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**STANDARD *MODIFIED* FORM OF  
AGREEMENT BETWEEN OWNER  
AND DESIGN-BUILDER - LUMP SUM**

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**Document No. 525**

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Washington, DC

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## **Standard Modified** 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.*

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

**OWNER:**  
*(Name and address)*

**DESIGN-BUILDER:**  
*(Name and address)*

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

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

## **Article 1**

### **Scope of Work**

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

## **Article 2**

### **Contract Documents**

**2.1** The Contract Documents are comprised of the following:

**2.1.1** All written modifications, amendments, minor changes and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2010 Edition) as modified ("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 and attachments, executed by Owner and Design-Builder (List for example, performance standard requirements, performance incentive requirements, markup exhibits, allowances, or unit prices);

*This Agreement includes the following documents: The Request for Qualifications (RFQ), the design builder entity's response to the RFQ or also known as the Statement of Qualifications (SOQ), the Request for Proposals (RFP), the design builder entity's response to the RFP or also known as the Proposal.*

*Other documents included in this Agreement include any and all documents within or considered a part of the RFP and any and all attachments and addenda to the RFP.*

*NOTE: The RFQ and RFP contain supplemental municipal, state and federal contract requirements that Design Builder agrees to comply to and are hereby incorporated herein by reference and made part of this Agreement.*

**2.1.4** The General Conditions of Contract; and

**2.1.5** Construction Documents prepared and approved in accordance with Section 2.4 of the General Conditions of Contract.

## **Article 3**

### **Interpretation and Intent**

**3.1** Design-Builder and Owner, prior to execution of the Agreement, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents, for any conflicts or

ambiguities. Design-Builder and Owner ~~will~~ shall discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement.

*All of the terms and provisions of the Contract Documents, including but not limited to the exhibits, RFQ, RFP and Design Builder's responses thereto, are incorporated herein by reference and made a part of this Agreement. The Work shall meet or exceed the terms and provisions of the Agreement and the other contract documents including the RFQ, RFP and the Design Builder's responses thereto unless expressly excepted, noted and agreed upon between Design Builder and Owner.*

**3.2** The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after execution of the Agreement, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof. Conflicts existing within Section 2.1.2 shall be resolved by giving precedence first to the Deviation List, if any, then the Owner's Project Criteria, and then the Design-Builder's Proposal.

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

**3.4** If Owner's Project Criteria contain design specifications: (a) Design-Builder shall be entitled to reasonably rely on the accuracy of the information represented in such design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any performance specifications; and (b) Design-Builder shall be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

**3.5** The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements 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 instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

**4.2 Owner's ~~Limited License Ownership~~ Upon Project Completion and Payment in Full to Design-Builder.**

~~Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.~~

~~[At the parties' option, one of the following may be used in lieu of Section 4.2]:~~

~~Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder: (a) grants Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project; and (b) transfers all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in that portion of the Work Product that consists of architectural and other design elements and specifications that are unique to the Project. The parties shall specifically designate those portions of the Work Product for which ownership in the Work Product shall be transferred. Such grant and transfer are conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below.~~

~~or~~

Upon Owner's payment in full for all Work *satisfactorily* performed under the Contract Documents, Design-Builder transfers to Owner all ownership and property interests, including but not limited to any intellectual property rights, copyrights and/or patents, in the Work Product. Such transfer is conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier ~~(collectively the "Indemnified Parties"), and on the Owner's obligations to provide the indemnity set forth in Section 4.5 below.~~

**4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate.** If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

**4.3.1** Use of the Work Product is at Owner's sole risk without liability or legal exposure to ~~Design Builder any Indemnified Party and on the Owner's obligation to provide the indemnity set forth in Section 4.5 below;~~ and

~~**4.3.2** Owner agrees to pay Design-Builder the additional sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) as compensation for the right to use the Work Product to complete the Project and subsequently use the work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.~~

**4.4 Owner's Limited License upon Design-Builder's Default.** If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

~~**4.5 Owner's Indemnification for Use of Work Product.** If Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify and hold harmless such Indemnified Parties from and against any and all claims, damages, liabilities, losses and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product.~~

## 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 the parties mutually agree otherwise in writing.

**5.2 Substantial Completion and Final Completion.**

**5.2.1** Substantial Completion of the entire Work shall be achieved no later than Nine Hundred Thirteen ( 913 ) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

***[At the parties' option, the following supplemental language may be inserted at the end of Section 5.2.1, if the Project is subject to a Temporary Certificate of Occupancy]***

The parties agree that the definition for Substantial Completion set forth in Section 1.2.18 of the General Conditions of Contract is hereby modified to read as follows:

~~"Substantial Completion is the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes, provided, however, that Substantial Completion shall be deemed to have been achieved no later than the date of issuance of a Temporary Certificate of Occupancy issued by the local building official."~~

**5.2.2** Interim milestones and/or Substantial Completion of identified portions of the Work ("Scheduled Interim Milestone Dates") shall be achieved as follows: *(Insert any interim milestones for portions of the Work with different scheduled dates for Substantial Completion)*

**5.2.3** Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. 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~~ **shall** suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by \_\_\_\_\_

(\_\_\_\_\_) days after the Scheduled Substantial Completion Date (the "LD Date"), Designer-Builder shall pay Owner Two Hundred Fifty Dollars (\$ 250.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date.

~~***[The parties may want to consider the following supplemental language within Section 5.4 if they want to assess liquidated damages for failing to meet Final Completion. In this case, the first sentence in Section 5.2.3 should be deleted and replaced with the following language.]***~~

Design-Builder understands that if Final Completion is not achieved within \_\_\_\_\_ 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 \_\_\_\_\_ days of Substantial Completion, Design-Builder shall pay to Owner \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), as liquidated damages for each calendar day that Final Completion is delayed beyond the above-referenced number of days.

~~***[In lieu of the liquidated damages specified in Section 5.4 or the alternate provided herein, the Parties may decide that the Agreement will provide for actual damages in the event of Project delay, with Owner being cautioned that there is a waiver of consequential damages under Section 10.5.1 of the General Conditions of Contract. In this case, delete Sections 5.4 and 5.5 and insert the following]***~~

~~**5.4**~~ Design-Builder and Owner have agreed not to provide for liquidated damages in this Agreement for failure of Design-Builder to achieve the Contract Time(s) set forth in this Article 5. Design-Builder understands, however, that Owner may suffer actual damages in the event the Contract Time(s) set forth herein are not timely achieved. Owner shall be able to recover such actual damages from Design-Builder to the extent it can demonstrate that actual damages have been incurred, are directly related and caused by Design-Builder's failure to meet the Contract Time(s) set forth herein, and are not waived by Section 10.5.1 of the General Conditions of Contract. Notwithstanding the foregoing, in no event shall Design-Builder's liability for actual damages for delays exceed \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

~~**5.5**~~ Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving the Contract Time(s).

~~***[The Parties may also desire to cap the liquidated damages payable under this Agreement, in which case the following language should be included at the end of Section 5.5.]***~~

Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement for failure to achieve the Contract Time(s) shall be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

~~**5.6**~~ ~~**Early Completion Bonus.**~~ If Substantial Completion is attained on or before \_\_\_\_\_ (\_\_\_\_\_) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.3 hereof an early completion bonus of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for each day that Substantial Completion is attained earlier than the Bonus Date. ~~*(If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly)*~~

~~***[The Parties may also desire to cap the early completion bonus payable under Section 5.6, in which case the following language should be included.]***~~

Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

~~5.7 [The Parties may also desire to modify Article 8.2.2 of the General Conditions of Contract relative to compensability of delays that would cause the Contract Time(s) to be extended. In such case, the following option can be used.]~~

~~In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 of the General Conditions of Contract, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.2.1 of the General Conditions of Contract, provided, however, for Force Majeure Events, Design-Builder shall only be entitled to an increase in the Contract Price if said events exceed \_\_\_\_\_ cumulative days. Said additional compensation shall be limited to:~~

~~**[Check one box only]**~~

~~\$ \_\_\_\_\_ dollars a day for each day work is delayed beyond the Scheduled Substantial Completion Date.~~

~~or~~

~~the direct costs and expenses Design-Builder can demonstrate it has reasonably and actually incurred as a result of such event.~~

## **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 \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) ("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 ten \_\_\_\_\_ percent (10%) of the additional costs incurred for that Change Order, plus any other markups set forth at Exhibit \_\_\_\_\_ hereto.

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

***[Check one box only]***

No additional reduction to account for Design-Builder's Fee or any other markup.

or

An amount equal to the sum of: (a) two and one half percent (2.5%) applied to the direct costs of the net reduction (which amount ~~will~~ shall account for a reduction associated with Design-Builder's Fee); plus (b) any other markups set forth at Exhibit \_\_\_\_\_ hereto applied to the direct costs of the net reduction.

### 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 an Exhibit hereto.

**6.3.2** Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner ~~will~~ shall continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value. ~~There are no guarantees that this contract shall have any allowances.~~

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

**6.3.4** 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.

~~*[In the alternative, the parties may want to delete Section 6.3.4 and add the following provision.]*~~

~~In the event the actual direct cost of labor, materials, equipment, transportation, taxes and insurance associated with an Allowance Item is \_\_\_\_\_ percent (\_\_\_\_%) greater than or less than the Allowance Value for such Allowance Item, Design-Builder and Owner agree that Design-Builder's right to Fee and markup shall be adjusted in accordance with Section 6.2.~~

**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.

~~The ten percent (10%) markup shall not be allowed on an additive Change Order to increase an allowance.~~

### ~~6.4 Performance Incentives.~~

~~**6.4.1** Owner and Design-Builder have agreed to the performance incentive arrangements set forth in Exhibit \_\_\_\_\_.~~

~~*[The parties are encouraged to discuss and agree upon performance incentives that will influence project success. These incentives may consist of Award Fees, incentives for safety, personnel retention, client satisfaction and similar items.]*~~

## Article 7

### Procedure for Payment

#### 7.1 Progress Payments.

7.1.1 Design-Builder shall submit to Owner on the *twenty fifth day of the month (25)* 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 ~~ten (10)~~ *thirty (30)* days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

## 7.2 Retainage on Progress Payments.

7.2.1 Owner ~~will shall~~ retain ten percent (10%) of each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed, *in the opinion of the Owner*, by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner ~~will shall~~ not retain any additional retention amounts from Design-Builder's subsequent Applications for Payment, *except for stored materials*. ~~Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.~~

~~*[Design-Builder and Owner may want to consider substituting the following retainage provision.]*~~

Owner will retain \_\_\_\_\_ percent (\_\_\_\_\_% ) from Design-Builder's Applications for Payment, ~~exclusive of general conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment 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 will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Subcontractors completing their work early in the Project.~~

7.2.2 Within ~~fifteen (15)~~ *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) *200% times* 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 thirty (30) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract. *A Final Adjusting Change Order shall accompany the Final Application for Payment.*

7.4 **Interest.** Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest ~~commencing five (5) days after payment is due at the rate of \_\_\_\_\_ percent (\_\_\_\_\_% ) per month as governed by O.C.G.A. § 13-11-7, interest on late payments, except for any disputed amounts until paid.~~

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 changes in the 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. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

## Article 8

### Termination for Convenience

**8.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**8.1.1** All Work *satisfactorily* executed *by Design Builder* and for ~~proven-less~~ *reasonable* cost or expense in connection with the Work;

**8.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

**8.1.3** *(Choose one of the following:)*

The fair and reasonable sums for overhead and profit on the sum of items 8.1.1 and 8.1.2 above.

or

Overhead and profit in the amount of \_\_\_\_\_ percent ( \_\_\_\_\_ %) on the sum of items 8.1.1 and 8.1.2 above.

~~**8.2** In addition to the amounts set forth in Section 8.1 above, Design-Builder shall be entitled to receive one of the following as applicable:~~

~~**8.2.1** If Owner terminates this Agreement prior to commencement of construction, Design-Builder shall be paid \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the remaining balance of the Contract Price.~~

~~**8.2.2** If Owner terminates this Agreement after commencement of construction, Design-Builder shall be paid \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the remaining balance of the Contract Price.~~

**8.3** If Owner terminates this Agreement pursuant to Section 8.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 hereof. ~~Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4.~~

*[The following Article 9 should be used only if the Owner and Design-Builder agree to establish*

*their respective representatives at the time the Agreement is executed rather than during the performance of the Project.]*

## **Article 9**

### **Representatives of the Parties**

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

**9.1.1** Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

**9.1.2** Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

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

**9.2.1** Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

**9.2.2** Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: *(Identify individual's name, title, address and telephone numbers)*

## **Article 10**

### **Bonds and Insurance**

**10.1 Insurance.** Design-Builder *and its subcontractors (including but not limited to the Design Consultant) shall not commence work until they have procured and Owner shall procure* the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

**10.2 Bonds and Other Performance Security.** Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

**Performance Bond.**

*[Check one box only. If no box is checked, then no bond is required.]*

Required                       Not Required

**Payment Bond.**

*[Check one box only. If no box is checked, then no bond is required.]*

Required                       Not Required

**Other Performance Security.**

*[Check one box only. If no box is checked, then no other performance security is required. If the "Required" box is checked, identify below the specific performance security that is being required and all salient commercial terms associated with that security.]*

*BID BOND*

Required                       Not Required

*See Insurance Exhibit, Design-Builders Insurance Requirements for additional sureties/insurance requirements.*

## **Article 11**

### **Other Provisions**

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

*Attachment A – DEFINITION OF TERMS*

*Attachment B – SCOPE OF WORK*

*Attachment C – Includes the following documents:*

*GENERAL CONDITIONS (modified DBIA FORM 535)*

*INSURANCE EXHIBIT (DBIA DOCUMENT No. E-INS-I)*

*Attachment D – PROJECT BACKGROUND DOCUMENTS*

*Attachment E – PLANT PERFORMANCE TESTING*

*Attachment F – SUBMISSION FORMS*

*Attachment G – COST PROPOSAL FORM*

*Attachment H – OWNER'S PROJECT CRITERIA*

*It must be noted that the RFQ and the RFP contain supplemental municipal, state and federal contract requirements that Design-Builder agrees to comply to.*

[Section 2.3.1 of the General Conditions of Contract sets forth a traditional negligence standard as it relates to the Design-Builder's performance of design professional services. If the Basis of Design Documents identify specific performance standards that can be objectively measured, the parties, by including the following language, agree that the Design-Builder is obligated to achieve such standards.]

Notwithstanding Section 2.3.1 of the General Conditions of Contract, if the parties agree upon specific performance standards in the Basis of Design Documents, the design professional services shall be performed to achieve such standards.

~~[In lieu of Sections 10.3.1 through 10.3.3 of the General Conditions of Contract, the parties may want to delete such sections and include the following alternative dispute resolution clause.]~~

~~Any claims, disputes, or controversies between the parties arising out of or related to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 of the General Conditions of Contract shall be resolved in a court of competent jurisdiction in the state in which the Project is located.~~

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

**OWNER:**

City of Lyons, Georgia  
(Name of Owner)

BY: Willis D. NeSmith, Jr., Mayor

Attest: Lynn Rowland, City Clerk

**DESIGN-BUILDER:**

INSERT Company Name  
(Name of Design-Builder)

Insert name and Title

Attest: Insert name and Title

[CORPORATE SEAL]

[CORPORATE SEAL]

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

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

**Caution: You should sign an original DBIA document which has this caution printed in blue. An original assures that changes will not be obscured as may occur when documents are reproduced.**