contractor or Subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code of Ordinances;
- c) Cancellation of the public contract; or
- d) In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within Applicable Law, of Contractors, Subcontractor or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.