

**REQUEST FOR PROPOSALS
FOR
FC-8430, DESIGN-BUILD NORTHSIDE DRIVE
PEDESTRIAN BRIDGE**



City of Atlanta

**Richard Mendoza
Commissioner
Department of Public Works**

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CIPC, CISCC, CIGPM
Chief Procurement Officer
Department of Procurement**



CITY OF ATLANTA

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Chief Procurement Officer
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August 25, 2015

ATTENTION INTERESTED PROPONENTS:

Your firm is hereby invited to submit to the City of Atlanta, Department of Procurement (“DOP”), a proposal for **FC-8430, Design-Build Northside Drive Pedestrian Bridge**. The City of Atlanta (the “City”) is soliciting proposals from qualified firms to design and construct a Pedestrian Bridge approximately 15’ wide x 110’ long crossing over Northside Drive. The proposed bridge will provide pedestrians safe and unimpeded access to the Mercedes-Benz Stadium.

A **Pre-proposal Conference** will be held on **Wednesday, September 9, 2015, at 11:00 A.M. EDT**, at 55 Trinity Avenue, S.W., Suite 1900 (1st Floor), City Hall South, Atlanta, Georgia 30303. The purpose of the Pre-proposal Conference is to provide proponents with detailed information regarding the project and to address questions and concerns. There will be representatives from the Department of Public Works, Office of Contract Compliance and Risk Management available at the conference to discuss this project and to answer any questions. Proponents are **strongly urged** to attend the Pre-proposal Conference.

Proponents will be allowed to submit questions in writing and to ask questions during the Pre-proposal Conference. However, please note that oral answers to questions during the Pre-proposal Conference are not authoritative. Authoritative responses to all written questions will be published and made available to all proponents in the form of an addendum. The deadline to submit questions in writing is **Wednesday, September 16, 2015, at 2:00 P.M. EDT**.

Your response to this Request for Proposals (“RFP”) must be received by designated staff of the Department of Procurement at 55 Trinity Avenue, S.W., Suite 1900 (1st Floor), City Hall South, Atlanta, Georgia 30303, **no later than 2:00 P.M. EDT, Wednesday, September 30, 2015**.

****ABSOLUTELY NO PROPOSALS WILL BE ACCEPTED AFTER 2:00 P.M. EDT****

Proposals will be publicly opened and read at 2:01 p.m. EDT on the respective due date in Suite 1900 (1st Floor), 55 Trinity Avenue, S.W., City Hall South, Atlanta, Georgia 30303.



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August 25, 2015

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This RFP is being made available by electronic means. If accepted by such means, then the proponent acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the proponent's possession and the version maintained by the DOP, the version maintained by the DOP shall govern.

You are required to email your business name, contact person, address, phone number, fax number, email address, and the project number to Lloyd A. Richardson, Contracting Officer, at larichardson@atlantaga.gov, to be placed on the Plan Holders List. Failure to do so may prevent you from receiving any addenda that are issued and may deem you non-responsive.

This RFP may be obtained from the Department of Procurement Plan Room, 55 Trinity Avenue, S.W., Suite 1900 (1st Floor), City Hall South, Atlanta, Georgia 30303, at a cost of \$75.00 per package as of August 25, 2015 between the hours of 8:15 a.m. EDT and 5:00 p.m. EDT, Monday through Friday. Payment for the documents represents production costs; therefore, payment is non-refundable.

If you have any questions regarding this project, please contact Mr. Lloyd A. Richardson, Contracting Officer, at (404) 865-8504 or by email at larichardson@atlantaga.gov. Any questions regarding the procedure for purchasing a copy of the document or obtaining a copy of the Plan Holders List should be directed to the Plan Room at (404) 330-6204.

The City reserves the right to cancel any and all solicitations and to accept or reject, in whole or in part, any and all proposals when it is for good cause and in the best interest of the City.

Thank you for your interest in doing business with the City.

Sincerely,

A handwritten signature in cursive script that reads "Adam L. Smith".

Adam L. Smith

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REQUEST FOR PROPOSALS
for
FC-8430, Design-Build Northside Drive Pedestrian Bridge
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PART I

INSTRUCTIONS TO **PROPONENTS**

FC-8430, DESIGN-BUILD NORTHSIDE DRIVE PEDESTRIAN BRIDGE

PART 1: INFORMATION AND INSTRUCTIONS TO PROPONENTS

- 1. Work Being Procured:** This Request for Proposals (“RFP”) from qualified proponents (“Proponent” or “Proponents”) by the City of Atlanta (“City”), on behalf of its Department of Public Works (“DPW”), seeks to procure work (“Work”) for the following project: Contract No. **FC-8430, Design-Build Northside Drive Pedestrian Bridge** (“Project”). The proposed Project will be owned by the City and maintained by the DPW. The RFP includes the following parts, including exhibits, attachments and appendices:
 - ◆ Part 1 – Information and Instructions to Proponents
 - ◆ Part 2 – Contents of Proposals / Required Submittals
 - ◆ Part 3 – Evaluation of Proposals
 - ◆ Part 4 – Required Procurement Documents
 - ◆ Part 5 – Standard Form of Agreement
 - ◆ Appendices
- 2. Scope of Work:** The project consists of the design, permitting and construction of a single span pedestrian bridge approximately 15’ wide x 110’ long crossing over Northside Drive. Work to be rendered by the Proponent(s) to complete the project are provided in more detail in Exhibit B – Scope of Work documents included herein.
- 3. Method of Source Selection:** This procurement is being conducted in accordance with all applicable provisions of the City of Atlanta’s Code of Ordinances, including its Procurement and Real Estate Code and the particular method of source selection for the work sought in this RFP is Code Section 2-1189; Competitive Sealed Proposal. By submitting a Proposal concerning this procurement, a Proponent acknowledges that it is familiar with all laws applicable to this procurement, including, but not limited to, the City’s Code of Ordinances and Charter, which laws are incorporated into this RFP by reference.
- 4. Minimum Qualifications; Authority to Transact Business in Georgia:**
 - 4.1** Each Proponent must submit with its Proposal documentation that demonstrates it is duly authorized to conduct business in the State of Georgia.
 - 4.2** Proponent shall not have been terminated for cause from any City contract in the preceding ten (10) years nor shall Proponent have any active litigation or claims pending against the City of Atlanta, Georgia.
 - 4.3** A Joint Venture is required for this RFP
- 5. No Offer by City; Firm Offer by Proponent:** This procurement does not constitute an offer by City to enter into a Design-Build Agreement and cannot be accepted by any Proponent to form a Design-Build Agreement. This procurement is only an invitation for offers from interested Proponents and no offer shall bind City. A Proponent’s offer is a firm offer and may

not be withdrawn except under the rules specified in City's Code of Ordinances and other applicable law.

- 6. Proposal Deadline:** Your response to this RFP must be received by the City's Department of Procurement ("DOP"), 55 Trinity Avenue, S.W., City Hall South, Suite 1900, Atlanta, Georgia 30303-0307 no later than **2:00 P.M., EDT** (as verified by the Bureau of National Standards) on **Wednesday, September 30, 2015**. Any Proposal received after this time will not be considered and will be rejected and returned.
- 7. Pre-Proposal Conference:** Each Proponent is strongly encouraged to attend the Pre-Proposal Conference scheduled for **Wednesday, September 9, 2015, at 11:00 A.M. EDT**, at the DOP's Conference Room in Suite 1900. Each Proponent must be fully informed regarding all existing and expected conditions and matters which might affect the cost or performance of the Work. A site tour will immediately follow the Pre-Proposal Conference. Proponents will be required to sign the waiver and release form included herein and submit to the City (at the time of the tour) as a condition of attending the site tour. Any failure to fully investigate the Jobsite(s) shall not relieve any Proponent from responsibility from evaluating properly the difficulty or cost of successfully performing the Work.
- 8. Proposal Guarantee:**
 - 8.1** Each Proponent is required to furnish a Proposal Guarantee in the amount of five percent (5%) of the Lump Sum Amount. At the option of the Proponent, the Proposal Guarantee may also be cash, a certified check payable to the order of City or a Proposal Bond as provided on Form 8 included in Part 4 herein. A surety executing a Proposal Bond must meet the requirements set forth in Appendix B-Insurance and Bonding Requirements attached to the Agreement included in this RFP.
 - 8.2** No Proposal shall be considered unless it is accompanied by the required guarantee. The Proposal Guarantee shall insure the execution of the Agreement and the furnishing of the performance and payment bonds and insurance by the successful Proponent as required by the Agreement Documents.
 - 8.3** Each Proponent agrees that, if it is awarded the Agreement and fails to execute and provide all other documents required to consummate the transaction within fifteen (15) days of the award, City will retain the Proposal Guarantee as liquidated damages and not as a penalty.
 - 8.4** Attorneys-in-fact who sign Proposal Bonds must file with the bond a certified and effectively dated copy of their power of attorney.
- 9. Procurement Questions; Prohibited Contacts:** Any questions regarding this RFP should be submitted in writing to, Lloyd A. Richardson, Contracting Officer, Department of Procurement, 55 Trinity Avenue, SW, Suite 1900, Atlanta, Georgia 30303-0307, by fax (404) 739-4875 or e-mail larichardson@atlantaga.gov, and must be received by **2:00 P.M., EDT on Wednesday, September 16, 2015**. Questions received after the designated period may not be considered. Any response made by the City will be provided in writing to all Proponents by Addendum. It is the responsibility of each Proponent to obtain a copy of any Addendum issued for this procurement by monitoring the City's website at www.atlantaga.gov and its

Department of Procurement's Plan Room which is open during posted business hours, Suite 1900, 1st Floor, 55 Trinity Avenue, S.W., City Hall South, Atlanta, Georgia 30303. No Proponent may rely on any verbal response to any question submitted concerning this RFP. All Proponents and representatives of any Proponent are **strictly prohibited** from contacting any other City employees or any third-party representatives of the City on any matter having to do with this RFP. All communications by any Proponent concerning this RFP must be made to the City's contact person, or any other City representatives designated by the Chief Procurement Officer in writing.

10. Ownership of Proposals: Each Proposal submitted to the City will become the property of the City, without compensation to a Proponent, for the City's use, in its discretion.

11. Georgia Utility Contractor's License: The Proponent shall provide its Georgia Utility Contractor's License Number and a copy of the license with the documentation submitted in Part 4 of this RFP. A utility Contractor's license number held by a Subcontractor or issued by another state does **NOT** fulfill this requirement in lieu of the Proponent's Georgia Utility Contractor's License.

12. Preparation of Proposals: All Proposals must be submitted on forms supplied by the City and shall be subject to all requirements of the Agreement Documents. All Proposals must be regular in every respect and no interlineations, excisions, or special conditions shall be made or included in the Proposal by the Proponent.

12.1 Lump sum, unit price, and extensions of unit prices must be entered in the appropriate spaces provided on the Proposal Cost Form. Unit prices shall include an appropriate allocation of overhead and other indirect costs so that the summation of unit price extensions and lump sum items represent the Proposal Total amount. In the case of any Proposal item for which a fixed amount predetermined by the City has already been entered on the Proposal Cost Form, the amount so entered shall be conclusive of all Proponents as the price for such item, and shall not be revised unless the City directs a change in the Scope of Work affecting the item to which such amount relates.

12.2 The City may consider as irregular any conditional Proposal or any Proposal on which there is an alteration of, or departure from, the Proposal Cost Form hereto attached and at its option may reject the same.

12.3 Erasure or other changes in the Proposals must be explained or noted over the signature of the Proponent. Failure to do so shall render the Proponent as non-responsive and cause rejection of the Proposal.

12.4 Failure to execute the Proposal Cost Form documents may render the Proponent as non-responsive and cause rejection of the Proposal.

13. Georgia Open Records Act: Each Proponent shall refer to the Georgia Open Records Acts (O.C.G.A. § 50-18-72) for information not subject to public disclosure.

14. How to Submit Proposals: The Proposal must be submitted in sealed envelope(s) or package(s) and the outside of the envelope(s) or package(s) must clearly identify the name of

the project: **FC-8430, Design-Build Northside Drive Pedestrian Bridge**; and, the name and address of the Proponent. All proposals must be submitted to:

**Adam L. Smith, Esq., CPPO, CPPB, CPPM, CPP,
CIPC, CISCC, CIGPM
Chief Procurement Officer
Department of Procurement
55 Trinity Avenue, S.W.
City Hall South, Suite 1900
Atlanta, GA 30303-0307**

- 14.1** A Proponent is required to submit one (1) original and seven (7) copies of its Informational Proposal. Each Informational Proposal must be submitted on 8½” x 11” single-sided, double-spaced, typed pages, using 12–point font size and such pages must be inserted in a standard three-hole ring binder. Each Informational Proposal must contain an index and separate sections for the information requirements set forth in this RFP, as well as for the forms required to be submitted.
- 14.2** In addition to the hard copy submission, each Proponent must submit two (2) digital versions of its Proposal in Adobe Portable Document Format (PDF) on compact disk (CDs). CD One (1) version should be a duplicate of the hard copy of the Proposal with no deviations in order or layout of the hard copy Proposal. CD Two (2) version should be a redacted version of your hard copy Proposal. Please refer to the Georgia Open Records Acts (O.C.G.A. Section 50-18-72) for those items of documents that can be redacted.
- 14.3** The City assumes no liability for differences in information contained in the Proponent’s printed Proposal and that contained on the CDs. In the event of a discrepancy, the City will rely upon the information contained in the Proponent’s printed material (Hard Copy). Each CD should be labeled with the Project Number, Project Name, and the CD Number.
- 14.4** A Proponent is required to submit, in a separate, sealed envelope, clearly marked “Cost Proposal”, one (1) original, marked “Original” and seven (7) copies of its Cost Proposal with its Informational Proposal.
- 15. Execution of Proposal Documents:** Proponents shall submit their Proposals, together with the Proposal Guarantee and all forms which the Proponent is required to sign, executed in the appropriate manner as set forth below:
- 15.1** If the Proponent is a corporation, all documents requiring execution by the Proponent shall be signed by the president or vice-president of the corporation, whose signature shall be attested by the secretary or assistant secretary of the corporation and the corporate seal affixed.
- 15.2** If the Proponent is an individual, he or she shall sign the documents and his or her signature shall be notarized by a notary public.

15.3 If the Proponent is an individual doing business under a trade name, all documents shall be signed by the Proponent whose signature shall be followed by either, "doing business as," or "trading as," followed by the trade name of the Proponent's business, and notarized by a notary public.

15.4 If the Proponent is a partnership, all forms shall be executed by placing the name of the partnership followed by "By: (the signature of the partner executing)" followed by the word "Partner," and notarized by a notary public.

15.5 If the Proponent is a joint venture, each party to the joint venture shall execute the Proposal Documents in the manner set forth in this article as appropriate for this type of organization.

16. Insurance and/or Bonding Requirements: The Insurance and/or Bonding requirements for any Agreement that may be awarded pursuant to this RFP are set forth in the Insurance and Bonding Requirements included in the appendix of this RFP.

17. Applicable City Office of Contract Compliance ("OCC") Programs: The OCC Programs applicable to this procurement are set forth in Appendix A; Office of Contract Compliance Requirements, included in this RFP. By submitting a Proposal in response to this procurement, each Proponent agrees to comply with such applicable OCC Programs.

18. Evaluation of Financial Information: The City's evaluation of financial information concerning a Proponent and its consideration of such information in determining whether a Proponent is responsive and responsible may involve a review of several items of information required to be included in a Proposal. City will review the information included in Form 3; Proponent Financial Disclosure attached to this RFP and any additional information required on that form to be included in a Proposal. Further, if this RFP requires the provision of a Payment Bond and/or Performance Bond if an Agreement is awarded, the City will review the information included in the Form 4.2; Certification of Bonding Ability. A Proponent may include with that form and Form 4.1; Certification of Insurance Ability, (a) notarized letter(s) from its proposed insurer(s) and surety(ies) indicating that the financial capacity of the Proponent is such that the insurer(s)/surety(ies) is/are willing to issue insurance and Payment and Performance Bonds for the Proponent if an Agreement is awarded. Further, if this RFP requires a successful Proponent that is awarded an Agreement pursuant to this procurement to post some other type of performance guarantee (e.g. letter of credit, guarantee agreement, etc.), a Proponent must submit with its Proposal a notarized letter from an appropriate financial institution (e.g., bank) indicating that it is willing to issue such performance guarantee for the Proponent if an Agreement is awarded.

19. Special Rules Applicable to Evaluation of Proposals: A Proponent may be required to submit, in writing, the addresses of any proposed subcontractors or equipment manufacturers listed in the Proposal and to submit other material information relative to proposed subcontractors. City reserves the right to disapprove any proposed subcontractors or equipment manufacturers whose technical or financial ability or resources or whose experience are deemed inadequate.

20. Examination of Proposal Documents:

- 20.1** Each Proponent is responsible for examining with appropriate care the complete RFP and all Addenda and for informing itself with respect to all conditions which might in any way affect the cost or the performance of any Work. Failure to do so will be at the sole risk of the Proponent, who is deemed to have included all costs for performance of the Work in its Proposal.
- 20.2** Each Proponent shall promptly notify City in writing should the Proponent find discrepancies, errors, ambiguities or omissions in the Proposal Documents, or should their intent or meaning appear unclear or ambiguous, or should any other question arise relative to the RFP. Replies to such notices may be made in the form of an Addendum to the RFP, which will be issued simultaneously to all potential Proponents who have obtained the RFP from City.
- 20.3** City may in accordance with applicable law, by Addendum, modify any provision or part of the RFP at any time prior to the Proposal due date and time. The Proponent shall not rely on oral clarifications to the RFP unless they are confirmed in writing by City in an issued Addendum.
- 20.4** Each Proponent must confirm Addenda have been received and acknowledge receipt by executing the Form 5: Acknowledgment of Addenda attached to this RFP.

21. Oral Presentations: Responsive Proponents may be required to participate in an oral presentation to the City Evaluation Committee. The Key Personnel (or some group thereof) identified in the Proponent's Proposal must be active participants in the oral presentation. The Proponent's presentation should demonstrate an understanding of the project and work to be provided. The City will notify responsive Proponent(s) of the date, time and location for the presentation and will provide an agenda or topics for discussion.

22. Cancellation of Solicitation: This solicitation may be cancelled in accordance to the City of Atlanta Code of Ordinances.

23. Award of Agreement; Execution: If the City awards an Agreement pursuant to this procurement, the City will prepare and forward to the successful Proponent an Agreement for execution substantially in the form included in this RFP. Subsequent to the award and within fifteen (15) days after the prescribed forms are presented for signature, the successful Proponent shall execute and deliver to the City six (6) copies of the Agreement as included in the Agreement Documents and provide performance and payment bonds and insurance certificates. The failure of the successful Proponent to execute the Agreement and to supply the required bonds within fifteen (15) days after the prescribed forms are presented for signature, or within such extended period as the City may grant, based upon reasons determined sufficient by the City, shall constitute a default, and the Proponent shall forfeit the Proposal Guarantee and the City may either award the Agreement to the next most responsive Proponent or re-advertise for Proposals, and may proceed against the Proposal Bond of the defaulted Proponent. If a more favorable Proposal is received by re-advertising, the defaulting Proponent shall have no claim against the City for a refund.

24. Surety Bonds: Regarding submission of surety bonds prior to or subsequent to the Proposal submission, the following requirements pertain:

24.1 Any surety bond submitted in accordance with the Proposal or Agreement requirements must be issued by a corporate surety company satisfactory to the City and authorized to act as such in the State of Georgia;

24.2 Such bonds shall conform to the forms provided with the RFP and be completed in accordance with the instructions thereon; and

24.3 In accordance with Georgia law, and upon award of the Agreement, separate performance and payment bonds shall be required of the successful Proponent, each in an amount not less than the total amount payable under the Agreement.

24.3.1 The performance bond shall remain in effect for two (2) years after final acceptance of the Work or the guaranty period under the Agreement, whichever is the longer.

24.3.2 The payment bond shall remain in effect for the period required under Georgia law for the payment bonds on public construction agreements. Reference is made to the bond forms and the Agreement Documents for additional particulars of the terms required in the bonds. In the case of any inconsistency between the Bond Forms and Georgia law, the law shall control. Finally, alterations, extension of the time allowed for performance, extra and additional Work, and other changes authorized under the Agreement may be made without notice to or consent of the surety or sureties.

25. Laws and Regulations: The Proponent's attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Agreement throughout, to the extent that such requirements do not conflict with federal laws or regulations, and they will be deemed to be included in the Agreement the same as though therein written out in full.

Proponent's attention is directed to the following laws and regulations:

25.1 Wages under this Agreement must not be less than the minimum wage rates specified for Atlanta-funded projects as set forth in these documents;

25.2 Applicable provisions of the Occupational Safety and Health Act must be observed during Work under this Agreement; and

25.3 Appendix A – Requirements of the Office of Contract Compliance.

26. Agreement Terms: The term of the agreement shall be for eighteen (18) months. The Contractor shall be fully mobilized within the fifteen (15) calendar days after receipt of Notice to Proceed.

27. Liquidated Damages: The performance of the Work under Agreement within the specified time is essential to the City's economic interests. The attention of potential Proponents is

directed to the provisions of the Agreement Documents, which establish the basis for liquidated damages to be paid to the City in the event that the Work is not completed on schedule.

28. Pre-Construction Conference: A pre-construction conference may be held with the successful Proponent and all known Subcontractors at a time and place set by the City.

29. Substitutions: Whenever a Material, article or piece of Equipment is identified on the Plans or in the Specifications by reference to manufacturers' or vendors' names, trade names, catalog numbers, etc., it is intended to establish a standard, and any Material, article or Equipment of other manufacturers and vendors which will perform adequately the duties imposed by the general design will be considered equally acceptable, provided the Material, article or Equipment so proposed is, in the opinion of the City, of equal substance and function. A Material, article or piece of Equipment shall not be purchased or installed by the Proponent without the City's written approval.

29.1 If the term "OR EQUAL" follows the names of approved manufacturers, then other manufacturers desiring approval may submit the product to the City for approval during the bidding phase. The manufacturer should include the following items in this pre-submittal:

29.1.1 Descriptive literature, including information on Materials used, minimum design standards features, manufacturing processes and facilities, and similar information, which will indicate experience and expertise in the manufacture of the product being evaluated;

29.1.2 Performance Specifications applicable to the manufacturer's standard design, which indicate the level of performance to be expected from the product;

29.1.3 A complete set of submittal Drawings of similar Equipment that has been completed and placed into operation;

29.1.4 A list of existing installations of equipment similar in type and size;

29.1.5 Evidence of technical ability of the manufacturer to design and manufacture Equipment and systems meeting project requirements. Evidence submitted shall include, at a minimum, descriptions of engineering and manufacturing staff capabilities;

29.1.6 Information required to satisfy specified experience requirements or a copy of the bond to be submitted in lieu of experience;

29.1.7 A complete description of field service capabilities, including the location of field service facilities which would serve the proposed facility and the number and qualifications of personnel working from that location;

29.1.8 A complete list of all requirements of the Drawings and Specifications with which the manufacturer cannot conform, including reasons why alternate features are considered equivalent; and

29.1.9 All other information necessary to fully evaluate the product for consideration.

29.2 This pre-submittal shall reach the City no later than three (3) weeks prior to the Proposal due date. Manufacturers will be advised of approval or rejection in writing no later than fourteen (14) days prior to the Proposal due date. Rejected submittals may be supplemented with additional information and resubmitted no later than one (1) week prior to the Proposal due date. Manufacturers making supplementary submittals will be advised of approval or rejection in writing no later than three (3) days prior to the Proposal due date.

29.2.1 NOTE: Proposals based on Equipment, which has not received the approval of the City, will render the Proponent as non-responsive and cause rejection of the Proposal.

29.2.2 If the term "EQUAL TO" precedes the names of approved manufacturers in the Specifications, the Proponent may, after receiving the Notice to Proceed, submit Shop Drawings on the substitute product for the approval of the City.

29.2.3 Any Proponent intending to furnish substitute products is cautioned to verify that the item being furnished will perform the same functions and have the same capabilities as the item specified. The Proponent shall include in his Proposal the cost of accessory items, which may be required by the substitute product and any architectural, structural, mechanical, piping, electrical or other modifications required to accommodate the substitution.

29.2.4 Approval of the City is dependent on his determination that the product offered is essentially equal in function, performance, quality of manufacture, ease of maintenance, reliability, service life and other criteria to that on which the design is based, and will require no major modifications to structures, electrical systems, control systems, or piping systems.

30. Illegal Immigration: Each Proponent must complete and submit a Contractor's Affidavit, attached hereto as Form 1; Illegal Immigration Reform and Enforcement Act Forms with its Proposal. This RFP is subject to the Illegal Immigration Reform and Enforcement Act of 2011 (the "Act"). Pursuant to the Act, the Proponent must provide with its proposal proof of its registration with and continuing and future participation in the E-Verify Program established by the United States Department of Homeland Security. Under state law, the City cannot consider any Proposal which does not include a completed Contractor's Affidavit. It is not the intent of this notice to provide detailed information or legal advice concerning the Act. All Proponents intending to do business with the City are responsible for independently apprising themselves of and complying with the requirements of the Act and assessing its effect on City procurements and their participation in those procurements. For additional information on the E-Verify program or to enroll in the program, go to <https://e-verify.uscis.gov/enroll>.

31. Multiple Awards: The City reserves, at its sole discretion, the option to award to multiple Proponents. The award(s) will be based on the Scope of Work in its entirety or by components. Multiple awards may be made on the total Scope of Work or to components of the Scope of Work.

32. Joint Venture: Proponents will be required to form a Joint Venture ("JV"); each member of the JV will be required to fully complete and submit the required submittal forms in accordance with the instructions on the forms in Part 4.

33. Conflict of Interest: The City has contractual commitments and has engaged numerous firms providing/or have provided various professional services to the Owner for this Project. These firms and their respective sub-consultant firms may be contractually prohibited from participation in specific work phases of the Project. The Proponent (and successful Design-Builder) must ensure that all entities with which it contracts have reviewed their contractual obligations and that a conflict of interest would not exist by performing Work on the Project.

PART II

CONTENTS OF PROPOSALS/REQUIRED SUBMITTALS

Part 2; Contents of Proposals/Required Submittals

- 1. General Contents of Proposals:** A Proponent must submit a complete Proposal in response to this RFP in the format specified in this RFP; no other format will be considered. A Proposal will consist of two (2) separate documents:
 - 1.1.** Informational Proposal, suggested limit of seventy (75) pages; and
 - 1.2.** Cost Proposal (Form provided by City at Part 4; Required Procurement Documents). Cost Proposal will become part of the Agreement attached to this RFP, if an Agreement is awarded pursuant to this procurement. A preliminary schedule of values shall be provided in the cost proposal for review by the City.
- 2. Informational Proposals:** An Informational Proposal is comprised of two (2) sources of information:
 - 2.1.** Volume I, information drafted and provided by a Proponent (suggested limit of fifty (50) pages); and
 - 2.2.** Volume II, information provided by a Proponent on forms provided by the City (or required to be created by a Proponent) in this RFP.

The Informational Proposals must be tabbed as indicated to reflect the sections listed in the below Outline.

- 3. Information Required to be Included in Informational Proposal:**
 - 3.1. Summary:** The following is a summary of information and presentation order required to be contained in an Informational Proposal :
 - 3.1.1 Information Drafted and Provided by a Proponent:** This information should be included in a **Volume I** to a Proposal, suggested limit of seventy (75) pages:
 - 3.1.1.1. Executive Summary/Organizational Structure;
 - 3.1.1.2. Key Personnel, Overall Experience, Qualifications and Performance on Previous Similar Projects;
 - 3.1.1.3. Management Plan; and
 - 3.1.1.4. Conceptual Submittal (Project Approach)
 - 3.1.2 Information Provided by a Proponent on Forms Provided by the City (“Required Submittals”):** This information should be included in a **Volume II** to a Proposal:
 - 3.1.2.1. **Form 1;** Illegal Immigration Reform and Enforcement Act (IIREA) Forms;
 - 3.1.2.2. **Form 2;** Contractor Disclosure Affidavit and Questionnaire;
 - 3.1.2.3. **Form 3;** Proponent Financial Disclosure;
 - 3.1.2.4. **Form 4.1;** Certification of Insurance Ability;
 - 3.1.2.5. **Form 4.2;** Certification of Bonding Ability;

- 3.1.2.6. **Form 5**; Acknowledgment of Addenda;
- 3.1.2.7. **Form 6**; Proponent Contact Directory;
- 3.1.2.8. **Form 7**; Reference List;
- 3.1.2.9. **Form 8**; Proposal Bond;
- 3.1.2.10. **Form 9**; Required Submittal Checklist;
- 3.1.2.11. Cost Proposal Form (This should be included in a separate sealed envelope and labeled “Cost Proposal”);
- 3.1.2.12. Authority to Transact Business in the State of Georgia;
- 3.1.2.13. Statement of Qualifications
- 3.1.2.14. Safety Record Form
- 3.1.2.15. Authority to Transact Business in Georgia
- 3.1.2.16. Joint Venture Agreement
- 3.1.2.17. General Contractor’s License
- 3.1.2.18. Georgia Utility Contractor’s License
- 3.1.2.19. Georgia Registered Architect License; and
- 3.1.2.20. Appendix A: Office of Contract Compliance Requirements forms and submittals, including Joint Venture Agreement, if applicable.

NOTE: Every space on every form must be completed. If the form requires a Notary, please comply. Failure to complete each form as required may deem you non-responsive. If there are any questions regarding any form, it is strongly recommended that you submit your question(s) to the Contracting Officer listed in the RFP prior to the deadline for submitting questions.

3.2. Information Requirements Details: The following is a more detailed summary of the requirements of certain portions of the Informational Proposal. Each Outlined Item should be included in your Proposals and tabbed as indicated:

3.2.1 Executive Summary (Tab in Volume I):

3.2.1.1. **Cover Letter:** The executive summary must include a letter with the Proponent’s name, address, telephone number and fax number, signed by a person authorized to act on behalf of the Proponent. The letter should also include the name, title, address, e-mail address, telephone number and fax number of the person signing the letter and the name, title, address, e-mail address, telephone number and fax number of one (1) contact person to whom all future correspondence and/or communications may be directed by the City concerning this procurement, if that person is different from the person executing the letter. The letter should also designate the type of business entity that proposes to enter into a Contract with the City and the identity of any other business entities that will comprise the Proponent and include a brief history of the Proponent and statement of the Proponent’s approach to providing the work solicited in this RFP.

3.2.1.2. **Detailed Executive Summary:** The purpose of the Detailed Executive Summary is to provide an overview of the Proponent's qualifications to accomplish the project. At a minimum, the Detailed Executive Summary must contain the following information:

- Complete legal name of the Proponent and the name of the legal entities that comprise the Proponent. The Proponent must provide the domicile where each entity comprising it is organized, including entity name, brief history of the entity, contact name, address, phone number, and facsimile number, as well as the legal structure of the entity and a listing of major satellite offices;
- The general and specific capabilities and experience of the Proponent's Team. Each Proponent must identify examples where team members have worked together to complete a project of similar scope and size and discuss how the team was formed and how the team will function as an integrated unit in providing services to the City;
- A description of the Proponent's plan for complying with the City's EBO goals. This section should include detailed information regarding the essential subcontractors/ subconsultants the Proponent intends to use and should indicate the role and responsibilities these firms will be assigned. Each Proponent must provide a letter from each essential subcontractor/ subconsultant indicating that the firm concurs with the role and responsibility Proponent has described; and
- Litigation Disclosure Statement. A declarative statement as to whether the Proponent or any member of the Proponent team has an open dispute with the City or is involved in any litigation associated with work in progress or completed in both the private and public sector during the past five (5) years.
- The Executive Summary will be evaluated based on completeness of the information requested in a concise, easily understood form.

3.2.2 Organizational Structure (Tab in Volume I): The Organization will be evaluated based on completeness of the information requested in a concise, easily understood format. The Proponent's Organizational Structure Section of the Proposal should introduce the proposed Proponent team by:

3.2.2.1. Providing the Proponent's Management Organizational Chart for the Design-Build Team, both graphically and in narrative format for personnel proposed to perform actual Work on the Project and estimated percentage of work performed on the Project (e.g., Principal 0.5% of time, Project Manager, 100%, etc.). The Organizational chart and narrative should provide a description of the Proponent's views on how it will organizationally provide the Work, as well as depict the relationship of its key personnel roles to that of the Principal-in-Charge and other key members of the management team.

- 3.2.2.2. Providing a description of how this organizational structure will facilitate managing the Services requested and how an efficient flow of information will be realized from the organizational structure.
- 3.2.2.3. Providing the names of proposed candidates for each function on the chart.

3.2.3 Key Personnel/Resumes (Tab in Volume I):

- 3.2.3.1. Identify the Key Personnel that the Design-Builder will use to fill the following positions:
 - Project Manager (e.g., the person providing overall responsibility; primary project contact with the City);
 - Construction Manager;
 - Construction Superintendent;
 - Engineering Design Manager;
 - Lead Structural Design Engineer;
 - Lead Electrical Engineer;
 - Lead Mechanical Engineer;
 - Lead Geotechnical Design Engineer; and
 - Site Safety Officer.
- 3.2.3.2. Submission of these names constitutes a commitment to use these individuals if the Proponent is selected, and changes may be made only with the prior written consent of the City. In the event there is need to replace Key Personnel during the course of the project, Proponent must describe its back-up personnel plan providing the City with approval of replacement personnel that meet the original criteria.
- 3.2.3.3. Key Personnel Experience demonstrating minimum qualifications described below in 3.2.3.4 and in the Overall Experience Section 3.2.4 below, shall be provided on the Statement of Proponent's Qualifications (Form provided by City at Part 4; Required Procurement Documents).
- 3.2.3.4. Proponent shall provide resumes for the following two (2) Key Personnel:
 - Project Manager – Responsible for the overall performance and daily operations of the Design-Build project.
 - Construction Superintendent – Responsible for the overall direction and supervision of on-site construction activities.
- 3.2.3.4.1. Resumes should be organized as follows:
 - Name and Title;
 - Professional Background;
 - Current and Past Relevant Employment;
 - Education;

- Certifications;
- List of three (3) recent relevant projects, including:
- Client Name;
- Project description;
- Final or estimated construction cost;
- Role of the individual;
- Project start date and actual or anticipated completion date of the project; and
- Client List/Reference Contact.

3.2.3.4.2. For each resume provided, each Proponent must provide a minimum of two (2), one (1) to two (2) page letters of recommendation from clients for whom that individual has held a similar role within the past ten (10) years. The letter must state at a minimum:

- The role the individual held in the project;
- The original contract schedule to start and complete the project; and
- The actual start and completion dates of the project.

3.2.4 Overall Experience, Qualifications and Performance on Previous Projects (Tab in Volume I):

3.2.4.1. Proponent shall have successfully completed at least three (3) contracts involving construction of pedestrian bridges with a construction value of not less than \$7 million. Projects shall have occurred within the last 10 years, with a minimum of one (1) of the projects completed through a design-build delivery method with a “Fast-Track” construction approach. Construction components of each project must include reinforced concrete, steel, piping, installation of mechanical equipment and electrical systems. The projects must have included formal Partnering with Owner, Contractor and Design Consultant, and should highlight the qualifications of the Proponent's Key Personnel proposed for this project.

3.2.4.2. Designer shall have successfully completed at least three (3) contracts involving design of pedestrian bridges with a construction value of not less than \$7 million. Projects shall have occurred within the last ten (10) years, with a minimum of one (1) of the projects completed through a design-build delivery method with a “Fast-Track” construction approach. Design components of each project must include reinforced concrete, steel, piping, installation of mechanical equipment and electrical systems. The projects must have included formal Partnering with Owner, Contractor and Design Consultant, and should highlight the qualifications of the Key Personnel proposed for this project.

- 3.2.4.3. The City requests that if Proponent is able to identify design and/or construction contracts that involved recreational and aquatic facilities having a construction value at or exceeding \$10 million, please use these projects to fulfill experience qualifications requested above
- 3.2.4.4. Proponent shall identify whether the Contractor and Designer have formally partnered to provide similar services for recreational and aquatic facilities.
- 3.2.4.5. Proponent shall provide the names, addresses, and current phone numbers of a minimum of three (3) references for each project listed.
- 3.2.4.6. Proponent shall provide names, relevant experience and contract value of key subcontractors proposed. Key subcontractor(s) shall have at least three (3) projects where similar work has been completed in the last ten (10) years.
- 3.2.4.7. The Proponent, including all team members identified in the Proposal, must have an established Safety Program that, as a minimum, includes those items as listed on the attachment entitled "SAFETY RECORD FORM," included in Part 4 of this RFP. This information must be provided for each individual organization identified by the Proponent in their Proposal where applicable for this type of work
- 3.2.4.8. The Proponent's, including all team members identified in the Proposal, Workman's Compensation Ratings (EMR-Experience Modification Rate) must not exceed 1.0 for any year during the last three (3) years.
- 3.2.4.9. The Proponent's, including all team members identified in the Proposal, OSHA Incidence Rates must not exceed the most current Industry Standard published by the U.S. Department of Labor (2013), www.bls.gov/iif/oshsum.htm, for the last three (3) years for construction of buildings, NAICS code 23236 (i.e. total recordable case rate must not exceed 3.6; Injuries and Illness with Lost Work Days must not exceed 1.3; and, Injuries and Illness with Job Transfer or Restricted Work Days must not exceed 0.9). The following will be provided by the Proponent for each of their team members:
- Total Recordable Case Rates;
 - Injuries and Illness with Lost Work Days; and
 - Injuries and Illness with Job Transfer or Restricted Work Days.
- 3.2.4.10. If there have been any fatalities during the last five (5) years on any projects performed by the Design-Builder (to include all members of the Design-Build Team) or on any work performed under the direct supervision of a proposed Project Manager or Construction Superintendent and either was cited by OSHA for "Willful" or "Serious" in performing the work in which the fatality occurred, the Contractor will be disqualified based on the City's review. The Contractor may also be disqualified in the event that a Recordable

Incident occurred due to the same condition that existed when a previous fatality occurred and resulted in an OSHA citation or failure to implement a corrective action plan. Proponent is to provide the following for each member of the Design Build Team:

- Fatalities during the last five (5) years where Contractor was cited by OSHA for “Willful” or “Serious” Violation; and
- Fatalities during the last five (5) years where the proposed Project Manager was cited by OSHA for “Willful” or “Serious” Violation.

3.2.5 Management Plan (Tab in Volume I): Based on the Proponent's Organizational structure, describe how the Proponent will manage the Work to be provided, specifically addressing the following:

3.2.5.1. Proponent's approach to team leadership;

3.2.5.2. How the Proponent will:

3.2.5.2.1. Ensure proper communications amongst all members;

3.2.5.2.2. Assure the City that all Service(s) will be kept within any established time and budget constraints;

3.2.5.2.3. Establish and maintain the necessary cooperative relationships;

3.2.5.2.4. Coordinate all necessary project activities within that team relationship;

3.2.5.2.5. Establish a QA/QC process that may include, but not be limited to, a QA/QC review team

3.2.5.3. Identify the methods, procedures and/or tools to be utilized to manage aforementioned project elements;

3.2.5.4. Proponent's proposed method to identify and resolve issues during the project duration and make critical decisions;

3.2.5.5. Proponents approach and general plan to transition project from the Substantial Completion and Final Acceptance stages to the City's operation and maintenance staff.

3.2.6 Conceptual Submittal (Project Approach) (Tab in Volume I): Proponent is required to provide a detailed narrative and visual renderings describing the proposed Bridge. The narrative and renderings must include the distinct character of the Bridge, physical attributes, amenities, level of proposed services and any other information necessary to fully describe the proposed Bridge, within the parameters of **Exhibit B: Program Requirements** (attached to the Part 5; Standard Form of Agreement) including, at a minimum, the following:

3.2.6.1. Identify any design or construction features that the Proponent represents will set the Bridge apart from other Pedestrian Bridges.

3.2.6.2. Provide the general color scheme, fixtures, décor and the image sign and graphic elements.

3.2.6.3. Submit a maximum of ten (10) different color sketches depicting the proposed Bridge. Sketches may be 11” x 17” but must be folded to 8 ½” x 11” when submitted and should include but not limited to:

- The overall design of the Structure.
- Site Plan.

4. Cost Proposal. Each Proponent must submit a Lump Sum Amount for the design build of the Northside Drive Pedestrian Bridge as identified in the form provided in Part 4, Required Procurement Forms (Cost Proposal). The Cost Proposal must support the Scope of Work – **Exhibit B: Program Requirements** (attached to the Part 5; Standard Form of Agreement) contained in the RFP and fully encompass all activities in the Proponent's Proposal.

5. Submission of Proposals: See Part 1, Paragraph 14.0, “How to Submit Proposals” of this RFP.

PART III

EVALUATION OF PROPOSALS

Part 3; Evaluation of Proposals

All Proposals will be evaluated in accordance with the City's Code of Ordinances and the criteria specified on the Percentage Evaluation Form and considering the information required to be submitted in each Proposal. An Evaluation Committee will review the Proposals in accordance with this RFP.

All Proposals will be evaluated using the following Evaluation Form:

RELATIVE WEIGHT	GRADED ITEM	SCORE
5%	Executive Summary/Organizational Structure	
20%	Key Personnel, Overall Experience, Qualifications and Performance on Previous Projects	
10%	Management Plan	
30%	Conceptual Submittal (Project Approach)	
10%	Cost Proposal	
15%	OCC Programs	
10%	Financial Capability	
100%	TOTAL SCORE	

PART IV

REQUIRED SUBMITTALS

PART 4: REQUIRED SUBMITTAL FORMS

All Respondents, including, but not limited to, corporate entities, limited liability companies, joint ventures, or partnerships, that submit a Proposal or Bid in response to this solicitation must fill out all forms in their entirety, and all forms must be signed, notarized or sealed with the corporate seal (if applicable), as required per each form's instructions.

If Respondent intends to be named as a Prime Contractor(s) with the City, then Respondent must fill out all the forms listed in this solicitation document; otherwise, Respondent may be deemed non-responsive.

Required Submittal (FORM 1)

Illegal Immigration Reform and Enforcement Act Forms (Page 1 of 3)

INSTRUCTIONS TO PROPONENTS:

All Proponents must comply with the Illegal Immigration Reform and Enforcement Act of 2011, O.G.G.A § 13-10-90, et seq. (IIREA). IIREA was formerly known as the Georgia Security and Immigration Compliance Act or GSICA. Proponents must familiarize themselves with IIREA and are solely responsible for ensuring compliance. Proponents must not rely on these instructions for that purpose. They are offered only as a convenience to assist Proponents in complying with the requirements of the City's procurement process and the terms of this RFP.

1. The attached Contractor Affidavit must be filled out COMPLETELY and submitted with the Proposal prior to Proposal due date.
2. The Contractor Affidavit must contain an active Federal Work Authorization Program (E-Verify) User ID Number and Date of Registration.
3. Where the business structure of a Proponent is such that Proponent is required to obtain an Employer Identification Number (EIN) from the Internal Revenue Service, Proponent must complete the Contractor Affidavit on behalf of, and provide a Federal Work Authorization User ID Number issued to, the Proponent itself. Where the business structure of a Proponent does not require it to obtain an EIN, each entity comprising Proponent must submit a separate Contractor Affidavit.

Example 1, ABC, Inc. and XYZ, Inc. form and submit a Proposal as Happy Day, LLC. Happy Day, LLC must enroll in the E-verify program and submit a single Contractor Affidavit in the name of Happy Day, LLC which includes the Federal Work Authorization User ID Number issued to Happy Day, LLC.

Example 2, ABC, Inc. and XYZ, Inc. execute a joint venture agreement and submit a Proposal under the name Happy Day, JV. If, based on the nature of the JV agreement, Happy Day, JV. is not required to obtain an Employer Identification Number from the IRS, the Proposal submitted by Happy Day, JV must include both a Contractor Affidavit for ABC, Inc. and a Contractor Affidavit for XYZ, Inc.

4. All Contractor Affidavits must be executed by an authorized representative of the entity named in the Affidavit.
5. All Contractor Affidavits must be duly notarized.
6. All Contractor Affidavits must be submitted with the Proponent's Response to the RFP.
7. Subcontractor and sub-subcontractor affidavits are not required at the time of proposal submission, but will be required at contract execution or in accordance with the timelines set forth in IIREA.

Required Submittal (FORM 1)

Illegal Immigration Reform and Enforcement Act Forms (Page 2 of 3)

Contractor Affidavit under O.C.G.A. § 13-10-91(b)(1)

By executing this affidavit, the undersigned contractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned contractor will continue to use the federal work authorization program throughout the contract period and the undersigned contractor will contract for physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the information required by O.C.G.A. § 13-10-91(b). Contractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Contractor: _____

Name of Project: **FC-8430, Design-Build Northside Drive Pedestrian Bridge**

Name of Public Employer: City of Atlanta

I hereby declare under penalty of perjury that the forgoing is true and correct.

Executed on _____, _____, 20__ in _____ (city), _____ (state)

Signature of Authorized Officer or Agent

Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE
ME ON THIS THE ____, DAY OF _____, 20____

NOTARY PUBLIC
My Commission Expires: _____

Required Submittal (FORM 1)

Illegal Immigration Reform and Enforcement Act Forms (Page 3 of 3)

Subcontractor Affidavit under O.C.G.A. § 13-10-91(b)(3)

By executing this affidavit, the undersigned subcontractor verifies its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm or corporation which is engaged in the physical performance of services under a contract with (_____ (name of contractor)) on behalf of the City of Atlanta has registered with, is authorized to use and uses the federal work authorization program commonly known as E-Verify, or any subsequent replacement program, in accordance with the applicable provisions and deadlines established in O.C.G.A. § 13-10-91. Furthermore, the undersigned subcontractor will continue to use the federal work authorization program throughout the contract period and the undersigned subcontractor will contract for the physical performance of services in satisfaction of such contract only with sub-subcontractors who present an affidavit to the subcontractor with the information required by O.C.G.A. § 13-10-

91(b). Additionally, the undersigned subcontractor will forward notice of the receipt of an affidavit from a sub-subcontractor to the contractor within five business days of receipt. If the undersigned subcontractor receives notice of receipt of an affidavit from any sub-subcontractor that has contracted with a sub-subcontractor to forward, within five business days of receipt, a copy of such notice to the contractor. Subcontractor hereby attests that its federal work authorization user identification number and date of authorization are as follows:

Federal Work Authorization User Identification Number

Date of Authorization

Name of Subcontractor: _____

Name of Project: **FC-8430, Design-Build Northside Drive Pedestrian Bridge**

Name of Public Employer: City of Atlanta

I hereby declare under penalty of perjury that the forgoing is true and correct.

Executed on _____, _____, 20__ in _____ (city), _____ (state)

Signature of Authorized Officer or Agent

Printed name and Title of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE
ME ON THIS THE ____, DAY OF _____, 20__

NOTARY PUBLIC
My Commission Expires: _____

Required Submittal (FORM 2)
Contractor Disclosure Form (Page 1 of 7)

DEFINITIONS FOR THE PURPOSES OF THIS DISCLOSURE AFFIDAVIT

“Affiliate”	Any legal entity that, directly or indirectly through one of more intermediate legal entities, controls, is controlled by or is under common control with the Respondent or a member of Respondent.
“Contractor”	Any person or entity having a contract with the city.
“Control”	The controlling entity: (i) possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the controlled entity, whether through the ownership of voting securities or by contract or otherwise; or (ii) has direct or indirect ownership in the aggregate of fifty one (51%) or more of any class of voting or equity interests in the controlled entity.
“Respondent”	Any individual or entity that submits a proposal in response to a solicitation. If the Respondent is an individual, then that individual must complete and sign this Disclosure Affidavit where indicated. If the Respondent is an entity, then an authorized representative of that entity must complete and sign this Disclosure Affidavit where indicated. If the Respondent is a newly formed entity (formed within the last three years), then an authorized representative of that entity must complete and sign this Disclosure Affidavit where indicated, and each of the members or owners of the entity must also complete and sign separate Disclosure Affidavits where indicated.

Instructions: Provide the following information for the entity or individual completing this Statement (the “Individual/Entity”).

A. Basic Information:

1. Name of Individual/Entity responding to this solicitation:

2. Name of the authorized representative for the responding Entity:

B. Individual/Entity Information:

1. Principal Office Address:

2. Telephone and Facsimile Numbers:

3. E-Mail Address:

4. Name and title of Contact Person for the Individual/Entity:

5. Is the individual/Entity authorized to transact business in the state of Georgia?

Yes (Attach Certificate of Authority to transact business in Georgia from Georgia Secretary of State.)

No

Required Submittal (FORM 2)
Contractor Disclosure Form (Page 2 of 7)

C. Questionnaire

If you answer "YES" to any of the questions below, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, the name of the court and the file or reference number of the case, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your

1. Please describe the general development of the Respondent's business during the past ten (10) years, or such shorter period of time that the Respondent has been in business.

2. Are there any lawsuits, administrative actions or litigation to which Respondent is currently a party or has been a party (either as a plaintiff or defendant) during the past ten (10) years based upon fraud, theft, breach of contract, misrepresentation, safety, wrongful death or other similar conduct? **YES** **NO**

3. If "yes" to question number 2, were any of the parties to the suit a bonding company, insurance company, an owner, or otherwise? If so, attach a sheet listing all parties and indicate the type of company involved. **YES** **NO**

4. Has the Respondent been charged with a criminal offense within the last ten (10) years? **YES** **NO**

5. Has the Respondent received any citations or notices of violation from any government agency in connection with any of Respondent's work during the past ten (10) years (including OSHA violations)? Describe any citation or notices of violation which Respondent received. **YES** **NO**

6. Please state whether any of the following events have occurred in the last ten (10) years with respect to the Respondent. If any answer is yes, explain fully the circumstances surrounding the subject matter of the affirmative answer:
 - (a) Whether Respondent, or Affiliate currently or previously associated with Respondent, has ever filed a petition in bankruptcy, taken any actions with respect to insolvency, reorganization, receivership, moratorium or assignment for the benefit of creditors, or otherwise sought relief from creditors? **YES** **NO**

 - (b) Whether Respondent was subject of any order, judgment or decree not subsequently reversed, suspended or vacated by any court permanently enjoining Respondent from engaging in any type of business practice? **YES** **NO**

 - (c) Whether Respondent was the subject of any civil or criminal proceeding in which there was a final adjudication adverse to Respondent which directly arose from activities conducted by Respondent. **YES** **NO**

Required Submittal (FORM 2)
Contractor Disclosure Form (Page 3 of 7)

7. Has any employee, agent or representative of Respondent who is or will be directly involved in the project, in the last ten (10) years:

(a) directly or indirectly, had a business relationship with the City?

YES **NO**

(b) directly or indirectly, received revenues from the City?

YES **NO**

(c) directly or indirectly, received revenues from conducting business on City property or pursuant to any contract with the City?

YES **NO**

8. Whether any employee, agent, or representative of Respondent who is or will be directly involved in the project has or had within the last ten (10) years a direct or indirect business relationship with any elected or appointed City official or with any City employee?

YES **NO**

9. Whether Respondent has provided employment or compensation to any third party intermediary, agent, or lobbyist to directly or indirectly communicate with any City official or employee, or municipal official or employee in connection with any transaction or investment involving your firm and the City?

YES **NO**

10. Whether Respondent, or any agent, officer, director, or employee of your organization has solicited or made a contribution to any City official or member, or to the political party or political action committee within the previous five (5) years?

YES **NO**

11. Has the Respondent or any agent, officer, director, or employee been terminated, suspended, or debarred (for cause or otherwise) from any work being performed for the City or any other Federal, State or Local Government?

YES **NO**

12. Has the Respondent, member of Respondent's team or officer of any of them (with respect to any matter involving the business practice or activities of his or her employer been notified within the five (5) years preceding the date of this offer that any of them are the target of a criminal investigation, grand jury investigation, or civil enforcement proceeding?

YES **NO**

13. Please identify any Personal or Financial Relationships that may give rise to a conflict of interest as defined below [*Please be advised that you may be ineligible for award of contract if you have a personal or financial relationship that constitutes a conflict of interest that cannot be avoided*]:

(a) Personal relationships: executives, board members and partners in firms submitting offers must disclose familial relationships with employees, officers and elected officials of the City of Atlanta. Familial relationships shall include spouse, domestic partner registered under section 94-133, mother, father, sister, brother, and natural or adopted children of an official or employee.

YES **NO**

(b) Financial relationships: Respondent must disclose any interest held with a City employee or official, or family members of a City employee or official, which may yield, directly or indirectly, a monetary or other material benefit to the Respondent or the Respondent's family members. Please describe:

YES **NO**

Required Submittal (FORM 2)
Contractor Disclosure Form (Page 4 of 7)

D. REPRESENTATIONS

Anti-Lobbying Provision. All respondents, including agents, employees, representatives, lobbyists, attorneys and proposed partner(s), subcontractor(s) or joint venturer(s), will refrain, under penalty of the respondent's disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process.

Certification of Independent Price Determination/Non-Collusion. Collusion and other anticompetitive practices among offerors are prohibited by city, state and federal laws. All Respondents shall identify a person having authority to sign for the Respondent who shall certify, in writing, as follows:

“I certify that this bid proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an bid or offer for the same supplies, labor, services, construction, materials or equipment to be furnished or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of city, state and federal law and can result in fines, prison sentences, and civil damages awards. By signing this document, I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent/Offeror.”

Certify Satisfaction of all Underlying Obligations. (If Applicable) If a Contract is awarded through this solicitation, then such Contractor should know that before final payment is made to a Contractor by the City, the Contractor shall certify to the City in writing, in a form satisfactory to the City, that all subcontractors, materialmen suppliers and similar firms or persons involved in the City contract have been paid in full at the time of final payment to the Contractor by the City or will be paid in full utilizing the monies constituting final payment to the Contractor.

Confidentiality . Details of the proposals will not be discussed with other respondents during the selection process. Respondent should be aware, however, that all proposals and information submitted therein may become subject to public inspection following award of the contract. Each respondent should consider this possibility and, where trade secrets or other proprietary information may be involved, may choose to provide in lieu of such proprietary information, an explanation as to why such information is not provided in its proposal. However, the respondent may be required to submit such required information before further consideration.

Equal Employment Opportunity (EEO) Provision. All bidders or offerors will be required to comply with sections 2-1200 and 2-1414 of the City of Atlanta Code of Ordinances, as follows: During the performance of the agreement, the Contractor agrees as follows:

- a. The Contractor shall not discriminate against any employee, or applicant for employment, because of race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation. As used here, the words "shall not discriminate" shall mean and include without limitation the following:

Required Submittal (FORM 2)
Contractor Disclosure Form (Page 5 of 7)

Recruited, whether by advertising or other means; compensated, whether in the form of rates of pay, or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; demoted; downgraded; transferred; laid off; and terminated.

The Contractor agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officers setting forth the provisions of the EEO clause.

- b. The Contractor shall, in all solicitations or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, domestic relationship status, parental status, familial status, sexual orientation, national origin, gender identity, age, disability, or political affiliation.
- c. The Contractor shall send to each labor union or representative of workers with which the Contractor may have a collective bargaining agreement or other contract or understanding a notice advising the labor union or workers' representative of the Contractor's commitments under the equal employment opportunity program of the City of Atlanta and under the Code of Ordinances and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor shall register all workers in the skilled trades who are below the journeyman level with the U.S. Bureau of Apprenticeship and Training.
- d. The Contractor shall furnish all information and reports required by the contract compliance officer pursuant to the Code of Ordinances, and shall permit access to the books, records, and accounts of the Contractor during normal business hours by the contract compliance officer for the purpose of investigation so as to ascertain compliance with the program.
- e. The Contractor shall take such action with respect to any subcontractor as the city may direct as a means of enforcing the provisions of paragraphs (a) through (h) herein, including penalties and sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in or is threatened with litigation as a result of such direction by the city, the city will enter into such litigation as is necessary to protect the interest of the city and to effectuate the equal employment opportunity program of the city; and, in the case of contracts receiving federal assistance, the Contractor or the city may request the United States to enter into such litigation to protect the interests of the United States.
- f. The Contractor and its subcontractors, if any, shall file compliance reports at reasonable times and intervals with the city in the form and to the extent prescribed by the contract compliance officer. Compliance reports filed at such times directed shall contain information as to employment practices, policies, programs and statistics of the Contractor and its subcontractors.

Required Submittal (FORM 2)
Contractor Disclosure Form (Page 6 of 7)

- g. The Contractor shall include the provisions of paragraphs (a) through (h) of this equal employment opportunity clause in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor.
- h. A finding, as hereinafter provided, that a refusal by the Contractor or subcontractor to comply with any portion of this program, as herein provided and described, may subject the offending party to any or all of the following penalties:
 - (1) Withholding from the Contractor in violation all future payments under the involved contract until it is determined that the Contractor or subcontractor is in compliance with the provisions of the contract;
 - (2) Refusal of all future bids for any contract with the City of Atlanta or any of its departments or divisions until such time as the Contractor or subcontractor demonstrates that there has been established and there shall be carried out all of the provisions of the program as provided in the Code of Ordinances;
 - (3) Cancellation of the public contract;
 - (4) In a case in which there is substantial or material violation of the compliance procedure herein set forth or as may be provided for by the contract, appropriate proceedings may be brought to enforce those provisions, including the enjoining, within applicable law, of Contractors, subcontractors or other organizations, individuals or groups who prevent or seek to prevent directly or indirectly compliance with the policy as herein provided.

Prohibition on Kickbacks or Gratuities/Non-Gratuity. The undersigned acknowledges the following prohibitions on kickbacks and gratuities:

- a. It is unethical for any person to offer, give or agree to give any employee or former employee a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.
- b. It is unethical for any employee or former employee to solicit, demand, accept or agree to accept from another person a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.
- c. It is also unethical for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Required Submittal (FORM 2)
Contractor Disclosure Form (Page 7 of 7)

Declaration

Under penalty of perjury, I declare that I have examined this Disclosure Form and Questionnaire and all attachments to it, if applicable, and, to the best of my knowledge and belief all statements contained herein and in any attachments, if applicable, are true, correct and complete.

I certify that this offer is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting an offer for the same supplies, services, construction, or professional or consultant services, and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of city, state and federal law and can result in fines, prison sentences, and civil damages awards. I agree to abide by all conditions of this solicitation and offer and certify that I am authorized to sign for this Respondent.

Sign here if you are an individual:

Printed _____ **Name:**

Signature: _____

Date: _____

Subscribed and sworn to or affirmed by _____ **(name) this** ___ **day of** _____, **20** ___.

Notary Public of _____(state)

My commission expires: _____

Sign here if you are an authorized representative of a responding entity or partnership:

Printed Name of Entity or Partnership: _____

Signature of authorized representative: _____

Title: _____

Date: _____, **20**___

Subscribed and sworn to or affirmed by _____ **(name), as the**
_____**(title) of** _____ **(entity or partnership name) this**
___ **day of** _____, **20**___.

Notary Public of _____(state)

My commission expires: _____

Required Submittal (FORM 3)

Proponent Financial Disclosure (Page 1 of 5)

Instructions: It is necessary for the City to evaluate, verify, and understand the Proponent's financial capability and stability to undertake and perform the Services contemplated in this Solicitation. To accomplish this task, the Proponent must provide accurate and legible financial disclosures to the City as requested below.

A "Proponent" is an individual, entity or partnership submitting a proposal or Proposal in response to a Solicitation.

1. If the Proponent is an individual, financial disclosures for that individual must be provided.
2. If the Proponent is an entity or partnership, financial disclosures for that entity or partnership must be provided.
3. If the Proponent is a newly formed entity or partnership (formed within the last three years), financial disclosures for that entity or partnership must be provided together with full financial disclosure from the entity's or partnership's owners. Financial Disclosure includes a full response to all questions and requests for documentation listed in this Form.

For example, if the Proponent is a newly formed entity (formed within the last three years) made up of two separate entities (e.g., a majority interest owner and a minority interest owner), then financial disclosure is required from the Proponent entity, and financial disclosure is also required from each of the two owners (majority entity owner and minority entity owner) as well.

The Proponent (and its owners, if applicable) must submit hard copies of all financial disclosures in response to this Form.

Required Submittal (FORM 3)

Proponent Financial Disclosure (Page 2 of 5)

Part A - General Information:

Name of the Proponent: _____

Name of individual, entity or
partnership completing this Form: _____

Relationship of individual, entity
or partnership completing this Form
to the Proponent: _____

Contact information of individual,
entity or partnership completing
this Form: _____

Address _____

Phone Number(s) _____

Email: _____

Required Submittal (FORM 3)

Proponent Financial Disclosure (Page 3 of 5)

Part B: Financial Information:

1. The Proponent, and its owners, if applicable, should demonstrate its financial capability and stability by selecting and providing documentation from one of the following three groups of requests (see below). Please circle which group, (a), (b), or (c), is selected and provide the supporting documentation with the proposal/Proposal.
 - (a) Financial statements for the three (3) most recent consecutive fiscal years, audited by a Certified Public Accountant (“CPA”), including:
 - (i) Income Statement;
 - (ii) Balance Sheet; and
 - (iii) Statement of Cash Flows.
 - (b) Financial statements for the three (3) most recent consecutive fiscal years, either reviewed or compiled by a Certified Public Accountant (“CPA”), including:
 - (i) Income Statement;
 - (ii) Balance Sheet; and
 - (iii) Satisfactory proof of Proponent’s ability to obtain a Performance Bond for the amount described in Appendix B, if applicable.
 - (c) Unaudited, self-prepared financial statements for the three (3) most recent consecutive fiscal years, including:
 - (i) Income Statement;
 - (ii) Balance Sheet;
 - (iii) Satisfactory proof of Proponent’s ability to obtain a Performance Bond for the amount described in Appendix B, if applicable;
 - (iv) Two (2) banks or other institutional lenders’ references; and
 - (v) Dunn and Bradstreet report for the last two (2) years.

Required Submittal (FORM 3)

Proponent Financial Disclosure (Page 4 of 5)

2. Fill in the blanks below to provide a summary of all of the Proponent's assets and liabilities for the three (3) most recent years (calculated from the date of the end of the fiscal year).

ALL FIGURES BELOW MUST BE REPRESENTED IN U.S. CURRENCY (\$).

Standard currency of Proponent's Financial Statements: _____

The exchange rate used: _____ = US \$ _____

Most recent three (3) years

	<u>Year: 201</u> (Thousands)	<u>Year: 201</u> (Thousands)	<u>Year: 201</u> (Thousands)
Current Assets	\$.....	\$.....	\$.....
Current Liabilities	\$.....	\$.....	\$.....
Property & Equip.	\$.....	\$.....	\$.....
Working Capital	\$.....	\$.....	\$.....
Sales/ Revenue	\$.....	\$.....	\$.....
Total Assets	\$.....	\$.....	\$.....
Total Liabilities	\$.....	\$.....	\$.....
Interest Charges	\$.....	\$.....	\$.....
Net Income	\$.....	\$.....	\$.....
Net-Worth	\$.....	\$.....	\$.....

3. Do you plan to use or require an open line of credit for the project? Yes or No.

If yes, the Proponent must provide the source of the line of credit on bank letterhead for the bank providing the line of credit. The bank contact information must include: contact name, title, address, telephone, fax and e-mail address.

Required Submittal (FORM 3)

Proponent Financial Disclosure (Page 5 of 5)

Declaration

Under penalty of perjury, I declare that I have examined this Affidavit Disclosure form and all attachments to it, if applicable, and, to the best of my knowledge and belief, and all statements contained in it and all attachments, if applicable, are true, correct and complete.

Whether you are an individual executing this form or you are an authorized representative of an entity executing this form, the person signing below must sign or affirm in the presence of a Notary Public. The Notary Public's signature and seal must be provided, together with the date of the notarial act.

Sign here if you are an individual:

Printed Name: _____

Signature: _____

Date: _____, 20__.

Subscribed and sworn to or affirmed by _____ (name) this _____ day of _____, 20__.

Notary Public of _____ (state)

My commission expires: _____

Sign here if you are an authorized representative of a responding entity:

Printed Name of Entity: _____

Signature of authorized representative: _____

Title: _____

Date: _____, 20__.

Subscribed and sworn to or affirmed by _____ (name), as the _____ (title) of _____ (entity name) this _____ day of _____, 20__.

Notary Public of _____ (state)

My commission expires: _____

Required Submittal (FORM 4.1)

Certification of Insurance Ability Instructions:

Offerors **MUST** submit a **completed copy of this form executed by their insurance company**. Failure to submit completed form will result in the Offeror being deemed non-responsive.

I, _____ [*insert an individual's name*], on behalf of _____ [*insert insurance company full name*], a _____ [*insert type of entity LLC, LLP, corporation, etc.*](“**Insurer**”), hereby represent and certify each of the following to the City of Atlanta, a municipal corporation of the State of Georgia (“**City**”) on this _____ day of _____, 20____ [*insert date*]:

- (a) Insurer is licensed by the Insurance and Safety Fire Commissioner of the State of Georgia to transact insurance business in the State of Georgia;
- (b) Insurer has reviewed the Agreement attached to the solicitation for Project Number **FC-8430, Design-Build Northside Drive Pedestrian Bridge** (“**Project**”) and its corresponding **Appendix for Insurance Requirements**;
- (c) Insurer certifies that if, as of the date written above, (“**Offeror**”) was selected as the successful Offeror for the Project, Insurer would provide insurance to Offeror for this Project in accordance with the terms set forth in the corresponding **Appendix for Insurance Requirements**; and

PLEASE NOTE: If this Form 4.1 is executed by an Attorney-in-Fact, then Insurer must attach a copy of a duly executed Power-of-Attorney evidencing such authority in addition to correctly completing this Form 4.1. If Offeror is unable to provide City with insurance that comply with the terms of the corresponding Appendix for Insurance Requirements within ten (10) days of receiving notice of intent to award the Project from the City, the City may, in its sole discretion, retain Offeror's security submitted with its offer and/or disqualify Offeror from further consideration for the award of the Agreement.

By executing this certification, Insurer represents that all of the information provided by Insurer herein is true and correct as of the date set forth above.

Insurer: [*insert company name on line provided below*]

By: _____

Print Name: _____

Title: _____

Corporate Secretary/Assistant Secretary
(Seal)

Required Submittal (FORM 5)

Acknowledgment of Addenda

Proponents should sign below and return this form with their Proposal(s) to the Department of Procurement, 55 Trinity Avenue, City Hall South, Suite 1900, Atlanta, Georgia 30303, as acknowledgment of receipt of certain Addenda.

This is to acknowledge receipt of the following **Addenda** for **FC-8430, Design-Build Northside Drive Pedestrian Bridge:**

1. _____;
2. _____;
3. _____; and
4. _____.

Dated the _____ day of _____, 20__.

Corporate Proponent:
[Insert Corporate Name]

By: _____

Print Name: _____

Title: _____

Corporate Secretary/Assistant
Secretary (Seal)

Non-Corporate Proponent:
[Insert Proponent Name]

By: _____

Print Name: _____

Title: _____

Notary Public (Seal)
My Commission Expires: _____

Required Submittal (FORM 6)

Proponent Contact Directory¹

NAME	POSITION/TITLE	MAILING ADDRESS	OFFICE PHONE	CELL PHONE	EMAIL ADDRESS AND FAX NUMBER

¹ The purpose of the Proponent Contact Directory is to provide the City with a centralized, easily identified source of important contacts and other information regarding each of the business entities constituting a Proponent. This Proponent Contact Directory should include the names, positions/titles, firms, mailing addresses, phone and fax numbers and e-mail addresses for each of the following as it pertains to each of the firms in a Proponent's team:

1. At least two individuals, one primary the other(s) secondary, authorized to represent the firm for purposes of this RFP; and
2. Proponent Service Provider Key Personnel (as appropriate) listed in the Services Agreement included in this RFP at Part 5.

Required Submittal (FORM 7)

Reference List

Each Proponent must provide a list of at least three (3) references using the below-referenced format. The City is interested in reviewing references that are able to attest to a Proponent's performance ability and credibility in a particular industry or trade.

Proponent/JV Member: _____

Reference: Name
 Address
 City, State, Zip
 Phone
 Fax

Project Title:

Contact Person: _____
Direct Telephone: _____
Email Address: _____

Date(s) of Project: _____

Description of Services:

Total Amount of Contract Including Change Orders:

Proponent's Role and Responsibilities:

Current Completion Status:

(Use the Same Format to Provide the Additional References)

Required Submittal (FORM 9)

Required Submittal Checklist

The following submittals shall be completed and submitted with each Proposal see table below “Required Proposal Submittal Check Sheet.” Please verify that these submittals are in the envelope before it is sealed. *Disclaimer:* It is each Proponents sole responsibility to ensure that their proposal to the City is inclusive of all required submittal documents outlined on the below-referenced checklist; as well as within other parts of the solicitation document.

Submit one (1) Original Proposal, signed and dated, and seven (7) complete copies of the Original Proposal including all required attachments.

In addition to the hard copy submissions, each Proponent shall submit two (2) digital versions of its Proposal Submission in Adobe Portable Document Format (“PDF”) on compact disk (CDs). CD One (1) version should be a duplicate of the hard copy of the Proposal with no deviations in order or layout of the hard copy proposal. CD Two (2) version should be a redacted version of the hard copy Proposal Submission. Please refer to the Georgia Open Records Acts (O.C.G.A. § 50-18-72) for information not subject to public disclosure.

The City assumes no liability for differences in information contained in the Proponent’s printed Proposal Submission and that contained on the CDs. In the event of a discrepancy, the City will rely upon the information contained in the Proponent’s printed material (Hard Copy). Each CD should be labeled with the Project Number, Project Name, and the CD Number.

	Required Proposal Submittal Check Sheet
1	Volume 1 – Informational Proposal: <ul style="list-style-type: none"> <input type="checkbox"/> Executive Summary <input type="checkbox"/> Key Personnel, Overall Experience, Qualifications and Performance on Previous Projects <input type="checkbox"/> Management Plan <input type="checkbox"/> Conceptual Submittal (Project Approach)
2	Volume II – All Required Submittal Forms (if any of the required submittal documents are not submitted or incomplete within your Proposal submittal package, your firm may be deemed non-responsive). <u>Required Submittals include but are not limited to:</u> <ul style="list-style-type: none"> <input type="checkbox"/> Form 1; Illegal Immigration Reform and Enforcement Act Forms <input type="checkbox"/> Form 2; Contractor Disclosure Form <input type="checkbox"/> Form 3; Proponent Financial Disclosure <input type="checkbox"/> Form 4.1; Certification of Insurance Ability <input type="checkbox"/> Form 4.2; Certification of Bonding Ability <input type="checkbox"/> Form 5; Acknowledgment of Addenda <input type="checkbox"/> Form 6; Proponent Contact Directory <input type="checkbox"/> Form 7; Reference List <input type="checkbox"/> Form 8; Proposal Guarantee <input type="checkbox"/> Form 9; Required Submittal Checklist <input type="checkbox"/> Authority to Transact Business in the State of Georgia <input type="checkbox"/> Appendix A - Office of Contract Compliance Forms 1 – 5 <input type="checkbox"/> Statement of Qualifications <input type="checkbox"/> Safety Record Form <input type="checkbox"/> Authority to Transact Business in Georgia <input type="checkbox"/> Joint Venture Agreement <input type="checkbox"/> General Contractor’s License <input type="checkbox"/> Georgia Utility Contractor’s License <input type="checkbox"/> Georgia Registered Architect License
3	Separate Sealed Envelope – Cost Proposal
4	Proponent’s Official Company Name: Company Physical Address:
5	President/Vice President/Owner Name: Title: _____ Office Telephone Number: _____ Direct Cell Telephone Number: _____ Email Address:
6	Primary Point-of-Contact Concerning RFP: Title: _____ Office Telephone Number: _____ Direct Cell Telephone Number: _____ Email Address:

Required Submittal

Statement of Proponent's Qualifications

STATEMENT OF PROPONENT'S QUALIFICATIONS

This Statement is to accompany proposals submitted for the following project: **FC-8430, Design-Build Northside Drive Pedestrian Bridge**. Proponents must meet the minimum qualification criteria set forth under items 5, 7, 8, 9 10, and 11 of this section and must provide the organization chart as set forth under item 6 of this section to be deemed a "Responsible and Responsive Proponent".

1. NAME OF PROPONENT: _____

2. BUSINESS ADDRESS: _____

3. TELEPHONE NUMBER: _____

4. OFFICIAL REPRESENTATIVE AND TITLE: _____

5. Using the forms provided in this Section, list previously completed or current projects which are similar in scope and complexity to this project which were completed or assigned to your firm or joint venture, including: Name of project, location of project, owner's name, address and phone number, description of work performed, initial contract amount, final contract amount, start date, scheduled completion date and actual completion date. (If a joint venture, list separately for each joint venture partner.) Limit to 5.

6. Provide the following information for the organization proposed for this project:

a. Organizational chart.

b. Indicate the participation by the various members in the organization, as shown on the organizational chart; in the management; and in the division of work (If a joint venture, indicate percent of man hours and percent of project cost to be performed by each joint venture member).

7. Using the forms provided in this Section, provide information for key project personnel: Project Manager, Construction Manager, Construction Superintendent, Engineering Design Manager, Lead Structural Design Engineer, Lead Electrical Engineer, Lead Mechanical Engineer, Lead Geotechnical Design Engineer, and Site Safety Officer.

a. Project Manager – Responsible for the overall performance and daily operations of the Design-Build project.

b. Construction Superintendent – Responsible for the overall direction and supervision of on-site construction activities.

Required Submittal

Statement of Proponent's Qualifications

- c. Construction Manager, Engineering Design Manager, Lead Structural Design Engineer, , Lead Electrical Engineer, Lead Mechanical Engineer, Lead Geotechnical Design Engineer, and Site Safety Officer – List projects previously completed or current projects in which personnel performed work similar in scope and complexity to this project and in the role for which they will occupy in this project.
 8. The Proponent must have an established Safety Program that as a minimum includes those items as listed on the attachment entitled “*SAFETY RECORD FORM*,” Section IV Safety Program Information where applicable to this type of work.
 9. The Proponent’s Workman’s Compensation Ratings (EMR-Experience Modification Rate) must not exceed an average of 1.0 over the last three (3) years (provided for each team member).

Proponent’s Workman’s Compensation Ratings (EMR-Experience Modification Rate) _____
 10. The Proponent's, including all team members identified in the Proposal, OSHA Incidence Rates must not exceed the most current Industry Standard published by the U.S. Department of Labor (2013), www.bls.gov/iif/oshsum.htm, for the last three (3) years for construction of buildings, NAICS code 23236 (i.e. total recordable case rate must not exceed 3.6; Injuries and Illness with Lost Work Days must not exceed 1.3; and, Injuries and Illness with Job Transfer or Restricted Work Days must not exceed 0.9). The following will be provided by the Proponent for each of their team members:
 - a. Total Recordable Case Rates,
 - b. Injuries and Illness with Lost Work Days,
 - c. Injuries and Illness with Job Transfer or Restricted Work Days.
 11. “If there have been any fatalities during the last five (5) years on any projects performed by the Proponent or on any work performed under the direct supervision of a proposed Project Manager and the Proponent or proposed Project Manager was cited by OSHA for “Willful”, in performing the work in which the fatality occurred, the Proponent will be disqualified based on the City’s review. The Proponent may also be disqualified in the event that a Recordable Incident occurred due to the same condition that existed when a previous fatality occurred and resulted in an OSHA citation or failure to implement a corrective action plan.”
 - a. Fatalities during the last five (5) years where Proponent was cited by OSHA for “Willful” or “Serious” Violation. _____
 - b. Fatalities during the last five (5) years where the proposed Project Manager was cited by OSHA for “Willful” or “Serious” Violation. _____
-

Required Submittal

Statement of Proponent's Qualifications

The previous statements and attachments are true, correct, and complete to the best of my knowledge.

Date: _____

Proponent's Firm Name: _____

By: _____

Title: _____

Sworn to and subscribed before me

This ____ day of _____, 2015

Notary Public (Seal)

My Commission Expires: _____

Required Submittal

Statement of Proponent's Qualifications

STATEMENT OF PROPONENT'S QUALIFICATIONS

Project Name	
Project Type & Design	
Project Location	
Design Builder	
Key Personnel's Role	
Owner's Representative: Name and Phone Number	
Design Engineer's Representative: Name and Phone Number	
Relevant Project Experience from Project:	
Initial Contract Amount	\$
Final Contract Amount	\$
Reason for Cost increase, if any	
Project Duration	Date Started: Date Completed:
Was Project Completed on Time?	
If not Completed on Time, Why?	
Description of Major Project Components as they apply to this proposal	

Required Submittal

Statement of Proponent's Qualifications

STATEMENT OF PROPONENT'S QUALIFICATIONS

KEY PERSONNEL EXPERIENCE

NAME: _____

TITLE: _____

Project Name	
Project Type & Design	
Project Location	
Design Builder	
Key Personnel's Role	
Owner's Representative: Name and Phone Number	
Design Engineer's Representative: Name and Phone Number	
Relevant Project Experience from Project:	
Initial Contract Amount	\$
Final Contract Amount	\$
Reason for Cost increase, if any	
Project Duration	Date Started: Date Completed:
Was Project Completed on Time?	
If not Completed on Time, Why?	
Description of Major Project Components as they apply to this proposal	

Required Submittal

SAFETY RECORD FORM

I. General Information

Name of Firm:	
Business Address:	
Telephone:	Fax:
Prepared by/Title:	Date prepared:

II. Experience Modification Rates

- A. List your firm's Workers Compensation Experience Modification Rates (EMR) for the last three years.

Year	Experience Modification Rate (EMR)

III. OSHA Incidence Rates

- A. List your firm's Occupational Safety Health Administration (OSHA) total recordable incidence rates for the last three years.

Year	Total Recordable Incidents	Total Hours Worked	OSHA Incidence Rate*

* Use your OSHA Form No. 200 and the formula:

$$(\text{Total Incidents} \times 200,000 \text{ hours}) \div (\text{Number of hours worked}) = \text{Incidence Rate}$$

Required Submittal

SAFETY RECORD FORM

III. OSHA Incidence Rates (cont'd)

B. Provide your incidence rates over the last three years for the following categories:

Category	Incidence Rate by Year*		
	Year _____	Year _____	Year _____
Injuries and Illness with Lost Work Days			
Injuries and Illness with Job Transfer or Restricted Work Days			

* Use your OSHA Form No. 200 and the formula:

$(\text{Total Incidents} \times 200,000 \text{ hours}) \div (\text{Number of hours worked}) = \text{Incidence Rate}$

C. Provide your incidences of fatality over the last five years:

Category	Fatalities by Year				
	Year _____	Year _____	Year _____	Year _____	Year _____
Number of Fatalities					

D. Does your firm have any upheld OSHA citations in the past five years?

Yes No (If yes, attach explanation)

IV. Safety Program Information

A. Do you have a written safety program?

Yes No (If yes, attach outline)

B. Which of the following does your safety program contain:

1. Does your company require health and safety training of its subcontractors?

Yes No

2. Is documentation of health and safety training required?

Yes No

3. Do you have a Hazard Communication Program (29 CFR 1910.1200, CCR Title 8 Section 5194)?

Yes No

4. Do you have a Confined Space Entry and Rescue Program (29 CFR 1910.146, CCR Title 8 Section 5156-5159)?

Required Submittal

SAFETY RECORD FORM

Yes No (If yes, attach explanation)

5. Do you have a "Hot Work" permit program (29 CFR 1910.146, CCR Title 8 5156-5159)?

Yes No (If yes, attach explanation)

6. Do you have a "Lock-Out/Tag-Out" program (29 CFR 1910.417)?

Yes No (If yes, attach explanation)

C. Do you have an Equipment Maintenance Program for the following:

- | | | |
|--|------------------------------|-----------------------------|
| 1. Miscellaneous construction tools and equipment? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Ladders? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Scaffolds? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 4. Heavy Equipment? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 5. Vehicles? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

D. Do you have a new employee safety orientation program?

Yes No

1. If yes, does it include instruction in the following:

- | | | |
|-----------------------------------|------------------------------|-----------------------------|
| (a) Company Safety Policy | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (b) Company Safety Rules | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (c) Safety Meeting Attendance | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (d) Company Safety Record | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (e) Hazard Recognition | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (f) Hazard Reporting | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (g) Injury Reporting | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (h) Non-Injury Accident Reporting | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (i) Personal Protective Equipment | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (j) Respiratory Protection | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (k) Fire Protection | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (l) Housekeeping | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (m) Toxic Substance | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (n) Electrical Safety | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (o) Fall Protection | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (p) First-Aid/CPR | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (q) Driving Safety | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (r) Hearing Conservation | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (s) Lock-Out/Tag-Out | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (t) Bloodborne Pathogens | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (u) Asbestos | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (v) Confined Spaces | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (w) Hazard Communication | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Required Submittal

SAFETY RECORD FORM

IV. Safety Program Information (cont'd)

E. Do you conduct safety meetings for your employees? Yes No

1. If yes, how often:

Daily Weekly Bi-weekly Monthly As Needed

F. Do you conduct health and safety audits of work in progress?

Yes No

1. If yes, who conducts the audits?

2. How often are the audits conducted?

G. Do you notify all employees of accidents and precautions related to accidents and near misses?

Yes No

1. If yes, how is this notification accomplished?

- | | | |
|---|------------------------------|-----------------------------|
| (a) Safety meetings | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (b) Post notification in office | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (c) Post notification at the site where the incident occurred | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| (d) Other _____ | | |

H. Is safety a criteria in evaluating the performance of:

- | | | |
|----------------|------------------------------|-----------------------------|
| 1. Employees | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 2. Supervisors | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| 3. Management | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

I. Does your firm hold "tailgate" safety meetings? Yes No

1. If yes, how often:

Daily Weekly Bi-weekly Monthly As Needed

J. Does your company have a drug and alcohol testing policy?

Yes No

K. Does your company require that subcontractors participate in a drug surveillance/testing program?

Yes No

L. Does your company have a method of disseminating safety information?

Yes No

Required Submittal

AUTHORITY TO TRANSACT BUSINESS IN GEORGIA

FC-8430, Design-Build Northside Drive Pedestrian Bridge

Copy of authorization must be included in Proposal

Required Submittal

JOINT VENTURE AGREEMENT

FC-8430, Design-Build Northside Drive Pedestrian Bridge

Copy of Joint Venture Agreement must be included in Proposal

Required Submittal

GENERAL CONTRACTOR'S LICENSE

FC-8430, Design-Build Northside Drive Pedestrian Bridge

Copy of License must be included in Proposal

Required Submittal

GEORGIA UTILITY CONTRACTOR'S LICENSE

FC-8430, Design-Build Northside Drive Pedestrian Bridge

Contractor's Name: _____

Utility Contractor's License Number: _____

Expiration Date of License: _____

FC Number and Project Name: **FC-8430, Design-Build Northside Drive Pedestrian Bridge**

Copy of License must be included in Proposal

Required Submittal

GEORGIA REGISTERED ARCHITECT LICENSE

FC-8430, Design-Build Northside Drive Pedestrian Bridge

Copy of License must be included in Proposal

PART V

DRAFT STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN BUILDER

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Standard Form of Agreement Between Owner and Design-Builder - Lump Sum

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

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

OWNER: THE CITY OF ATLANTA
(Name and address)

Suite

DESIGN-BUILDER:

PROJECT: _____

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

Article 1

Scope of Work

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

Article 2

Contract Documents

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, and Change Orders to this Agreement issued in accordance with the Standard Form General Conditions of Contract ("General Conditions of Contract");

2.1.2 The Basis of Design Documents, including the Owner's Project Criteria, Design-Builder's Proposal and the Deviation List, if any, contained in the Design-Builder's Proposal, which shall specifically identify any and all deviations from Owner's Project Criteria;

2.1.3 This Agreement, including all exhibits, appendices, and attachments, executed by Owner and Design-Builder:

2.1.4 General Conditions of Contract;

2.1.5 Special Conditions of Contract;

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

2.1.7 Miscellaneous documents prepared and approved by Owner as required submittals for RFP; and

2.1.8 Legislation authorizing Contract between Owner and Design-Builder.

2.2 Completeness of Documents. The Design Builder's signature of the Agreement is a representation to Owner that Design Builder has visited the site where the Work will be performed, become familiar with the local conditions under which the Work is to be performed, and has correlated personal observations with the requirements of the Contract Documents. Except for any error, inconsistencies, conflicts, or omissions reported to Owner by Design-Builder as set forth in Article 3 herein, by signing the Agreement the Design-Builder represents that it has analyzed the Contract Documents and that they are sufficiently complete and detailed for the Work required herein and are consistent with the best practices in the construction and design industries.

Article 3

Interpretation and Intent

3.1 Omitted.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, or between the Contract Documents and applicable standards or Legal Requirements, the Design-Builder shall 1) provide the better quality or greater quantity of Work and 2) comply with the more stringent requirement unless directed otherwise in writing by the City. Design-Builder shall take field measurements and verify existing field conditions prior to ordering materials or performing any Work and shall be responsible for the correctness of such measurements. Design-Builder shall not be entitled to any additional compensation or an extension of the Contract Time(s) arising from its failure to verify existing field conditions.

3.3 Terms, words and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 Omitted.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

Article 4

Ownership of Work Product

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement (“Work Product”) are deemed to be the property of the City upon payment therefore. The City shall retain the ownership and intellectual property interests of the Work Product, including copyright interests associated with the Work Product.

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

4.3 Omitted.

4.4 Omitted.

4.5 Omitted.

Article 5

Contract Time

5.1 Date of Commencement. The Work shall commence within five (5) days of Design-Builder’s receipt of Owner’s Notice to Proceed (“Date of Commencement”) unless a different time is required in the Owner’s Notice to Proceed.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than 730 calendar days after the Date of Commencement (“Scheduled Substantial Completion Date”).

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work (“Scheduled Interim Milestone Dates”), if any, shall be achieved as set forth in Owner’s Project Criteria, the other Contract Documents, or as follows: See Project Criteria

5.2.3 Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.7 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 (collectively the “Contract Time(s)”) shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by 0 days of Substantial Completion Date, (the "LD Date"), Designer-Builder shall pay Owner Three Thousand Five Hundred Dollars (\$3,500.00), as liquidated damages for each calendar day that Substantial Completion extends beyond the LD Date.

5.5 Design-Builder understands that if Final Completion is not achieved within 0 days of the Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Final Completion is not achieved within 0 days of Substantial Completion, Design-Builder shall pay to Owner Five Hundred Dollars (\$500.00), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

5.6 The Liquidated Damages set forth in Articles 5.4 and 5.5 are hereby agreed upon as fixed liquidated damages due the City for Design-Builder's failure to complete the Work within the Contract Time(s). Design-Builder and its surety shall be liable for any liquidated damages in excess of the amount due Design-Builder.

5.6.1 If the Design-Builder's schedule projects an untimely completion with unexcused delay and the City in good faith believes that retainage will be insufficient to cover the City's damages, Design-Builder agrees that the City may withhold additional funds to assure the payment of the liquidated damages owed by Design-Builder.

5.6.2 The fixed liquidated damages are not established as a penalty but are calculated and agreed upon in advance by the City and Design-Builder due to the uncertainty and impossibility of making a determination as to the actual direct, incidental and consequential damages which are incurred by the City as a result of the failure on the part of Design-Builder to complete the Work within the Contract Time(s) specified in the Contract Documents. Liquidated Damages as they accrue may be deducted from periodic partial payments to the extent they are sufficient to cover the liquidated damages owing the City; provided that any excess liquidated damages owing over the periodic partial payment amount may be deducted from retainage. Such deduction shall be in addition to the retainage provided for in the Contract Documents. The remaining amount of liquidated damages owing upon completion will be deducted from any amounts owing as Final Payment to Design-Builder or its surety. Any excess amount owing to the City as liquidated damages shall be paid upon demand by Design-Builder or its surety.

5.7 Omitted.

Article 6

Contract Price

6.1 Contract Price. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of _____ (\$ _____) ("Contract Price"), subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.2 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 9.4.1.3 or 9.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of Five percent (5%) of the additional costs incurred for that Change Order.

6.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

An amount equal to the sum of Five percent (5%) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee).

6.3 Allowance Items and Allowance Values.

6.3.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Owner's Project Criteria, other Contract Documents, or attached as an Exhibit or Appendix hereto.

6.3.2 Omitted.

6.3.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining a written Work Authorization or Change Directive to proceed from Owner.

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

6.3.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.3.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

6.4 Performance Incentives.

6.4.1 Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit A.

Article 7

Procedure for Payment

7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the Twenty-Fifth (25th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.1.2 Owner shall make payment within forty-five days after Owner's receipt and approval of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.1.3 Design-Builder acknowledges and agrees that all payments related to this Agreement are subject to the limitations set forth in Article 6.3 of the General Conditions.

7.2 Retainage on Progress Payments.

7.2.1 Owner will retain ten percent (10%) of each Application for Payment as retainage provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner may, in the Owner's sole discretion, reduce retainage to five percent (5%).

7.2.2 Within thirty (30) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.3 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment within sixty (60) days after Owner's receipt and approval of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

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

7.5 Record Keeping and Finance Controls. With respect to changes in the Work performed on a cost basis by Design-Builder pursuant to the Contract Documents, Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to Work performed on a cost basis in accordance with the Contract Documents, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties.

Article 8

Termination for Convenience

8.1 The City shall have the right to terminate this Agreement without cause upon seven (7) calendar days' written notice to Design-Builder. In the event of such termination for the City's convenience, Design-Builder's recovery against Owner shall be limited to Work performed through the date of termination, calculated on a percent complete basis, together with any retainage withheld, as well as Design Builder's reasonable demobilization costs, if applicable. Design-Builder shall not be entitled to any other or further recovery against Owner, including, but not limited to, anticipated profit on work not performed. In no event shall Design-Builder be entitled to a "cost-plus" recovery from Owner.

Article 9

Representatives of the Parties

9.1 Owner's Representatives.

9.1.1 Owner designates the individual(s) listed below as the City's Representative(s) with authority to administer the Agreement as set forth in Section 3.4 of the General Conditions: *(Identify individual's name, title, address and telephone numbers)*

Deputy Commissioner
City of Atlanta, Department of Public Works
55 Trinity Ave, SW, Suite 4700, Atlanta, GA 30303
w/ a copy to the Project Manager (to be designated prior to the Date of Commencement)

9.2 Design-Builder's Representatives.

9.2.1 Design-Builder designates the individual(s) listed below as Design-Builder's Representative(s), which have the authority and responsibility set forth in Article 2 of the General Conditions: *(Identify individual's name, title, address and telephone numbers)*

Name:
Title:
Address:
Phone:
Email:

9.2.2 Omitted

Article 10

Bonds and Insurance

10.1 Design-Builder shall procure the insurance and bonding required by Appendix B to this Agreement.

Article 11

Other Provisions

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

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

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

[Signatures on the following page.]

OWNER:

CITY OF ATLANTA

By: _____
Mayor

ATTEST:

Municipal Clerk (SEAL)

RECOMMENDED:

Commissioner, Department of
Public Works

APPROVED:

Chief Procurement Officer

APPROVED AS TO FORM:

City Attorney

**DESIGN-BUILDER: [IF JOINT VENTURE]
[INSERT NAME OF JV]**

By: [INSERT NAME OF JV PARTNER]

By: _____

Name (print): _____

Title: _____

Attest:

Corporate Secretary (seal)

By: [INSERT NAME OF JV PARTNER]

By: _____

Name (print): _____

Title: _____

Attest:

Corporate Secretary (seal)

[INSERT ALTERNATIVE SIGNATURE BLOCKS FOR DESIGN-BUILDER FOR APPROPRIATE CORPORATE STRUCTURE]

FOR A SINGLE CORPORATION

CITY OF ATLANTA

By: _____
Mayor

ATTEST:

Municipal Clerk (SEAL)

RECOMMENDED:

Commissioner, Department of
Public Works

APPROVED:

Chief Procurement Officer

APPROVED AS TO FORM:

City Attorney

DESIGN-BUILDER

By: [INSERT NAME OF CORPORATION]

By: _____

Name (print): _____

Title: _____

Attest:

_____(seal)
Corporate Secretary

FOR A LIMITED LIABILITY CORPORATION (LLC)

CITY OF ATLANTA

By: _____
Mayor

ATTEST:

Municipal Clerk (SEAL)

RECOMMENDED:

Commissioner, Department of
Public Works

APPROVED:

Chief Procurement Officer

APPROVED AS TO FORM:

City Attorney

DESIGN-BUILDER

By: [INSERT NAME OF LLC]

ITS: MANAGING MEMBER

By: _____

Name (print): _____

Title: _____

NOTARY PUBLIC

_____ (SEAL)

MY COMMISSION EXPIRES:

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DRAFT

Exhibit A

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

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Article 1

General

1.1 Mutual Obligations

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

1.2 Basic Definitions

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

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

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

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

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

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

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

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

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

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

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

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

anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

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

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

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

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

1.2.10 Omitted.

1.2.11 Omitted.

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

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

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

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

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

1.2.14 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements. The Owner's Project Criteria may also include the scope of work and Specifications, the drawings and reports, special conditions, appendices to the Agreement, and the other requirements of the Contract Documents.

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

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

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

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

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

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

1.2.21 *Work Product* has the meaning set forth in Article 4 of the Agreement.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder. The following persons are identified by the Design-Builder as its key personnel that will provide the Work required by the Contract Documents (Proponents may provide documentation with equivalent information to augment forms.):

- 2.1.1.1** Key Personnel:
- a. Overall Project Manager
 - b. Construction Manager
 - c. Construction Superintendent
 - d. Project Manager for Design Consultant
 - e. Lead Structural Engineer
 - f. Lead Instrumentation and Control Engineer
 - g. Lead Electrical Engineer
 - h. Lead Geotechnical Design Engineer
 - i. Safety Officer

- 2.1.1.2** Key Subcontractors:
- a. Design Consultant
 - b.
 - c.

2.1.1.3 Design-Builder shall not transfer, reassign or replace Key Personnel and/or Key Subcontractors identified in Articles 2.1.1.1 and 2.1.1.2, except as the result of retirement, voluntary resignation, involuntary termination for cause in Design-Builder's sole discretion, illness, disability, or death, during the term of this Agreement without the prior written approval from the Owner.

2.1.2 Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule, (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution, (iii) whether health and safety issues exist in connection with the Work; and (iv) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s).

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

2.1.4 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, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents within the Contract Time(s). Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.3 Standard of Care for Design Professional Services.

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

2.4 Design Development Services.

2.4.1 Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim design submissions that Owner may wish to review, which interim design submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements. Interim design submissions shall be consistent with the Basis of Design Documents, as the Basis of Design Documents may have been changed through

the design process set forth in this Section 2.4.1. On or about the time of the scheduled submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted design submissions. Changes to the Basis of Design Documents shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all Changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design submissions and meeting minutes.

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

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

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

2.5 Legal Requirements.

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

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

2.6 Government Approvals and Permits.

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

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

2.7 Design-Builder's Construction Phase Services.

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

utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

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

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

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

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

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

2.8 Design-Builder's Responsibility for Project Safety.

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

2.8.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.8.3 Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations

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

2.9 Design-Builder's Warranty.

2.9.1 Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder agrees to assign to the Owner at the time of Substantial Completion of the Work all manufacturer's warranties relating to the Work, and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

2.10 Correction of Defective Work.

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

2.10.2 Design-Builder shall, within three (3) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such three (3) day period, Owner, in addition to any other remedies provided under the Contract Documents, may commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder and its surety shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the three (3) day period identified herein shall be deemed inapplicable.

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

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

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

3.1.2 Owner shall provide timely reviews and approvals of interim design submissions and Construction Documents. Design-Builder shall provide Owner with at least fourteen (14) days for Owner's review of any such submissions and documents, unless a shorter review period is otherwise agreed to by Owner.

3.1.3 Omitted.

3.2 Furnishing of Services and Information.

3.2.1 Omitted.

3.2.2 Omitted.

3.3 Financial Information.

3.3.1 Design-Builder acknowledges that this Agreement and any changes to it by amendment, modification, Change Order or other similar document may have required or may require the legislative authorization of the City's Council and approval of the Mayor. Under Georgia law, Design-Builder is deemed to possess knowledge concerning the City's ability to assume contractual obligations and the consequences of Design-Builder's provision of goods or services to the City under an unauthorized contract, amendment, modification, Change Order or other similar document, including the possibility that the Design-Builder may be precluded from recovering payment for such unauthorized goods or services. Accordingly, Design-Builder agrees that if it provides goods or services to the City under an agreement that has not received proper legislative authorization or if Design-Builder provides goods or services to the City in excess of the any contractually authorized goods or services, as required by the City's Charter and Code, the City may withhold payment for any unauthorized goods or services provided by Design-Builder. Design-Builder assumes all risk of non-payment for the provision of any unauthorized goods or services to the City, and it waives and releases all claims to payment or to other remedies for the provision of any unauthorized goods or services to the City, however characterized, including, without limitation, all remedies at law or equity.

3.3.2 Omitted.

3.4 Owner's Representative.

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

3.5 Government Approvals and Permits.

3.5.1 Omitted.

3.5.2 Owner may provide reasonable assistance to Design-Builder in obtaining those permits,

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

3.6 Owner's Separate Contractors.

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

Article 4

Hazardous Conditions and Investigation of Site Conditions

4.1 Hazardous Conditions.

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

4.1.2 Omitted.

4.1.3 Omitted.

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

4.1.5 Omitted.

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

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

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

owners and users of adjacent utilities.

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

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

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

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

4.2 Design-Builder's Investigation of Site Conditions

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

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

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

THE CITY, ITS AGENTS AND EMPLOYEES MAKE NO REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER TO DESIGN-BUILDER CONCERNING THE CONTRACT

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

Article 5

Insurance and Bonds

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in Appendix B Insurance and Bonding Requirements.

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

5.1.3 Omitted.

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

5.2 Omitted

5.3 Omitted

5.4 Bonds and Other Performance Security.

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

5.4.2 Omitted.

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

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

Article 6

Payment

6.1 Schedule of Values.

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

6.1.2 Omitted.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof. The Application for Payment will be substantially in the form attached to this Agreement as Appendix C.

6.2.2 Omitted.

6.2.3 Omitted.

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

6.3 Withholding of Payments.

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

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

6.4 Interest.

6.4.1 As set forth in Article 7 of the Agreement, this Article 6 and the other Contract Documents

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

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within ten (10) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof, (ii) the remaining items of Work that have to be completed before final payment, (iii) provisions (to the extent not already provided in the Contract Documents) establishing Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment, and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

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

6.7 Final Payment.

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

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

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

6.7.2.2 A general release executed by Design-Builder waiving, upon receipt of final

payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

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

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

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

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

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

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

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

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

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

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

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

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

7.2 Omitted.

7.2.1 Omitted.

7.3 Payment Claim Indemnification.

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

7.4 Design-Builder's General Indemnification.

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

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

7.5 Omitted.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

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

8.2 Delays to the Work.

8.2.1 If Design-Builder is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Design-Builder shall be entitled to an extension of the time for completion only, and shall not be entitled to any additional payment on account of such delay. Without limiting the foregoing, the Design-Builder shall not be entitled to payment or compensation of any kind from Owner for direct, consequential, indirect or impact damages, including but not limited to costs of acceleration arising because of hindrance or delay from any cause whatsoever, whether such hindrances or delays be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable; provided, however, that this provision shall not preclude recovery by the Design-Builder of damages for hindrances or delays due solely to fraud or bad faith on part of the Owner or its agents.

8.2.2 Omitted.

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

Article 9

Changes to the Contract Price and Time

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

9.1 Change Orders.

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

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

9.1.1.1 The scope of the change in the Work;

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

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

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. All Change Orders shall be inclusive of all sales, use, consumer, and other taxes mandated by applicable Legal Requirements.

9.1.3 Omitted.

9.2 Change Directives.

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

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

9.3 Work Authorizations

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

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

9.4 Contract Price Adjustments.

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

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

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

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

9.4.1.4 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement. If the net result of both additions and deletions to the Work is an increase in the Contract Price, overhead and profit shall be calculated on the basis of the net increase to the Contract Price. If the net result of both additions and deletions to the Work is a decrease in the Contract Price, overhead and profit shall be reduced in accordance with Article 6 of the Agreement. . Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

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

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

9.5 Emergencies.

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

9.6 Written Change Order Requirement

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

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

9.7 Accord and Satisfaction

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

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

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

10.2 Mediation.

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

10.2.2 Omitted.

10.2.3 Omitted.

10.2.4 Omitted.

10.3 Arbitration at the City's Election.

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

10.3.2 If claims are not resolved by negotiation, mediation, or otherwise, and the Owner elects arbitration, the arbitration shall be held in Atlanta, Georgia and shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently then in effect. The demand for arbitration shall be in writing and filed with the appropriate organization selected by the Owner and shall be served on the Design-Builder. This agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof. In any arbitration or litigation, the arbitrators or the Court shall have the jurisdiction to award the City costs, arbitrator fees, expert fees, and attorneys' fees, and the arbitrators or the Court shall award all such fees to the City if it is the prevailing party. For purposes of this Section 10.3.2, the City shall be the "prevailing party" if it is successful on the material issues of the dispute, even if the City was not successful on all issues.

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

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

10.4 Litigation if Arbitration Not Elected.

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

10.5 Duty to Continue Performance.

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

10.6 CONSEQUENTIAL DAMAGES.

10.6.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.6.2 AND ARTICLE 11 BELOW), NEITHER DESIGN-BUILDER NOR

OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, LOST PROFITS, BUSINESS, REPUTATION OR FINANCING.

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

Article 11

Stop Work and Termination for Cause

11.1 Owner's Right to Stop Work.

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

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

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

11.2.1 If Design-Builder fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

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

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder and its sureties shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, which costs and expenses are not subject to the waiver of consequential damages set forth in Section 10.6 hereof.

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

11.3 Omitted.

11.4 Omitted.

11.5 Bankruptcy of Design-Builder.

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

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

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

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

Article 12

Electronic Data

12.1 Electronic Data.

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

12.2 Transmission of Electronic Data.

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

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

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

12.3 Electronic Data Protocol.

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

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

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

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

Article 13

Miscellaneous

13.1 Confidential Information.

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

describing the content of the information to be disclosed and providing a copy of the pleading, instrument, document, communication or other written item compelling disclosure or, if not in writing, a detailed description of the nature of the communication compelling disclosure with the name, address, phone number and facsimile number of the person requesting disclosure.

13.2 Assignment.

13.2.1 Design-Builder shall not, without the written consent of Owner assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents. Any such purported assignment shall be null and void absent Owner's written consent.

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 State of Georgia, 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 Owner to insist, in any one or more instances, on the performance of any of the obligations required by Design-Builder 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.

13.10 Release of Quasi-Contractual Claims.

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

13.11 Equal Business Opportunity Compliance.

13.11.1 During the performance of this Agreement, Design-Builder agrees to comply with all provisions of Part 2, Chapter 2, Article X, Division 11, including Section 2-1441 through 2-1460 of the Code of Ordinances of the City of Atlanta, the Equal Business Opportunity (“EBO”) Program as may be hereafter amended.

13.12 No Construction Against the Drafter.

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

13.13 Design-Builder not an Agent of the City.

13.13.1 Design-Builder is an independent contractor of the City and nothing in this Agreement shall be deemed to constitute Design-Builder and the City as partners, joint venturers, or be construed as requiring or permitting the sharing of profits or losses. Nothing in this Agreement shall be deemed to constitute Design-Builder and the City as principal and agent and neither party has the authority to represent or bind or create any legal obligations for or on behalf of the other party.

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DRAFT

Exhibit B

SCOPE OF WORK

FC-8430, Design-Build Service of Northside Drive Pedestrian Bridge

SCOPE OF WORK

Project Description

This proposal is based on the concept drawings dated September 8, 2014 by TVSDESIGN. This project includes a single span pedestrian bridge approximately 15' wide x 110' long over Northside Drive, a series of ramps at each end of the span providing access to the bridge and a steel mesh and tube enclosure structure around the main span. A portion of the ramps will be at grade separated with retaining wall and a portion of them will be bridge spans resting on concrete piers. City of Atlanta prefers to use precast edge beams for the main span as shown in the concept drawings. The finished surface of both the ramps and main bridge span will be cast in place concrete with a broom finish. A positive barrier will be provided to protect pedestrian traffic from the edge of the structure by use of concrete parapet, handrail, fencing, or other acceptable means, or a combination of the above as shown on the concept drawings.

The design-build services include architectural services, engineering services and construction services, with a schedule of 18 months from the Notice of Proceed. This scope is limited to what is shown on the concept plans. Any change from the concept drawings under city's direction shall be change of scope. As an option, the successful proponent may arrange and provide the funding for this project at an agreed interest rate. The city will pay back to the design-build team at or before the end of the project.

Scope of Work

The design-build team shall be responsible for survey, geotechnical investigation, design, acquisition of all permits not acquired by the city, construction, traffic control and lighting etc. All design-build services shall follow the City's engineering design procedures, AASHTO code, GDOT Design Standards, GDOT standard Specifications and other applicable Federal, State and City's guidelines.

1. Surveying and field verification: The design-build team should perform all necessary surveying tasks to undertake and finish the project. The design-build team should perform adequate investigations of existing site conditions to support the design and construction of the project.
2. Utilities: The design-build team should coordinate with the city and all utility providers to agree on a plan to maintain, protect, relocate, reinstall, or other action that may be necessary for the work to progress. Any damages due to the design-builder team's operations shall be repaired at the design-builder team's expense.
3. Geotechnical investigation: The design-build team shall be responsible for geotechnical investigation and design including geotechnical investigation, geotechnical data report, foundation report, geotechnical instrumentation and monitoring, and protection of existing infrastructure, structures and utilities.

FC-8430, Design-Build Service of Northside Drive Pedestrian Bridge

SCOPE OF WORK

4. Bridge design: The design-build team shall be responsible for the design of pedestrian bridge, approaching ramps, retaining walls, railing and other miscellaneous structures, including preparation of design documents, construction plans, specifications, and shop drawings reviews and approvals. The selected architect should provide skin cover, graphic design and signage design. The design loading should meet AASHTO requirements for Pedestrian Walkways and Bridges without H/HS truck loading or lane loading.
5. Construction: The design-build team shall be responsible for the construction of the new pedestrian bridge, approaching ramps to the bridge, retaining walls and other miscellaneous structures.
6. Steel Mesh and tube enclosure structure: The design-build team is responsible for design, fabrication and installation of steel mesh and tube enclosure structures. It includes preparation of design documents, construction plans, specifications, and shop drawings reviews and approvals. The original architect may be involved in the review and approval process of the final shop drawings due to its look and complexity.
7. Painting: The design-build team is responsible to paint all exposed steel members according applicable standards, codes and specifications.
8. Traffic control: The design-build team shall be responsible for providing a safe and effective temporary traffic control plan to move vehicular and pedestrian traffic during all phases of construction.
9. Lighting: The design-build team shall provide and install all the lighting according to the final construction plans.
10. Removal of hazardous waste or contaminated soil: The design-build team is responsible for handling, removal and disposal of hazardous waste or contaminated soil in accordance with applicable laws and standards.

Exclusions from Proposal Scope

1. Right of way and construction easement
2. Relocation of existing traffic signal.
3. Relocation of stadium contractor fencing, barrier wall and signage.
4. Roadway/site work outside the footprint of bridge and ramps.
5. ADA considerations beyond that shown in the concept drawings.
6. Additional architectural features not shown in the concept plans: form liners, specialty finishes, specialty railings or fences, corbels, insets or other formwork specialties.

FC-8430, Design-Build Service of Northside Drive Pedestrian Bridge
SCOPE OF WORK

7. Demolition of existing Georgia Dome sign and Marta sign.

Appendix A

Office of Contract Compliance Requirements



CITY OF ATLANTA

Kasim Reed
Mayor

SUITE 1700
55 TRINITY AVENUE, SW
ATLANTA, GA 30303
(404) 330-6010 Fax: (404) 658-7359
Internet Home Page: www.atlantaga.gov

OFFICE OF
CONTRACT COMPLIANCE
Larry Scott
Director
Lscott@atlantaga.gov

August 25, 2015

RE: Project No.: FC 8430, Design Build for Northside Drive Pedestrian Bridge

Dear Prospective City of Atlanta Bidder:

The Office of Contract Compliance information is an integral part of every City of Atlanta bid. All Bidders are required to make efforts to ensure that businesses are not discriminated against on the basis of their race, ethnicity or gender, and to demonstrate compliance with these program requirements at or prior to the time of Bid opening, or upon request by OCC. Bidders are required to ensure that prospective subcontractors, vendors, suppliers and other potential participants are not denied opportunities to compete for work on a City contract on the basis of their race, ethnicity, or gender, and must afford all firms, including those owned by racial or ethnic minorities and women, opportunities to participate in the performance of the business of the City to the extent of their availability, capacity and willingness to compete. Please read all of the information very carefully. Pay close attention to the specific goal of minority and female business enterprises for this project and the EBO program reminders listed on page 6.

If you have any questions about the information included in this section of the solicitation, please contact the City of Atlanta Office of Contract Compliance at (404) 330-6010.

The City of Atlanta looks forward to the opportunity to do business with your company.

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CITY OF ATLANTA

EQUAL BUSINESS OPPORTUNITY EQUAL EMPLOYMENT OPPORTUNITY

POLICY STATEMENT

It is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City. The City must ensure that firms seeking to participate in contracting and procurement activities with the City are not prevented from doing so on the basis of the race or gender of their owners. The City is committed to ensuring that it is not a passive participant in any private scheme of discrimination. To ensure that businesses are not discriminated against with regard to prime contracting, subcontracting or other partnering opportunities with the City, the City has developed an Equal Business Opportunity (EBO) Program. It is also the policy of the City of Atlanta to actively promote equal employment opportunities for minority and female workers and prohibit discrimination based upon race, religion, color, sex, national origin, marital status, physical handicap or sexual orientation through the City's Equal Employment Opportunity (EEO) Program. The purpose of the Equal Business Opportunity and Equal Employment Opportunity Programs is to mitigate the present and ongoing effects of the past and present discrimination against women and minority owned businesses and women and minority workers so that opportunity, regardless of race or gender, will become institutionalized in the Atlanta marketplace. It is important to note that all bidders, without exception, including minority and female owned business enterprises, must comply with the City of Atlanta's EBO and EEO Program requirements. Goals for minority and female business enterprises are set for this project on page 6.

Implementation of EBO Policy

The Office of Contract Compliance will review information submitted by Bidders pertaining to efforts to promote opportunities for diverse businesses, including M/FBEs, to compete for business as subcontractors and/or Suppliers. A Bidder is eligible for award of a City contract upon a finding by OCC that the Bidder has engaged in, and provided with its bid submission documentation of, efforts to ensure that its process of soliciting, evaluating and awarding subcontracts, placing orders, and partnering with other companies has been non-discriminatory. To assist prime contractors in this effort, the Office of Contract Compliance has set forth in this solicitation document the M/FBEs goals within the relevant NAICS Codes, for this Project.

For subcontracting, the Subcontractor Project Plan must include all subcontractors to be utilized on the project, detail the services to be performed, the dollar value of the work to be performed by each subcontractor, and the City of Atlanta M/FBE certification number and supplier id number.

For Suppliers, the Subcontractor Project Plan must include all suppliers to be utilized on the project, the supplies to be provided, including the dollar value of the supplies being provided and the City of Atlanta M/FBE certification number and supplier id number.

Determination of Non-discrimination During Bid Process

No Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Accordingly, each Bidder shall submit with each Bid the following

1. Covenant of Non Discrimination. Each Bidder shall submit with her/his Bid a Covenant of Non-Discrimination which is set forth herein as Exhibit EBO1.
2. Outreach efforts documentation. Each bidder shall submit with her/his bid written documentation demonstrating the bidder's outreach efforts to identify, contact, contract with, or utilize businesses, including certified MFBEs and SBEs, as subcontractors or suppliers on the contract. This information shall be set forth on Exhibit EBO2, which is included herein.
3. Subcontractor project plan. Each bidder shall submit with her/his bid a completed and signed subcontractor project plan, in a form approved and provided by the office of contract compliance, which lists the name, address, telephone number and contact person of each subcontractor or other business to be used in the contract, the NAICS Code and the type of work or service each business will perform, the dollar value of the work and the scope of work, the ownership of each business by race and gender, if applicable the AABE, APABE, FBE, or HABE certification number of each business, and any other information requested by the office of contract compliance. In order for the office of contract compliance to officially consider a firm to be an MFBE, the MFBE firm must be certified by or have a certification application pending with the office of contract compliance prior to the bidder's submission of the bid. The subcontractor project plan shall not be changed or altered after approval of the plan and award of the contract without the written approval of the director of the office of contract compliance. A written letter to the director of the office of contract compliance requesting approval to

change the subcontractor project plan must be submitted prior to any change in the plan or termination of an MFBE's contract.

OCC Review of Bidder Submissions

The Office of Contract Compliance shall determine whether a Bidder has satisfied the non-discrimination requirements of section 2-1448 based on its review of the Covenant of Non Discrimination, the Outreach Efforts Documentation, the Subcontractor Project Plan, and its review of other relevant facts and circumstances, including complaints received as part of the bid process. In reviewing the documents submitted by a Bidder to determine whether the Bidder has satisfied the non-discriminatory practices requirement of this section, the Office of Contract Compliance will consider, among other things, the total project dollars subcontracted to or expended for services performed by other businesses, including certified MFBEs, whether such businesses perform Commercially Useful Functions in the work of the contract based upon standard industry trade practices, whether any amounts paid to Supplier businesses are for goods customarily and ordinarily used based upon standard industry trade practices, and the availability of certified MFBEs within the relevant NAICS Codes for such Eligible Project.

(a) Receipt of Complaint of Discrimination in the Bid Process

The Office of Contract Compliance shall accept complaints of alleged discrimination during the bid process regarding any participant in the bid process. Where the complaint of discrimination is specific to the procurement which is under consideration by the city, the office of contract compliance may investigate said complaint, determine its validity, and determine whether the actions complained of impact the bidder's responsiveness on the specific procurement. Allegations of discrimination based on events, incidents or occurrences which are unrelated to the specific procurement will be placed in the bidder's file maintained in the vendor relations database and handled in accordance with the procedure established in the city's vendor relations subdivision, section 2-1465, et seq.

(b) Determination of Violation of EBO Process

Determination of violation of EBO process. Where the office of contract compliance investigates a complaint of discrimination that is related to the specific bid process, the details of that investigation, including findings, shall be recorded and maintained in the vendor relations database, pursuant to section 2-1471.

(c) Office of Contract Compliance Determination of Non-Compliance

Office of contract compliance determination of non-compliance. When, based upon the totality of the circumstances, the office of contract compliance determines that a bidder fails to satisfy the requirements of section 2-1448(a) of a city bid solicitation, the director of the office of contract compliance shall present a written determination of non-compliance to the Chief Procurement Officer which states the determination and lists the

reasons for the determination. A bid that does not comply with the requirements set forth in section 2-1448(a) shall be deemed non-responsive and rejected.

Equal Business Opportunity Program Bid/RFP Submittals

The Office of Contract Compliance will make any determinations of non-responsiveness. The covenant of non-discrimination, the outreach efforts documentation, the subcontractor project plan, and any other information required by OCC in the solicitation document pursuant to section 2-1448(b) must be completed in their entirety by each bidder and submitted with the other required bid documents in order for the bid to be considered as a responsive bid. Failure to timely submit these forms, fully completed, will result in the bid being considered as a non-responsive bid, and therefore, excluded from consideration.

Monitoring Of EBO Policy

Upon execution of a contract with the City of Atlanta, the successful bidder's Subcontractor Project Plan will become a part of the contract between the bidder and the City of Atlanta. The Subcontractor Project Plan will be monitored by the City of Atlanta's Office of Contract Compliance for adherence with the plan. The successful bidder will be required to provide specific EBO information on a monthly basis that demonstrates the use of subcontractors and suppliers as indicated on the Subcontractor Project Plan. The failure of the successful bidder to provide the specific EBO information by the specified date each month shall be sufficient cause for the City to withhold approval of the successful bidder's invoices for progress payments, increase the amount of the successful bidder's retainage, or evoke any other penalties as set forth in the City of Atlanta Code of Ordinances, Section 2-1452.

Implementation of EEO Policy

The City effectuates its EEO policy by adopting racial and gender work force availability for every contractor performing work for the City of Atlanta. These percentages are derived from the work force demographics set forth in the 2000 Census EEO file prepared by the United States Department of Commerce for the applicable labor pool normally utilized for the contract.

Monitoring of EEO Policy

Upon award of a contract with the City of Atlanta, the successful bidder must submit a Contract Employment Report (CER), describing the racial and gender make-up of the firm's work force. If the CER indicates that the firm's demographic composition does not meet the adopted EEO goals, the firm will be required to submit an affirmative action plan setting forth the steps to be taken to reach the adopted goals. The CER and the affirmative action plan, if necessary, will become a part of the contract between the successful bidder and the City of Atlanta. Compliance with the EEO requirements will be monitored by the Office of Contract Compliance.

First Source Jobs Program Policy Statement

It is the policy of the City of Atlanta to provide job opportunities to the residents of the City of Atlanta, whenever possible. Every contract with the City of Atlanta creates a potential pool of new employment opportunities. The prime contractor is expected to work with the First Source Jobs Program to fill at least 50% of all new entry-level jobs, which arise from this project, with residents of the City of Atlanta. For more specific information about the First Source Jobs Program contact:

**Michael Sterling
Interim Executive Director
First Source Jobs Program
Atlanta Workforce Development Agency
818 Pollard Boulevard
Atlanta, GA 30315
(404) 546-3001**

Joint Venture Participation on City of Atlanta EBO Projects

The City of Atlanta encourages, where economically feasible, the establishment of joint ventures to ensure prime contracting opportunities for all businesses, including non-discriminatory outreach efforts to utilize certified minority and female business enterprises on Eligible Projects. On selected projects valued at five million dollars and over, the Office of Contract Compliance shall determine on a project-by-project basis whether non-discriminatory outreach efforts to enter into a joint venture shall be required. On such Eligible Projects, joint venture member businesses must have different race ownership, different gender ownership or both. The minority and female business enterprise members of the joint venture on projects on which a Joint Venture is required must be certified as such by the Office of Contract Compliance, and the joint venture team shall include in its bid submittal the M/FBE certification number of each M/FBE joint venture member.

A joint venture may submit its agreement to the Office of Contract Compliance for pre-approval no later than fourteen (14) calendar days prior to the date set for receipt of bids on an Eligible Project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an Eligible Project.

Components of a Joint Venture Agreement

The Joint Venture agreement should include at a minimum:

- The initial capital investment of each venture partner.
- The proportional allocation of profits and losses to each venture partner.
- The sharing of the right to control the ownership and management of the joint venture.
- A detailed description of the discrete portion of work or tasks that will be performed by each of the venture partners.
- The method of, and responsibility for, accounting.
- The methods by which disputes are resolved.
- All other pertinent factors of the joint venture.

Equal Business Opportunity M/FBE Goals for this Project

Project No.: FC 8430, Design Build for Northside Drive Pedestrian Bridge

Part 1: All proponents must ensure that non-discriminatory practices are utilized to enter into a Joint Venture Agreement in accordance with the City of Atlanta's EBO Ordinance. The Joint Venture Agreement, at the very least, should reflect details of the member company's/companies' involvement in the **Design Build for Northside Drive Pedestrian Bridge** project throughout the life of the contract (See Page 6).

Part 2: All proponents must ensure that non-discriminatory practices are utilized during efforts to engage minority and female subcontractors and suppliers throughout the life of the contract. All outreach efforts must be documented and included with this bid submittal.

The availability of certified minority and female firms for the procurement categories listed in this project are:

18.1% AABE's, APABE's, HABE's

and

8.3% FBE

Please be reminded that no Bidder shall be awarded a contract on an Eligible Project unless the Office of Contract Compliance determines that the Bidder has satisfied the non-discrimination requirements of section 2-1448 on such Eligible Project. Details of the O.C.C. review process for determination of non-discrimination are outlined on page 2 of this document.

Equal Business Opportunity Program Reminders

1. Joint Venture Agreements. The Joint Venture member businesses must have different race ownership, different gender ownership, or both. MFBE members of the Joint Venture must be certified as such by the Office of Contract Compliance. The Joint Venture team shall include in its submittal the MFBE certification number of each MFBE Joint Venture member.
2. Subcontractor Certification. It is the prime contractor's responsibility to verify that MFBEs included on the Subcontractor Project Plan are certified by the City of Atlanta's Office of Contract Compliance, or have a certification application pending with the City of Atlanta's Office of Contract Compliance at the time that the bid is submitted.
3. Reporting. The successful bidder must submit monthly EBO participation reports to the Office of Contract Compliance.
4. Subcontractor Contact Form. It is required that bidders list and submit information on all subcontractors they solicit for quotes, all subcontractors who contact them with regard to the project, and all subcontractors they have discussions with regarding the project. Failure to provide complete information on this form will result in your bid being declared non-responsive.
5. EBO Ordinance. The EBO Program is governed by the provisions of the EBO Ordinance set forth in the City of Atlanta Code Division 12, section 2 - 1441 through 2 -1464. The ordinance can be obtained from the City of Atlanta Clerk's Office at (404) 330-6032.
6. Supplier Participation. In order to receive full M/FBE credit, suppliers must manufacture or warehouse the materials, supplies, or equipment being supplied for use on the Eligible Project.
7. OCC Registry of Certified Firms. To access OCC's real time registry of vendors (certified or non-certified), visit our PRISM Compliance Management portal at: <https://pro.prismcompliance.com/default.aspx>. Next, click the drop down arrow under "Visit a Jurisdiction", select "City of Atlanta", and click "go!". Once there, you may search by industry or Certification to obtain your desired results. You may also go to the website: www.atlantaga.gov/contractcompliance and scroll down to the section heading "Registry of Certified Firms". Click OCC's quarterly list to access the current directory of certified firms."

COVENANT OF NON-DISCRIMINATION

The undersigned understands that it is the policy of the City of Atlanta to promote full and equal business opportunity for all persons doing business with the City of Atlanta. The undersigned covenants that we have not discriminated, on the basis of race, gender or ethnicity, with regard to prime contracting, subcontracting or partnering opportunities. The undersigned further covenants that we have completed truthfully and fully the required forms EBO-2 and EBO-3. Set forth below is the signature of an officer of the bidding entity with the authority to bind the entity.

Signature of Attesting Party

Title of Attesting Party

On this ____ day of _____, 20____, before me appeared _____, the person who signed the above covenant in my presence.

Notary Public

Seal

First Source Job Information

Company Name: _____

FC No.: _____

Project Name: _____

The following entry level positions will become available as a result of the above referenced contract with the City of Atlanta.

- 1.
- 2.
- 3.
- 4.
- 5.

Include a job description and all required qualifications for each position listed above.

Identify a company representative and contact phone number who will be responsible for coordinating with the First Source Jobs Program.

Company Representative: _____

Phone Number: _____

First Source Jobs Agreement

THIS AGREEMENT REGARDING THE USE OF THE FIRST SOURCE JOBS PROGRAM BY CONTRACTORS WITH THE CITY OF ATLANTA TO FILL ENTRY LEVEL JOBS is made and entered into by _____

This _____ day of _____, 201__.

The City of Atlanta requires the immediate beneficiary or primary contractor for every eligible project to enter into a First Source Jobs employment agreement. The contractor agrees to the following terms and conditions:

- The first source for finding employees to fill all entry level jobs Created by the eligible project will be the First Source Program.
- The contractor will make every effort to fill 50% of the entry level jobs created by this eligible project with applicants from the First Source Program.
- The contractor shall make good faith effort to reach the goal of this employment agreement.
- Details as to the number and description of each entry level job must me provided with the bid.
- The contractor shall comply with the spirit of the First Source Jobs Policy beyond the duration of this agreement and continue to make good faith attempts to hire employees of similar backgrounds to those participating in the First Source Program.
- The contractor as a condition of transfer, assignment or otherwise shall require the transferee to agree in writing to the terms of the employment Agreement.

Upon a determination that a beneficiary or contractor has failed to comply with the terms of this Agreement, the City may impose the following penalties based on the severity of the non-compliance:

- The City of Atlanta may withhold payment from the contractor.
- The City of Atlanta may withhold 10 percent of all future payments on the contract until the contractor is in compliance
- The City of Atlanta may refuse all future bids on city projects or applications for financials assistance in any form from the City until the contractor demonstrated that the First Source requirements have been met, or cancellation of the eligible project.
- The City of Atlanta may cancel the eligible project.

All terms stated herein can be found in the City of Atlanta Code of Ordinances Sections 5-8002 through 5-8005.

The undersigned hereby agrees to the terms and conditions set forth in this agreement.

Contractor

Appendix B

Insurance and Bonding Requirements

APPENDIX B
INSURANCE & BONDING REQUIREMENTS
FC-8430, Design-Build Northside Drive Pedestrian Bridge

A. Preamble

The following requirements apply to all work under the agreement. Compliance is required by all Contractors/Consultants. **To the extent permitted by applicable law, the City of Atlanta (“City”) reserves the right to adjust or waive any insurance or bonding requirements contained in this Appendix B and applicable to the agreement.**

1. Evidence of Insurance Required Before Work Begins

No work under the agreement may be commenced until all insurance and bonding requirements contained in this Appendix B, or required by applicable law, have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City. Contractor/Consultant must provide City with a Certificate of Insurance that clearly and unconditionally indicates that Contractor/Consultant has complied with all insurance and bonding requirements set forth in this Appendix B and applicable to the agreement. If the Contractor/Consultant is a joint venture, the insurance certificate should name the joint venture, rather than the joint venture partners individually, as the primary insured. In accordance with the solicitation documents applicable to the agreement at the time Contractor/Consultant submits to City its executed agreement, Contractor/Consultant must satisfy all insurance and bonding requirements required by this Appendix B and applicable by law, and provide the required written documentation to City evidencing such compliance. In the event that Contractor/Consultant does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the agreement, City may, in addition to any other rights City may have under the solicitation documents applicable to the agreement or under applicable law, make a claim against any bid security provided by Contractor/Consultant.

2. Minimum Financial Security Requirements

All companies providing insurance required by this Appendix B must meet certain minimum financial security requirements. These requirements must conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the documentation provided by Contractor/Consultant to City certifying that all insurance and bonding requirements set forth in this Appendix B and applicable to the agreement have been unconditionally satisfied.

For all agreements, regardless of size, companies providing insurance or bonds under the agreement must meet the following requirements:

- i) Best's rating not less than A-,
- ii) Best's Financial Size Category not less than Class VII, and

- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia.
- iv) All bid, performance and payment bonds must be underwritten by a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Contractor/Consultant in writing. Contractor/Consultant must promptly obtain a new policy or bond issued by an insurer acceptable to City and submits to City evidence of its compliance with these conditions.

Contractor/Consultant's failure to comply with all insurance and bonding requirements set forth in this Appendix B and applicable to the agreement will not relieve Contractor/Consultant from any liability under the agreement. Contractor/Consultant's obligations to comply with all insurance and bonding requirements set forth in Appendix B and applicable to the agreement will not be construed to conflict with or limit Contractor/Consultant's/Consultant's indemnification obligations under the agreement.

3. Insurance Required for Duration of Contract

All insurance and bonds required by this Appendix B must be maintained during the entire term of the agreement, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

4. Notices of Cancellation & Renewal

Contractor/Consultant must, notify the City of Atlanta in writing at the address listed below by mail, hand-delivery or facsimile transmission, within 2 days of any notices received from any insurance carriers providing insurance coverage under this Agreement and Appendix B that concern the proposed cancellation, or termination of coverage.

Enterprise Risk Management
68 Mitchell St. Suite 9100
Atlanta, GA 30303
Facsimile No. (404) 658-7450

Confirmation of any mailed notices must be evidenced by return receipts of registered or certified mail.

Contractor/Consultant shall provide the City with evidence of required insurance prior to the commencement of this agreement, and, thereafter, with a certificate evidencing renewals or changes to required policies of insurance at least fifteen (15) days prior to the expiration of previously provided certificates.

5. Agent Acting as Authorized Representative

Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this contract shall warrant when signing the Accord Certificate of Insurance that specific authorization has been granted by

the Companies for the Agent to bind coverage as required and to execute the Acord Certificates of Insurance as evidence of such coverage. City of Atlanta coverage requirements may be broader than the original policies; these requirements have been conveyed to the Companies for these terms and conditions.

In addition, each and every agent shall warrant when signing the Acord Certificate of Insurance that the Agent is licensed to do business in the State of Georgia and that the Company or Companies are currently in good standing in the State of Georgia.

6. Certificate Holder

The **City of Atlanta** must be named as certificate holder. All notices must be mailed to the attention of **Enterprise Risk Management** at **68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303**.

7. Project Number & Name

The project number and name must be referenced in the description section of the insurance certificate.

8. Additional Insured Endorsements Form CG 20 26 07 04 or equivalent

The City must be covered as Additional Insured under all insurance (except worker's compensation and professional liability) required by this Appendix B and such insurance must be primary with respect to the Additional Insured. **Contractor/Consultant must submit to City an Additional Insured Endorsement evidencing City's rights as an Additional Insured for each policy of insurance under which it is required to be an additional insured pursuant to this Appendix B. Endorsement must not exclude the Additional Insured from Products - Completed Operations coverage. The City shall not have liability for any premiums charged for such coverage.**

9. Mandatory Sub-Contractor/Consultant Compliance

Contractor/Consultant must require and ensure that all subContractor/Consultants/subconsultants at all tiers to be sufficiently insured/bonded based on the scope of work performed under this agreement.

10. Self Insured Retentions, Deductibles or Similar Obligations

Any self insured retention, deductible or similar obligation will be the sole responsibility of the contractor.

B. Workers' Compensation and Employer's Liability Insurance

Contractor/Consultant must procure and maintain Workers' Compensation and Employer's Liability Insurance in the following limits to cover each employee who is or may be engaged in work under the agreement. :

Workers' Compensation. **Statutory**

Employer's Liability:

Bodily Injury by Accident/Disease **\$1,000,000 each accident**
Bodily Injury by Accident/Disease **\$1,000,000 each employee**
Bodily Injury by Accident/Disease **\$1,000,000 policy limit**

C. Commercial General Liability Insurance

Contractor/Consultant must procure and maintain Commercial General Liability Insurance on form (CG 00 00 01 or equivalent) in an amount not less than **\$1,000,000 per occurrence subject to a \$2,000,000 aggregate**. The following indicated extensions of coverage must be provided:

- Contractual Liability
- Broad Form Property Damage
- Premises Operations
- Personal Injury
- Fire Legal Liability
- Medical Expense
- Independent Contractor/Consultants/SubContractor/Consultants
- Products – Completed Operations
- Explosion, Collapse and Underground (XCU) Liability
- Additional Insured Endorsement* (primary& non-contributing in favor of the City of Atlanta)
- Waiver of Subrogation in favor of the City of Atlanta

D. Commercial Automobile Liability Insurance

Contractor/Consultant must procure and maintain Automobile Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following indicated extensions of coverage must be provided:

- Owned, Non-owned & Hired Vehicles
- Waiver of Subrogation in favor of the City of Atlanta

If Contractor/Consultant does not own any automobiles in the corporate name, non-owned vehicle coverage will apply and must be endorsed on either Contractor/Consultant's personal automobile policy or the Commercial General Liability coverage required under this Appendix B.

E. Excess or Umbrella Liability Insurance

Contractor/Consultant shall procure and maintain a policy providing Excess or Umbrella Liability Insurance which is at least as broad as the underlying policy. This insurance, which shall be maintained throughout the life of the contract, shall be in an amount of not less than **\$10,000,000 per occurrence**.

- Coverage must follow form with primary policy
- May be used to achieve minimum liability limits
- Coverage must be as broad as primary policy

F. Builders Risk / Installation Floater

Contractor/Consultant shall procure and maintain policy for Builders Risk/ Installation Floater with all risk coverage to cover damage or destruction to renovations, repairs or equipment being installed or otherwise being handled or stored by the Contractor, including off-site storage, transit and installation. The coverage must be in an amount equal to **100 percent of the value of the contract**. The following indicated extensions of coverage must be provided:

- All Risk Coverage
- Operational Testing Coverage included
- Loss Payee Endorsement

G. Property Coverage/Inland Marine

Contractor/Consultant shall procure and maintain all risk property coverage in an amount equal to replacement value for all equipment, furniture, fixtures, machinery and/or personal property.

H. Professional Liability Insurance

Contractor/Consultant shall procure and maintain during the life of this contract Professional Liability Insurance in an amount of **\$5,000,000** per occurrence and annual aggregate. The policy will fully address the Contractor/Consultant's professional services associated with the scope of work contained in this document. The policy will include at least a three year Extended Reporting Provision.

I. Performance Bond and Payment Bond

Contractor/Consultant shall furnish a Payment Bond and a Performance Bond to the City in an amount equal to **100 percent of the total contract value** and for the duration of the entire term.

The person executing the Bonds on behalf of the surety shall file with the Bonds a general power of attorney unlimited as to amount and type of bonds covered by such power of attorney, and certified by an official of said surety. **Be a U.S. Treasury Circular 570 listed company.**

FC-8430, Design-Build Northside Drive Pedestrian Bridge

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