



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

1.2.2 *Basis of Design Documents* are as follows: those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the “Basis of Design Documents.”

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

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

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

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

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

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

1.2.9 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition).

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

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

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

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

1.2.14 *Owner's Engineer* will assist the Owner in the administration of the Design-Build Contract including, but not limited to, the following tasks: preliminary design services; development of the Request for Qualifications and subsequent shortlisting; development of the Request for Proposals and subsequent proposal evaluation and Design-Builder selection; design and construction phase services; resident services during construction; and supplemental services. Black & Veatch will serve as the Owner's Engineer on the current Project.

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

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

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

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

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

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

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

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

2.1.1.1 Phase One – Generally consists of preliminary engineering, geotechnical investigations and design development as may be necessary to produce 80% complete

Construction Documents for the Project, as well as preparation, in close collaboration with the Owner, of a proposed price and schedule to provide a fully complete and operating Project, meeting Owner's Project Criteria. The proposed price and schedule includes the Project's design (developed to the Owner's required level of completion), a Guaranteed Maximum Price, Project schedule, and supporting documentation, such as detailed open-book costing for the Guaranteed Maximum Price. Phase One services also include the following:

Develop the Project execution plan, including Project schedule;

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

Produce the basis-of-design report;

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

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

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

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

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

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

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

Procure equipment and Subcontractors;

Secure necessary permits;

Construct the Project in accordance with this Agreement;

Conduct startup, commissioning and performance testing;

Provide operator training;

Provide warranty coverage; and

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

2.1.2 Provided the Owner accepts Design-Builder's GMP Proposal, Design Builder's Phase Two construction services will include construction of a new treatment facility with other improvements required under Owner's Project Criteria. Construction is to occur in two Parts as follows:

2.1.2.1 Part I - includes constructing and placing on-line 1 MGD of wastewater

treatment capacity. A firm quotation for the purchase, relocation, rehabilitation and field erection of a pre-owned 1 MGD package-type wastewater treatment plant will be assigned to the Design-Builder (for development of a subcontract). This firm quotation is contained in the Owner's Project Criteria. Design Builder shall achieve Substantial Completion of this Part I within 365 calendar days after the Date of Commencement. Design-Builder will provide all design, permitting, field trades, construction, performance testing, commissioning and start-up services as may be required to complete the Part I construction. Design-Builder shall provide a splitter box and necessary plant piping to accompany the plant to create a complete and fully operational system in accordance with Owner's Project Criteria. This plant is a "stand-alone" plant that will connect into the existing plant facilities such as RAS/WAS, disinfection, solids dewatering systems so that the capacity is operational while the remaining Part II is constructed. The plant must connect with the plant SCADA / Controls system.

2.1.2.2 Part II - includes constructing the remaining process units set forth in Owner's Project Criteria, including filtration, ultraviolet disinfection, solids digestion, dewatering equipment, rehabilitation / replacement of Membrane Filtration Unit No. 3, and any remaining plant piping. Design-Builder shall achieve Substantial Completion of Part 2 within 548 calendar days after the Date of Commencement.

2.1.3 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to

act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

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

2.1.5 Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall be in critical path format, indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s) and clearly indicate the critical path and identify the Work activities on the critical path. The schedule shall be periodically updated as required in Section 2.1.2 and revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

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

2.2 Design Professional Services.

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

2.3 Standard of Care for Design Professional Services.

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

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications

setting forth the Project requirements and shall be included in Design-Builder's schedule provided in accordance with Section 2.1.3. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design

and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Owner's Engineer and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

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

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

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

2.5 Legal Requirements.

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

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

2.6 Government Approvals and Permits.

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

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

2.7 Design-Builder's Construction Phase Services.

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

Project consistent with the Contract Documents.

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

2.7.3 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance.

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

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

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

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

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

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

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

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

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

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

2.7.9 In an effort to raise awareness of sediment and erosion control requirements and issues, it is the requirement of Oconee County Utility Department that the Design-Builder's Superintendent possess a valid **Site Inspector Certification (CMCSI) from Oconee County**. The Design-Builder will submit a copy of each required employee's certificate to the Owner. The Superintendent's certificate must be on file prior to Notice To Proceed. Ground disturbing activities will be prohibited until the requirements of this section are fulfilled.

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

2.8 Design-Builder's Responsibility for Project Safety.

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

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

Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters, and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner not caused by Design-Builder. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.10 Correction of Defective Work.

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

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

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

2.11 Required Manufacturers and Suppliers

2.11.1 Design-Builder agrees to comply with the Owner's request that Heyward, Inc., Atlanta, be considered and evaluated as the supplier of equipment needed to provide 1 MGD of treatment capacity described in Part 1 of the Work.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

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

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

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

3.2 Furnishing of Services and Information.

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

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

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

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

3.2.1.4 A legal description of the Site;

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

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

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

3.3 Owner's Engineer

3.3.1 Owner's Engineer will assist the Owner in the administration of the Contract Documents including, but not limited to, the following tasks: preliminary design services; development of the Request for Qualifications and subsequent shortlisting; development of the Request for Proposals and subsequent proposal evaluation and Design-Builder selection; design and construction phase services; resident services during construction; and supplemental services. The Owner's Engineer shall communicate regularly with the Design-Builder and the Owner and Design-Builder

shall endeavor to communicate with each other through the Owner's Engineer in matters arising out of or relating to the Contract Documents. The Owner's Engineer shall have authority to act on behalf of the Owner only to the extent expressly granted in the Agreement and these General Conditions. The Owner's Engineer shall have the authority:

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

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

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

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

3.3.2 The Owner's Engineer shall not have authority to:

3.3.2.1 approve or modify the Basis of Design Documents;

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

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

3.3.2.4 modify the Owner's Project Criteria;

3.3.2.5 approve or modify the GMP Exhibit or GMP Proposal;

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

3.3.2.7 declare Substantial Completion or final completion of the Project; or

3.3.2.8 Approve payment for Design-Builder's Applications for Payment.

3.4 Government Approvals and Permits.

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

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

3.5 Owner's Separate Contractors.

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

Article 4

Hazardous Conditions and Differing Site Conditions

4.1 Hazardous Conditions.

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

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

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

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

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

4.1.6

Insurance

5.1 Design-Builder's Insurance Requirements.

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

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

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

5.1.4 Owner and Owner's Engineer shall be named as an additional insured under any liability insurance policy.

5.2 Owner's Liability Insurance.

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

5.2.2

5.3 Payment and Performance Bonds

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

Article 6

Payment

6.1 Schedule of Values.

6.1.1 Unless required by the Owner upon execution of this Agreement, within 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, (iii) segregate as a separate category the Design-Builder's general conditions and include values for all items comprising the general conditions; (iv) include a separate category for Design-Builder's fee, and (v) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

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

6.2 Monthly Progress Payments.

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

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

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

6.2.2 The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials

are suitably stored at either the Site or another acceptable location, (ii) the equipment and materials are protected by suitable insurance and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

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

6.3 Withholding of Payments.

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

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

6.4 Design-Builder's Payment Obligations.

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

6.5 Substantial Completion.

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

6.5.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to 150% of the reasonable value of all remaining, incomplete, or defective items of Work as noted in the Certificate of Substantial Completion, as determined by Owner, plus all other amounts Owner is entitled to withhold pursuant to Section 6.3 above. Owner shall make payment of such retained amounts to Design-Builder within thirty (30) days of Design-Builder's submittal of an accurate and complete Application

for Payment for the retained amounts to be released.

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

6.6 Final Payment.

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

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

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

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

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

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

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

6.6.2.6 As-built drawings.

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

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

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

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

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

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

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

7.2 Indemnification

7.2.1 Design Builder's Performance. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner (and other entities identified in the Agreement to be indemnified by Design-Builder, including Owner's Engineer), all of their political subdivisions, affiliates, parents, subsidiaries, elected officials, appointed officials, members, stockholders, officers, directors, employees, representatives, agents, insurers, successors and assigns (all of which are hereinafter collectively referred to as "Indemnitees"), from and against all claims, damages, losses, costs and expenses, including but not limited to all attorneys', paralegal, consultants' and experts' fees, legal expenses and dispute resolution costs (collectively "Legal Expenses"), arising out of or resulting from the performance of Design-Builder's Work; provided, any such claim, damage, loss, cost or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than direct damage to Design-Builder's Work itself), including the loss of use resulting therefrom, and is caused or alleged to be caused in whole or in any part by any act or omission of Design-Builder or anyone directly or indirectly employed by Design-Builder or anyone for whose acts or omissions Design-Builder may be liable, regardless of whether it is also caused in part by a party indemnified hereunder; or (2) arises out of or relates to Design-Builder's performance under this Agreement, or results from any claimed failure of Design-Builder, or anyone directly or indirectly employed by Design-Builder or anyone for whose acts or omissions Design-Builder may be liable, to properly fulfill Design-Builder's obligations under this Agreement. This indemnity obligation shall not be construed to negate, or abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist under law except to the extent that it is caused by the sole negligence of any party indemnified hereunder in which case this obligation shall not apply relative to such indemnified party.

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

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

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

7.2.1 .

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

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

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

8.3 Force Majeure

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

- a. If such failure or delay could not have been anticipated and prevented by reasonable precautions;
- b. If such failure or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, work-around plans, or other means; and
- c. If and to the extent such failure or delay is caused, directly or indirectly, by fire, flood, earthquake, hurricane, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions or court order.

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

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

Notwithstanding anything contained herein to the contrary, strikes, slow-downs, walkouts, lockouts, and industrial disputes affecting the workforce of Design-Builder or its Subcontractors shall not constitute "Force Majeure Events" and are not excused under this provision.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

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

9.1.1.1 The scope of the change in the Work;

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

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

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

9.1.3 An executed Change Order constitutes a full and final settlement and accord and satisfaction of all effects of the changes described and included in the Change Order upon any and all aspects of the Contract Documents and compensates Design-Builder fully for such changes. Accordingly, except as specifically described and included in a Change Order 1) Design-Builder expressly waives and releases any and all right to make a claim or demand or to take any action or proceeding for any other consequences resulting from, arising out of, or related to the Change Order, whether the consequences result directly or indirectly from the changes described and included therein; and 2) Design-Builder expressly waives and releases any claim it may have against the Owner for a) any adjustment in the schedule, including but not limited to the Scheduled Substantial Completion Date, Scheduled Interim Milestone Dates or final completion date, or b) any additional compensation or damages, resulting from, arising out of, or related to, the changes described and included herein, including, but not limited to, any claim for impact or damages due to delay, disruption, hindrance, interference, inefficiencies or extra work arising out of, resulting from, or related to, the changes described and included therein, including, but not limited to, any effect that such changes may have on the unchanged portion of the Work or schedule.

9.2 Work Change Directives.

9.2.1 Owner may, by Work Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Price and/or the Contract Time(s).

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

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Guaranteed Maximum Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of

Article 9

the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder. Owner may also order minor changes in the Work.

9.4 Contract Price Adjustments.

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

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

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

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

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

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

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

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

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

9.5 Emergencies.

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If Design-Builder believes that it is entitled to an adjustment in the Guaranteed Maximum Price and/or Contract Time(s) from Owner for any event arising out of or related to the Work or Project, Design Builder shall provide written notice to the Owner stating in reasonable detail the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed fourteen (14) days, after the occurrence giving rise to the claim for relief. Such notice shall include sufficient information to advise the Owner of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request. No later than thirty (30) days after the event giving rise to Design-Builder's claim for

adjustment of the Guaranteed Maximum Price and/or Contract Time(s), Design-Builder shall provide Owner with a second notice of its claim for relief setting forth in detail its cost estimate and/or proposed schedule revision, which shall include such supporting documentation and detail as Owner may require to facilitate its review and response. The notices required by this section are express conditions precedent to Design-Builder's right to file a claim for adjustment of the Guaranteed Maximum Price and/or Contract Time(s) for events arising out of or related to the Work or the Project and Design-Builder's failure to give the written notices required by this section shall result in Design-Builder's waiver and release of its claim.

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

10.2 Dispute Avoidance and Resolution.

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

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

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Engineer, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

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

10.2.5 If after engaging in the dispute resolution process set forth in Sections 10.2.1 through 10.2.4, the parties are unable resolve their dispute or disagreement, each party shall be free to file such actions and seek such relief as it deems appropriate in the Superior Court of Oconee County. The parties expressly agree that the Superior Court of Oconee County shall be the sole and exclusive

venue for any action by either party seeking relief or recovery for any event, claim, dispute or disagreement arising out of the Contract Documents, not resolved through negotiations or mediation as provided for in this Section 10.2. The parties agree that except in the instance where a party refuses to participate in the dispute resolution process set forth in Sections 10.2.1 through 10.2.4, such dispute resolution process shall be a condition precedent to filing any action or seeking any relief or remedy in the Superior Court of Oconee County.

10.3 Duty to Continue Performance.

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

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Suspend or Stop Work.

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

11.1.1

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

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

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

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all designs, drawings, materials, equipment, scaffolds, tools, appliances, other items, and Design-

Builder's subcontracts, which have been purchased, provided or contracted for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also, without limitation, losses, damages, costs and expense, including all attorneys' fees, the fees and costs of design professionals, consultants and experts, and all other costs and expenses of litigation, incurred by Owner in connection with the re-procurement and the assertion and defense of claims arising from Design-Builder's default.

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

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

11.2.6

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

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

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

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error.

Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

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

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

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

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

13.1.2 All or substantial portions of the following documents may not be considered to be public records pursuant to applicable provisions of Georgia law: Design-Builder's and Owner's Engineer's work product under the Contract Documents; and all plans, drawings and other documents containing security plans and arrangements and/or detailed plans and drawings of any facility of the Owner. Such work product, security arrangements, and/or detailed plans and drawings are herein referenced as Sensitive Document(s). Without limiting the foregoing, it is expressly understood and agreed that Sensitive Document(s) is not limited to documents related to this Agreement and includes any and all documents herein described concerning any facility of the Owner regardless of the type of facility and regardless of the manner in which the Design-Builder acquired possession of such documents. The Owner retains sole authority and discretion to determine whether all or any portion of any Sensitive Document is a public record pursuant to applicable provisions of Georgia law. Under no circumstances will the Design-Builder provide the original or copy of any portion of any Sensitive Document (without regard to the status of such Sensitive Document as in preliminary, draft or final form) to any person or entity unless directed by the Owner or unless reasonably necessary to satisfy Design-Builder obligations pursuant to this contract. The Design-

Builder will maintain and implement such rules and procedures governing the conduct of its officers, employees, agents and subcontractors and the maintenance, handling and use of Sensitive Documents as may be reasonably necessary to prevent the release of any Sensitive Document in violation of this provision. Such rules and procedures will be subject to review by the Owner and such changes as the Owner determines to be reasonably necessary, including without limitation maintaining a log identifying any Sensitive Document provided to any person or entity that includes at a minimum, identification of the Sensitive Document provided, name of person releasing the Sensitive Document, name of person receiving the Sensitive Document, reason for releasing Sensitive Document, and date Sensitive Document released.

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

13.2 Assignment.

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

13.3 Successorship.

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

13.4 Governing Law.

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

13.5 Severability.

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

13.6 No Waiver.

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

13.7 Headings.

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

13.8 Notice.

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

13.9 Amendments.

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

13.10 Drug-Free Workplace

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

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

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

If the prospective contractor is an individual, the drug-free workplace requirement is met by not engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled

substance in the performance of the contract.

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

13.11 Design-Builder's Safety Representative

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

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

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

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

The Design-Builder shall notify the Owner and Oconee County Utility Department Engineer, or his/her designee, immediately of any serious accident, injury or fatality.

The Design-Builder shall immediately notify the Owner and Oconee County Utility Department Engineer or his/her designee of any OSHA inspection.

The Design-Builder shall notify the Owner and Oconee County Utility Department Engineer of any unusual hazards created by the Work or found during construction.

The Design-Builder shall provide to the Owner and Oconee County Utility Department Engineer a copy of all Work permits, if requested. Permits issued will include confined space entry, lockout / tagout, blasting, excavations, etc. The Design-Builder shall provide to the Owner a copy of a written safety program to meet the needs of the job (i.e. hazard communication, excavation, trenching, confined space, etc.). In addition, the Design-Builder will provide the following:

- A copy of their drug and alcohol abuse program,
- Fire protection and emergency evacuation plan,
- Medical services—regarding worker's compensation medical services and first aid on the job site,
- Personal protective equipment (PPE)—determine personal protective equipment needs and documentation of PPE assessment. The Design-Builder shall maintain good housekeeping (i.e. clean work areas, clear access, barricaded dangerous areas).

13.12 No Third Party Rights

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