



Department of Purchasing & Contract Compliance

Cecil S. Moore, CPPO, CPPB, CPSM, C.P.M., A.P.P
Director

Fulton County, GA

September 16, 2011

Re: #11RFP78834K-DB; Design/Build Services for S134 Big Creek WRF Immediate Needs Rehabilitation Project

Dear Vendors

Attached is one (1) copy of Addendum 4, hereby made a part of the above referenced #11RFP78834K-DB; Design/Build Services for S134 Big Creek WRF Immediate Needs Rehabilitation Project

Except as provided herein, all terms and conditions in the RFP referenced above remain unchanged and in full force and effect.

Sincerely,

Darlene A. Banks DAB

Darlene A. Banks, CPPB
Assistant Purchasing Agent

Winner 2000 - 2009 Achievement of Excellence in Procurement Award • National Purchasing Institute



130 Peachtree Street, S.W., Suite 1168 • Atlanta, GA 30303 • (404) 612-5800

This Addendum forms a part of the contract documents and modifies the original Proposal documents as noted below:

The Due Date for this project has been changed from Monday, September 26, 2011 to **Thursday, October 20, 2011 @ 11:00am.**

The last day for Clarifications or Interpretations (Questions & Answers) has been extended to Monday, October 3, 2011 by 4:00pm. However, the County will not accept any more requests to approve manufactures substitutions.

Attachments:

Attached is the Sample Contract, Volume III, for “Design/Build Services for S134-Big Creek WRF Immediate Needs Rehabilitation Project.”

Attached is the Revised Cost Proposal Summary Fixed Design/Build Price Form.

Note:

Please review/note the changes to this RFP.

Equipment Proposal Form.

Equipment Manufacture “Or Equal”:

Equipment Manufacturer “Or Equal”

The following manufacturers may be included in the list of acceptable manufacturer for the listed equipment:

Equipment

Vertical Non-Clog Pumps
Odor Control Systems
Liquid Polymer Preparation Equipment
Lime Slaker
Liquid Polymer Preparation Equipment
Vertical Non-Clog Pumps
Butterfly Valves
Swing Check Valves
Progressive Cavity Feed Pumps

Manufacturer

Chicago Pump
Bay Products, Inc.
Siemens Water Technologies Corporation
Siemens Water Technologies Corporation
Enpro Technologies
Cornell Pump Company
Dezurik, Inc.
Apco Valve
Seepex, Inc.

The following manufacturers are not included in the list of acceptable manufacturers for the listed equipment, have not proposed equipment acceptable as a substitute, or were not submitted in time for review:

Equipment

Vacuum system for chemical dosing
Secondary Clarifier Equipment
Peristaltic Hose Pumps
Influent Screens

Manufacturer

JCS Industries, Inc.
Monroe Environmental
Thermo Fisher Scientific
Spaans Babcock Inc.

The following equipment is not part of the scope of work and has not been reviewed:

Equipment

Manufacturer

Blower Siemens Energy Inc., Turbomachinery Solutions (former Turblex)

Changes to the RFP:

1. The existing Exhibit 10.2, Cost Proposal Summary Form included in the RFP is to be deleted. A revised Exhibit 10.2, Cost Proposal Summary Form, attached to this addendum, is to be submitted with the proposal.
2. Attached is an "Equipment Proposal Form", which the Proposer is to use to name the manufacturers of the major equipment for this project. This form is to be included in the Proposer's Technical Proposal.
Note the following: Proposer shall include all additional parameters regarding the design/operational requirements that are applicable to the given system and/or equipment. This shall include items such as flow rates, ratios, or other appropriate measurements. Specific information shall include the appropriate measurements and units (e.g., gpm, volts, ft², etc.). Proposer shall identify each major component of the equipment and system (e.g., tank walls, casings, enclosures, cores, etc.). Proposer shall identify the corresponding material of the listed component (e.g., concrete, type of metal, etc.)
3. During the site visits on September 8 and 9, the County has become aware that the gates in aeration basin number 3 are not completely sealing. The following is to be added to Appendix 2, 2.2.6.3: The D/B Company is to evaluate the gates in the aeration basins and to bring them into working order. This is to include bringing gates within leakage allowances as indicated in AWWA C513 or C560, as applicable.
4. The following is to be added to Appendix 2, 2.3: The interior of the equalization tank shall receive a special concrete protection coating. The specific coating and extent required is to be determined by the D/B Company.

5. Appendix 18.3 Odor Control Guarantee in the RFP is to be deleted and replaced with the following:

The BCWRF is to be kept from becoming an odor nuisance during construction. The D/B Company is to control concentrations of odor causing compounds such that they are not released in greater quantity while the D/B Work is going on than during normal plant operation.

The D/B Company is to take measurements of the air at the BCWRF property lines at the closest points to residents and businesses near where the D/B Work is to be done. The D/B Company is to justify which type of measurements are to be done so that it can be demonstrated this goal is met, either using calibrated gas detection meters or by determining the Dilution-to-Threshold (D/T) odor concentration, or both. D/T is as defined in ASTM E-679: Standard of Practice for Determination of Odor and Taste Thresholds by a Forced-Choice Ascending Concentration Series Method of Limits, current version. Field measurements of D/T odor concentration shall be done simultaneously by one member each of D/B Company staff, Fulton County staff, and Fulton County's Contract Operations staff. Pre-construction measurements are to be done at various times of the day and at various flows. The atmospheric and wind conditions are to be measured at the time of reading. The pre-construction readings shall be submitted to the Owner prior to start of the work. Similar measurements are to be done while the D/B Work is being performed, specifically while covers are open and/or odor control systems are being modified. During construction, there shall not be more than a maximum concentration of any odor causing compounds of 10 parts per billion (ppb) greater than the concentration indicated in the pre-construction odor measurements, as measured at the property line, nor shall there be any odor at the property line greater than 5 D/T odor concentration indicated in the pre-construction odor measurements, as measured at the property line. Odor concentrations are to be measured while the D/B Work is being performed.

Failure of the Odor Guarantee constitutes an increase of odor concentrations, quantified above, for a duration of greater than 4 hours and will require the D/B Company to immediately apply corrective measures to reduce the odors to an acceptable level. Should the D/B Company fail to correct the excess odor and the County is required to take action to do so, the D/B Company is to compensate the County for the cost to bring the odor level into compliance. Failure of the Odor Guarantee is not a reason for stoppage or slowdown of the work, nor is it a reason for lengthening the contract period.

ACKNOWLEDGEMENT OF ADDENDUM NO. 4

The undersigned proposer acknowledges receipt of this addendum by returning one (1) copy of this form with the proposal package to the Department of Purchasing and Contract Compliance, Fulton County Public Safety Building, 130 Peachtree Street, Suite 1168, Atlanta, Georgia 30303 by **11:00am on Thursday, October 20, 2011.**

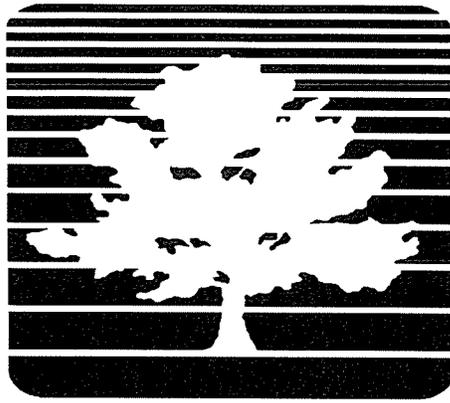
This is to acknowledge receipt of Addendum No. 4 _____ day of _____, 2011.

_____ Legal Name of Proposer

_____ Signature of Authorized Representative

_____ Title

ATTACHMENT
“Sample Contract”



FULTON COUNTY



PURCHASING DEPARTMENT

VOLUME III SAMPLE CONTRACT

FOR

REQUEST FOR PROPOSAL # 11RFP78834K-DB

**DESIGN/BUILD SERVICES FOR:
S134 – BIG CREEK WRF IMMEDIATE NEEDS
REHABILITATION PROJECT**

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.1 DEFINITIONS

1.2 INTERPRETATIONS

- 1.2.1 Applicability and Stringency of Contract Standards
- 1.2.2 As Shown, As Indicated, As Detailed
- 1.2.3 Causing Performance
- 1.2.4 Cost and Expense of Performance
- 1.2.5 Counterparts
- 1.2.6 Defined Terms
- 1.2.7 Delivery of Documents in Digital Format
- 1.2.8 Directed, Required, Acceptable
- 1.2.9 Entire Design/Build Contract
- 1.2.10 Gender and Plurality
- 1.2.11 Good Industry Practice and Good Engineering and Construction Practice
- 1.2.12 Governing Law
- 1.2.13 Headings
- 1.2.14 Internal Conflict or Discrepancy
- 1.2.15 Interpolation
- 1.2.16 Liquidated Damages and Fixed Design/Build Price Reductions
- 1.2.17 Minimum Technical Requirements
- 1.2.18 No Third Party Rights
- 1.2.19 Persons
- 1.2.20 References to Days
- 1.2.21 Reference Hereto
- 1.2.22 Reference to Including
- 1.2.23 Reference to Knowledge
- 1.2.24 Severability
- 1.2.25 Standards of Workmanship and Materials
- 1.2.26 Technical Standards and Codes Substantiation, for any additional cost or expense attributable to any such revision.
- 1.2.27 Treatment of Influent

1.3 EXECUTION, CORRELATION AND INTENT

- 1.3.1 Correlated Personnel Observations
- 1.3.2 County Documents
- 1.3.3 D/B Work Division
- 1.3.4 Order of Documents Precedence

ARTICLE 2 EFFECTIVE DATE AND CONTRACT TERM

ARTICLE 3 ADMINISTRATION

3.1 CONSTRUCTION MANAGER

- 3.1.1 Management Approach
- 3.1.2 The Construction Manager

3.2 ADMINISTRATION OF THE CONTRACT

- 3.2.1 County's Primary Representative
- 3.2.2 Monitor Performance
- 3.2.3 Responsibilities Not Required of Construction Manager
- 3.2.4 Access to D/B Work
- 3.2.5 Application for Payment Observation
- 3.2.6 Interpretations
- 3.2.7 Claims, Disputes and Other Matters
- 3.2.8 Artistic Affect
- 3.2.9 Decision on Disagreements
- 3.2.10 Authority to Reject Work
- 3.2.11 Submittals
- 3.2.12 Change Orders
- 3.2.13 Substantial Completion and Final Completion

ARTICLE 4 COUNTY

4.1 REPRESENTATIONS AND WARRANTIES OF THE COUNTY

- 4.1.1 Existence and Powers
- 4.1.2 Due Authorization and Binding Obligation
- 4.1.4 No Conflict
- 4.1.4 No Litigation
- 4.1.5 Governmental Approvals
- 4.1.6 Applicable Law Compliance

4.2 INFORMATION AND SERVICES REQUIRED OF THE COUNTY

4.3 COUNTY'S RIGHT TO STOP THE DESIGN/BUILD WORK

4.4 COUNTY'S RIGHT TO CARRY OUT THE DESIGN/BUILD WORK

4.5 COOPERATION WITH OTHERS

ARTICLE 5 D/B COMPANY

5.1 REPRESENTATIONS AND WARRANTIES OF THE D/B COMPANY

- 5.1.1 Existence and Powers
- 5.1.2 Due Authorization and Binding Obligation
- 5.1.3 No Conflict
- 5.1.4 No Approvals Required
- 5.1.5 No Litigation

- 5.1.6 Claims and Demands
- 5.1.7 Governmental Approvals
- 5.1.8 Applicable Law Compliance
- 5.1.9 Practicability of Performance
- 5.1.10 Patents and Licenses
- 5.1.11 Information Supplied by the D/B Company
- 5.1.12 Suitability of Site

5.2 D/B COMPANY'S ARCHITECTS AND ENGINEERS

- 5.2.1 Architects and Engineers of Record
- 5.2.2 Responsibilities Generally
- 5.2.3 Reviews and Approvals
- 5.2.4 Site Visits

5.3 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE D/B COMPANY

5.4 LABOR AND MATERIALS

- 5.4.1 Timely Payment
- 5.4.2 Employees

5.5 WARRANTY OF MATERIALS AND EQUIPMENT FURNISHED

5.6 TAXES

5.7 PERMITS, FEES AND NOTICES

- 5.7.1 Permits and Fees
- 5.7.2 Notices
- 5.7.3 Construction Documents
- 5.7.4 Responsibility for Inaccurate or Inconsistent Work

5.8 ALLOWANCES

- 5.8.1 Inclusion in the Fixed D/B Price
- 5.8.2 Monetary Amounts

5.9 PROJECT MANAGEMENT

- 5.9.1 Qualified Personnel
- 5.9.2 Acts and Omissions
- 5.9.3 Construction Manager
- 5.9.4 Documents Distribution
- 5.9.5 Personnel Performance
- 5.9.6 Senior Supervisors
- 5.9.7 Project Manager
- 5.9.8 Construction Superintendent
- 5.9.9 Other Management Personnel
- 5.9.10 Good Order

5.10 D/B COMPANY'S DESIGN/BUILD SCHEDULE

- 5.10.1 Submission of Schedule
- 5.10.2 All Submittals Reflected on Schedule

5.11 DOCUMENTS AND SAMPLES AT THE SITE

5.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 5.12.1 Submittal Register
- 5.12.2 Submittal Promptness
- 5.12.3 D/B Company Representations

5.13 SAFETY AND SECURITY

- 5.13.1 Safety
- 5.13.2 OSHA
- 5.13.3 Security

5.14 USE OF SITE

5.15 UTILITIES

5.16 CLEANING UP

- 5.16.1 D/B Company
- 5.16.2 County Rights

5.17 COMMUNICATIONS AND MEETINGS

5.18 CUSTOMER SERVICE

- 5.18.1 Single Point of Contact
- 5.18.2 Relations with Participating Communities

5.19 COPYRIGHT, ROYALTIES AND PATENTS

- 5.19.1 Documents
- 5.19.2 Payment

ARTICLE 6 DESIGN/BUILD OF THE DESIGN/BUILD PROJECT

6.1 DESIGN/BUILD GENERALLY.

- 6.1.1 Elements of the Design/Build Work
- 6.1.2 Commencement of Design/Build Work
- 6.1.3 Conditions to Commencement of Design/Build Work.
- 6.1.4 Additional Conditions to Design/Build Date.
- 6.1.5 Failure of Conditions for the Design/Build Date.
- 6.1.6 County Suspension Option During the Design/Build Period

6.2 DESIGN/BUILD COMPANY PERMITTING

- 6.2.1 Application for Governmental Approvals
- 6.2.2 No County Liability
- 6.2.3 D/B Company Assumption of Permitting Risk
- 6.2.4 Change in Law Not Related to Governmental Approvals

6.3 THE SITE

- 6.3.1 Suitability of Site
- 6.3.2 Pre-Existing Environmental Conditions
- 6.3.3 Familiarity with the Site
- 6.3.4 "As-Is" Condition of the Site
- 6.3.5 Limitations on the D/B Company's Assumption of "As-Is" Risk

6.4 D/B COMPANY DESIGN.

- 6.4.1 Sole Responsibility and Liability
- 6.4.2 Conformity of Company Design Documents with Minimum Technical Requirements
- 6.4.3 County Interest in Minimum Technical Requirements
- 6.4.4 Procedure for County Review of Design Submittals
- 6.4.5 Change in Law Affecting Design

6.5 D/B COMPANY CONSTRUCTION

- 6.5.1 Notice to Proceed for Construction
- 6.5.2 Construction Practice
- 6.5.3 Title and Risk of Loss
- 6.5.4 Subcontracts
- 6.5.5 Changes to Design/Build Work
- 6.5.6 Encumbrances
- 6.5.7 Warranties
- 6.5.8 Change in Law Affecting Construction
- 6.5.9 Emergency Action Plan
- 6.5.10 Emergency Action

6.6 DESIGN AND CONSTRUCTION GOVERNMENTAL APPROVALS

- 6.6.1 Applications and Submittals
- 6.6.2 Data and Information
- 6.6.3 Non-Compliance and Enforcement
- 6.6.4 Reports to Governmental Bodies
- 6.6.5 Potential Regulatory Change

6.7 PAYMENT OF THE DESIGN/BUILD PRICE

- 6.7.1 County Financing.
- 6.7.2 Design/Build Price Generally
- 6.7.3 Fixed Design/Build Price
- 6.7.4 Fixed Design/Build Price Adjustments
- 6.7.5 Limitation on Payments for Design/Build Improvement Costs
- 6.7.6 Payment of Costs

- 6.7.7 Financial Books and Records
- 6.7.8 Construction Disbursement Requisition Procedure.
- 6.7.9 Retainage
- 6.7.10 Certification of Requisitions.
- 6.7.11 Information Supporting Requisition
- 6.7.12 Review and Payment of Requisitioned Amounts
- 6.7.13 Permissible Withholdings
- 6.7.14 Disbursement Dispute Procedures
- 6.7.15 Required D/B Company Oversight Certification
- 6.7.16 Certification of Amounts Due
- 6.7.17 Tax Exemption of D/B Project

6.8 PROGRESS SCHEDULE AND REPORTS

6.9 CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK

- 6.9.1 Observation and Design Review Program
- 6.9.2 D/B Company Tests
- 6.9.3 County Tests, Observations and Inspections
- 6.9.4 Certificates and Reports
- 6.9.5 Notice of Covering Design/Build Work
- 6.9.6 Meetings and Design/Build Review

6.10 CORRECTION OF WORK.

- 6.10.1 Correction of Non-Conforming Design/Build Work
- 6.10.2 Election to Accept Non-Conforming Design/Build Work

6.11 DELIVERABLE MATERIAL

6.12 PERSONNEL

- 6.12.1 Project Manager
- 6.12.2 Construction Superintendent
- 6.12.3 Site Safety Representative
- 6.12.4 Quality Assurance/Quality Control (QA/QC) Manager
- 6.12.5 County Rights with Respect to Key Personnel
- 6.12.6 Labor Disputes

ARTICLE 7 ACCEPTANCE OF THE DESIGN/BUILD PROJECT

7.1 SUBSTANTIAL COMPLETION AND ACCEPTANCE TESTING

- 7.1.1 Submittal of Transition Package
- 7.1.2 Notice of Substantial Completion
- 7.1.3 Notice of Commencement of Acceptance Testing

- 7.2 FINAL PUNCH LIST**
- 7.3 SUBSTANTIAL COMPLETION**
- 7.4 CONDUCT OF ACCEPTANCE TEST**
 - 7.4.1 Training
 - 7.4.2 Unauthorized Releases Prohibited
 - 7.4.3 Notification and Reporting
 - 7.4.4 Cleanup and Costs
 - 7.4.5 Indemnity for Loss-and-Expense from Non-Complying Effluent
 - 7.4.6 Change in Law Affecting Effluent
- 7.5 ACCEPTANCE DATE CONDITIONS**
- 7.6 TEST REPORT**
- 7.7 CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS**
 - 7.7.1 Acceptance Date Concurrence
 - 7.7.2 Acceptance Date Disagreement
- 7.8 EXTENSION PERIOD**
- 7.9 SCHEDULED ACCEPTANCE DATE**
 - 7.9.1 Schedule for Completing the Design/Build Project
 - 7.9.2 Adjustment of Scheduled Acceptance Date
- 7.10 FAILURE TO MEET ACCEPTANCE STANDARD**
- 7.11 FINAL COMPLETION AND COUNTY ASSUMPTION OF DESIGN/BUILD PROJECT**
 - 7.11.1 Requirements
 - 7.11.2 Close out or Final Voucher and Claims Statement
- 7.12 NO ACCEPTANCE, WAIVER OR RELEASE**
- 7.13 COMPLIANCE WITH CONTRACT STANDARDS NOT EXCUSED**

ARTICLE 8 CHANGES IN THE WORK

- 8.1 CHANGE ORDERS**
- 8.2 REQUESTS FOR ADDITIONAL COST**
- 8.3 MINOR CHANGES IN THE WORK**

ARTICLE 9 DESIGN/BUILD GUARANTEES

- 9.1 DESIGN/BUILD GUARANTEES GENERALLY**
- 9.2 NOISE GUARANTEE**
- 9.3 FIXED DESIGN/BUILD PRICE GUARANTEE**
- 9.4 PLANT CONTINUOUS OPERATION GUARANTEE**
- 9.5 ODOR CONTROL GUARANTEE**

ARTICLE 10 SAFETY

- 10.1 DESIGN BUILDER'S SAFETY, HEALTH AND LOSS PREVENTION PROGRAM**
- 10.2 DESIGNATION OF SAFETY REPRESENTATIVE**
- 10.3 FULTON COUNTY'S SAFETY, HEALTH, AND LOSS PREVENTION PROCESS GUIDELINES AND REQUIREMENTS**
- 10.4 COMPLIANCE OF WORK, EQUIPMENT, AND PROCEDURES WITH ALL APPLICABLE LAWS AND REGULATIONS**
- 10.5 PROTECTION OF THE WORK**
- 10.6 SAFETY EQUIPMENT**
- 10.7 EMERGENCIES**
- 10.8 SUSPENSION OF THE WORK**
- 10.9 COMPANY'S INDEMNITY OF THE COUNTY FOR COMPANY'S NON-COMPLIANCE WITH SAFETY PROGRAM**

ARTICLE 11 INSURANCE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

- 11.1 INSURANCE**
 - 11.1.1 D/B Company Insurance
 - 11.1.2 Insurers, Deductibles and County Rights
 - 11.1.3 Certificates, Policies and Notice
 - 11.1.4 Maintenance of Insurance Coverage
- 11.2 LOSS, DAMAGE OR DESTRUCTION TO THE D/B WORK**
 - 11.2.1 Prevention and Repair
 - 11.2.2 Insurance and Other Third Party Payments

- 11.2.3 Uninsured Costs
- 11.2.4 Repair of County and Private Property

11.3 UNCONTROLLABLE CIRCUMSTANCES

- 11.3.1 Relief from Obligations
- 11.3.2 Notice and Mitigation
- 11.3.3 Conditions to Performance, Design/Build Price, and Schedule Relief
- 11.3.4 Acceptance of Relief Constitute Release

11.4 INDEMNIFICATION

ARTICLE 12 BREACH, DEFAULT, REMEDIES AND TERMINATION

12.1 REMEDIES FOR BREACH

12.2 EVENTS OF DEFAULT BY THE D/B COMPANY

- 12.2.1 Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination
- 12.2.2 Events of Default Requiring Previous Notice and Cure Opportunity for Termination
- 12.2.3 Other Remedies upon D/B Company Event of Default

12.3 EVENTS OF DEFAULT BY THE COUNTY

- 12.3.1 Events of Default Permitting Termination
- 12.3.2 Notice and Cure Opportunity

12.4 COUNTY CONVENIENCE TERMINATION DURING THE DESIGN/CONSTRUCTION PERIOD

- 12.4.1 Termination Right and Fee
- 12.4.2 Uncontrollable Circumstances
- 12.4.3 Termination Fee Payment Contingent Upon Surrender of Possession
- 12.4.4 Adequacy of Termination Payment
- 12.4.5 Consideration for Convenience Termination Payment
- 12.4.6 Completion of Continuance by County
- 12.4.7 Cost Records and Reporting
- 12.4.8 Delivery of Development Work Product to the County

12.5 OBLIGATIONS OF THE D/B COMPANY UPON TERMINATION OR EXPIRATION

- 12.5.1 The D/B Company Obligations
- 12.5.2 D/B Company Payment of Certain Costs
- 12.5.3 County Payment of Certain Costs

12.6 SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION

12.7 NO WAIVERS

12.8 NO CONSEQUENTIAL OR PUNITIVE DAMAGES

12.9 FORUM FOR DISPUTE RESOLUTION

12.10 NON-BINDING MEDIATION

12.10.1 Rights to Request and Decline

12.10.2 Procedure

12.10.3 Non-Binding Effect

12.10.4 Relation to Judicial Legal Proceedings

ARTICLE 13 SECURITY FOR PERFORMANCE

13.1 GENERALLY

13.2 BONDS

13.2.1 Construction Performance Bonds and Payment Bonds

13.2.2 Monitoring of Sureties.

ARTICLE 14 MISCELLANEOUS PROVISIONS

14.1 D/B COMPANY BUSINESS

14.2 RELATIONSHIP OF THE PARTIES

14.3 PROPERTY RIGHTS

14.3.1 Protection from Infringement

14.3.2 Intellectual Property Developed by the Company

14.4 INTEREST ON OVERDUE OBLIGATIONS

14.5 COST SUBSTANTIATION

14.5.1 Substantiating Non-Fixed Costs

14.5.2 Cost Substantiation Certificate

14.5.3 Technical Services

14.5.4 Mark-Up

14.5.5 Evidence of Costs Incurred

14.6 SUBCONTRACTORS

14.6.1 Use Restricted

14.6.2 Limited County Review and Approval of Permitted Subcontractors

14.6.3 Subcontract Terms and Subcontractor Actions.

14.6.4 Indemnity for Subcontractor Claims

14.6.5 Design Contract

14.6.6 Construction Contract

14.6.7 Notice to County of Amendments, Breaches and Defaults

14.6.8 Assignability

14.7 ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY

14.7.1 Rights as Government Not Limited

14.7.2 No County Obligation to Issue Governmental Approvals

14.8 ASSIGNMENT

14.8.1 By the D/B Company

14.8.2 By the County

14.9 BINDING EFFECT

14.10 AMENDMENT AND WAIVER

14.11 NONDISCRIMINATION

14.12 SOURCES OF FUNDS

14.13 NOTICES

14.14 COMPANY BANKRUPTCY MATTERS

14.14.1 Exclusive Jurisdiction

14.14.2 Waiver of Automatic Stay; Entitlement to Lift of Stay

14.14.3 Executory Contract Issues

14.14.4 Property of the Estate

14.15 NOTICE OF LITIGATION

14.16 FURTHER ASSURANCES

ARTICLE 15 FULL PERFORMANCE REPRESENTATION

ARTICLE 16 RECORDS RETENTION

ARTICLE 17 JURISDICTION

ARTICLE 18 EQUAL EMPLOYMENT OPPORTUNITY

ARTICLE 19 FORCE MAJEURE

ARTICLE 20 OPEN RECORDS ACT

ARTICLE 21 INVOICING AND PAYMENT

OWNER – D/B COMPANY AGREEMENT

**#11RFP78834K-DB; Big Creek WRF Immediate Needs Rehabilitation Project-S134
Design/Build**

DESIGN/BUILD COMPANY: _____

Project No. _____

Address: _____

Telephone: _____

Contact: _____ Facsimile: _____

THIS AGREEMENT is effective as of the _____ day of _____, 20____, by and between Fulton County, a political subdivision of the State of Georgia (hereinafter called the "County"), and the above named DESIGN/BUILD COMPANY in accordance with all provisions of this Agreement, consisting of the following Contract Documents:

- I. Form of Agreement;
- II. Addenda (Addendum 1 -)
- III. Exhibit A: General Conditions (Article 1 – 21)
- IV. Exhibit B: Design/Build Technical Requirements
(Appendix 1 – 19);
- V. Exhibit C: Project Deliverables;
- VI. Exhibit D: Purchasing Forms;
- VII. Exhibit E: Office of Contract Compliance Forms;
- VIII. Exhibit F: Insurance and Risk Management Forms;
- IX. Exhibit G: Bonds: Proposal, Payment and Performance

WITNESSETH: That the said DESIGN/BUILD COMPANY has agreed, and by these presents does agree with the said County, for and in consideration of a Fixed Design/Build Price of _____ (\$_____) and other good and valuable consideration, and under the penalty expressed on Bonds hereto attached, to furnish all equipment, tools, materials, skill, and labor of every description necessary to carry out and complete in good, firm, and substantial, and workmanlike manner, the Work specified, in strict conformity with the Contract Documents and the Request for Proposal hereinafter set forth, which Contract Documents Request for Proposal together with the proposal submittals made by the DESIGN/BUILD COMPANY, General Conditions, Addenda, Technical Requirements, Exhibits, and this Agreement, shall all form essential parts of this Contract. The Work covered by this Contract includes all Work indicated and listed in the Request For Proposal (RFP) entitled:

Project Number: #11RFP78834K-DB

Big Creek WRF Immediate Needs Rehabilitation Project-S134 Design/Build

The DESIGN/BUILD COMPANY shall commence the Work with adequate force and equipment within 10 days from receipt of Notice to Proceed from the County, and shall complete the work within **two years** from the Notice to Proceed or the date work begins, whichever comes first. The Contractor shall remain responsible for performing, in accordance with the terms of the contract, all work assigned prior to the expiration of the said calendar days allowed for completion of the work even if the work is not completed until after the expiration of such days.

For each calendar day that any work remains uncompleted, in accordance with Article 7.9, after the time allowed for completion of the work, the Contractor may pay the County the sum of \$ 1,000.00 not as a penalty but as liquidated damages, which liquidated damages the County may deduct from any money due the contractor. At the County's convenience and not to it prejudice the County may provide written notice of the commencement of the assessment of liquidated damages.

As full compensation for the faithful performance of this Contract, the County shall pay the DESIGN/BUILD COMPANY in accordance with the General Conditions and the prices stipulated in the RFP, hereto attached.

It is further mutually agreed between the parties hereto that if, at any time after the execution of this Agreement and the Surety Bonds hereto attached for its faithful performance, the County shall deem the surety or sureties upon such bonds to be unsatisfactory, or, if, for any reason, such bonds cease to be adequate to cover the performance of the Work, the DESIGN/BUILD COMPANY shall, at his expense, within five days after receipt of notice from the County so to do, furnish an additional bond or bonds in such form and amount, and with such surety or sureties as shall be satisfactory to the County. In such event no further payment to the DESIGN/BUILD COMPANY shall be deemed to be due under this Agreement until such new or additional security for the faithful performance of the Work shall be furnished in manner and form satisfactory to the County.

The DESIGN/BUILD COMPANY hereby assumes the entire responsibility and liability for any and all injury to or death of any and all persons, including the DESIGN/BUILD COMPANY'S agents, servants, and employees, and in addition thereto, for any and all damages to property caused by or resulting from or arising out of any act or omission in connection with this contract or the prosecution of work hereunder, whether caused by the DESIGN/BUILD COMPANY or the DESIGN/BUILD COMPANY'S agents, Servants, or employees, or by any of the DESIGN/BUILD COMPANY'S subcontractors or suppliers, and the DESIGN/BUILD COMPANY shall indemnify and hold harmless the County, the Construction Manager, or any of their subcontractors from and against any and all loss and/or expense which they or any of them may suffer or pay as a result of claims or suits due to, because of, or arising out of any and all such injuries, deaths and/or damage, irrespective of County or Construction Manager negligence (except that no party shall be indemnified for their own sole negligence). The DESIGN/BUILD COMPANY, if requested, shall assume and defend at the DESIGN/BUILD COMPANY'S own expense, any suit,

action or other legal proceedings arising there from, and the DESIGN/BUILD COMPANY hereby agrees to satisfy, pay, and cause to be discharged of record any judgment which may be rendered against the County and the Construction Manager arising there from.

In the event of any such loss, expense, damage, or injury, or if any claim or demand for damages as heretofore set forth is made against the County or the Construction Manager, the County may withhold from any payment due or thereafter to become due to the DESIGN/BUILD COMPANY under the terms of this Contract, an amount sufficient in its judgment to protect and indemnify it and the Construction Manager from any and all claims, expense, loss, damages, or injury; and the County, in its discretion, may require the DESIGN/BUILD COMPANY to furnish a surety bond satisfactory to the County providing for such protection and indemnity, which bond shall be furnished by the DESIGN/BUILD COMPANY within five (5) days after written demand has been made therefore. The expense of said Bond shall be borne by the DESIGN/BUILD COMPANY. **[See General Conditions for similar provisions]**

This Contract constitutes the full agreement between the parties, and the DESIGN/BUILD COMPANY shall not sublet, assign, transfer, pledge, convey, sell or otherwise dispose of the whole or any part of this Contract or his right, title, or interest therein to any person, firm or corporation without the previous consent of the County in writing. Subject to applicable provisions of law, this Contract shall be in full force and effect as a Contract, from the date on which a fully executed and approved counterpart hereof is delivered to the Contractor and shall remain and continue in full force and effect until after the expiration of any guarantee period and the DESIGN/BUILD COMPANY and his sureties are finally released by the County.

This agreement was approved by the Fulton County Board of Commissioner on [Insert approval date and item number].

[SIGNATURES NEXT PAGE]

IN WITNESS THEREOF, the Parties hereto have caused this Contract to be executed by their duly authorized representatives as attested and witnessed and their corporate seals to be hereunto affixed as of the day and year date first above written.

OWNER:

FULTON COUNTY, GEORGIA

John H. Eaves, Commission Chair
Board of Commissioners

ATTEST:

Mark Massey
Clerk to the Commission (Seal)

APPROVED AS TO FORM:

Office of the County Attorney

APPROVED AS TO CONTENT:

Angela Parker
Director of Public Works

CONTRACTOR:

**[DESIGN/BUILD COMPANY
COMPANY NAME]**

***[Insert Name & Title of person
authorized to sign contract]***

ATTEST:

Secretary/
Assistant Secretary

(Affix Corporate Seal)

END OF SECTION

ARTICLE 1- DEFINITIONS AND INTERPRETATIONS

1.1 DEFINITIONS

The following words and terms as used in the Design/Build (D/B) Request for Proposal (RFP) and the Design/Build Contract shall have the respective meanings set forth below. The words "include" or "including" are always without limitations.

Acceptance	Demonstration by the D/B Company, subject to confirmation by the County, that the Acceptance Testing Requirements have been conducted, the Acceptance Standards have been achieved, and all other contractually specified conditions for acceptance by the County of the Design/Build Project have been satisfied.
Acceptance Date	The date, which is the number of days, proposed on Price Proposal Form 4, from the Design/Build Date that the D/B Company guarantees to have achieved Acceptance.
Acceptance Date Conditions	Has the meaning specified in Article 7 of the Design/Build Contract.
Acceptance Test Procedures and Standards	Those test procedures and standards set forth in Appendix 15 of the D/B RFP that the D/B Company must undertake and meet in order to achieve the County's Acceptance of the Design/Build Work, including, but not limited to, demonstrating that the Plant is capable of satisfying the Performance Criteria described in Appendix 2 of the D/B RFP.
Acceptance Testing Plan	The plan prepared by the D/B Company to address the details of required acceptance testing as defined in Appendix 15.
Acceptance Testing Report	The certified written report that the D/B Company shall furnish describing and certifying the Acceptance Testing Plan has been executed and the results of the Acceptance Tests.
Addendum	Revision to the RFP documents issued by the County prior to the receipt proposals (written or graphic revisions to the RFP document, which clarifies, corrects or changes the requirements of the RFP or Contract documents issued by the County prior to opening of the proposals).
Agreement	Refers to the executed contract between the County and Contracting Entity.

Allowances	Are defined as sums of monies within the Contract Sum which may, at Owner's option and under terms established in the Contract, be utilized at the Owner's discretion to supplement corresponding basic requirements of the Contract Documents.
Appendix	Any of the documents attached to and thereby incorporated into the Design/Build Contract, as applicable and so designated as an "Appendix", including any and all exhibits and appendices, all of which may be amended or modified from time to time in accordance with the Design/Build Contract as applicable, and Applicable Laws.
Applicable Law	<p>Applicable Law means:</p> <ul style="list-style-type: none"> (1) any federal, State of Georgia, Fulton County or local law, code, regulation, consent order or agreement; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, consent order or agreement or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate regulatory Governmental Body if such interpretation is documented by such regulatory body ; and (4) any Governmental Approval, in each case having the force of law from time to time: <ul style="list-style-type: none"> (a) to the sitting, design, acquisition, construction, equipping, financing, ownership, possession, start-up, testing, operation, maintenance, repair, replacement, or management of municipal wastewater treatment systems; (b) to the conveyance, treatment, storage, or discharge of the Influent or the Effluent; (c) to the air and odor emissions from municipal wastewater treatment systems; and (d) to the transfer, handling, processing transportation or disposal of Sludge and Residuals.
Application for Payment	The form accepted by the County which is to be used by the D/B Company in requesting progress payments or final payment and which is to include supporting documentation as required by the Contract Document.
Approve(d)	Where used in conjunction with the County's response to submittals, requests, applications, inquiries, reports and claims by the D/B Company, the meaning of the term "approved" shall be held to limitations of the County's responsibilities and duties as described herein. In no case shall "approval" be interpreted as a release of the PM/CM or other contractors from

	responsibilities to fulfill the requirements of their Agreements and Contract Documents.
Award Date	The date listed in the Notice of Award to the apparent successful D/B Company.
Bankruptcy Code	Means the United States Bankruptcy Code (11 U.S.C. §101, et seq.), as amended from time to time and any successor statute thereto. "Bankruptcy Code" shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.
Bid Bond	Means a bond with good and sufficient surety or sureties for the faithful acceptance of the contract payable to, in favor of, and for the protection of the governmental entity for which the contract is to be awarded.
Big Creek WRF	Big Creek Water Reclamation Facility ("BCWRF") means the plant where the Immediate Needs Rehabilitation Project is to take place.
Billing Period	Means each calendar month, except that (1) the first Billing Period shall begin on the Design/Build Date and shall continue to the last day of the month in which the Design/Build Date occurs and (2) the last Billing Period shall end on the last day of the Term of the Design/Build Contract.
Calendar Day	Every day shown on the calendar.
CERCLA	Means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq., and the applicable regulations promulgated thereunder, each as amended or superseded from time to time.
Change in Law	Means any of the following acts, events or circumstances to the extent that compliance therewith materially increases the cost of performing, or materially increases the scope, of a party's obligations hereunder: (a) the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Contract Date, unless such Applicable Law was on or prior to the Contract Date duly proposed and published in the Federal Register or was adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

	<p>(b) the order or judgment of any Governmental Body issued on or after the Contract Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Contract Date) to the extent such order or judgment is not the result of willful or negligent action, breach of the Design/Build Contract, violation of law, illegal act, error or omission or lack of reasonable diligence of the D/B Company or of the County, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence;</p> <p>(c) except with respect to any Governmental Approval required for the construction of the Design/Build Project as provided in item (ii) below pertaining to exclusions from "Change in Law", the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination, or interruption of any Governmental Approval, or the imposition of a term, condition or requirement which is more stringent or burdensome than the Contract Standards in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or negligent action, breach of this Design/Build Contract, violation of law, illegal act, error or omission or a lack of reasonable diligence of the D/B Company or of the County, whichever is asserting the occurrence of a Change in Law; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence. It is specifically understood, however, that none of the following shall constitute a "Change in Law":</p> <ul style="list-style-type: none">(i) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law which was effective as of the Contract Date;(ii) all matters directly relating to obtaining and maintaining EPA, EPD or local Governmental
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	<p>Approvals of the design, construction and operation of the Design/Build Project, including any delay, non-issuance or imposition of terms and conditions upon the issuance or renewal of any Governmental Approval necessary in connection therewith, or the entry of an amended or replacement administrative order relating thereto;</p> <p>(iii) any action by a Governmental Body or any other event that affects generally applicable working conditions or standards that is not specific to the wastewater treatment industry or to the New Plant, and that does not require a Capital Modification in order to effectuate compliance therewith; and</p> <p>(iv) any action by a Governmental Body relating to sales or use taxes including the imposition or increase in any such taxes.</p>
Change Order	A written order signed by the Owner and Contractor and, stating their agreement upon all of the following: (1) change/modification in the work; (2) the amount of the modification, if any, in the Agreement Price; and (3) the extent of the modification, if any, in the Agreement time. Pursuant to Fulton County Policy and Procedure 800-6 (Described in Article 8).
Claim	A demand or assertion by the County or D/B Company seeking an adjustment of the Contract Price, Contract Times or both, or other relief with respect to the terms of the contract. A demand for money or services of a third party is not a claim.
Complete	That the Design/Build Work is 100% done, including punch list.
Consent Order	Not Used
Construction Cost Index or CCI	Construction Cost Index as published by the Engineering News Record.
Construction Equipment	Equipment used in the performance of the work but not incorporated therein.
Construction Period	Means the period from and including the Design/Build Date to and including the day preceding the Acceptance Date.
Construction Manager	The person designated as in charge of the project and to lead the day-to-day activities during the construction phase. Construction Manager is used interchangeably with "Engineer" (the Construction manager is the person identified as such in writing by the County. The term "Construction Manager" means the Construction Manager or the County's authorized representative).
Contact Person	Purchasing staff designated by the Fulton County Department of Purchasing and Contract Compliance to submit and questions and suggestions to.

Contract Completion	The established completion date(s) set forth in the contract.
Contract Date	The date that the Design/Build Contract has been executed by the County and the D/B Company.
Contract Documents	<p>The Contract Documents include all volumes of this RFP, the Contract Agreement, Contractor's Bid (including all documentation accompanying the Bid and any post-Bid documentation required by the County prior to the Notice of Award), Bonds , all Special Conditions, General Conditions, Supplementary Conditions, Specifications, Drawings and addenda, together with written amendments, change orders, field orders and the Construction Manager's written Interpretations and clarifications issued in accordance with the General Conditions on or after the date of the Contract Agreement.</p> <p>Shop drawing submittals reviewed in accordance with the General Conditions, geotechnical investigations and soils report and drawings of physical conditions in or relating to existing surface structures at or contiguous to the site are not Contract Documents.</p> <p>The Contract Documents shall define and describe the complete work to which they relate.</p>
Contract Representative	In the case of the D/B Company, the individual specified in writing by the D/B Company as the representative of the D/B Company for all purposes of the Design/Build Contract and, in the case of the County, the Director of Public Works or such other representative as shall be designated in writing by the County from time to time.
Contract Standards	The most stringent of the standards, terms, conditions, methods, techniques and practices imposed and required by: (1) Applicable Law; (2) the Minimum Technical Requirements; (3) the Effluent Requirements; (4) Good Engineering and Construction Practice; (5) Good Industry Practice; (6) applicable equipment manufacturers specifications; (7) applicable Insurance Requirements; and (8) any other standard, term, condition or requirement specifically provided in the Design/Build Contract to be observed by the D/B Company.
Convenience Termination Fee	See Reimbursable Expenses
Core Project Team	Design Engineer, Construction Contractor, Start-up and Training Contractor and others as identified in the Design/Build

	Proposal.
County	Fulton County Government and its authorized representatives . The County (Owner). (The person or entity identified as such herein. The term "County" means the County or the County's authorized representative. The term "County" also means any agent of the county, including the Construction Manager. The terms "County" and "Owner" may be used interchangeably in the Design/Build Contract and other related Documents).
County Fault	Means any breach (including the deception or breach of any County representation or warranty herein set forth), failure, nonperformance or noncompliance by the County with respect to its obligations under this Design/Build Contract to the extent not directly attributable to any Uncontrollable Circumstance or D/B Company Fault, and which materially and adversely affects the D/B Company's rights, obligations or ability or costs to perform under this Design/Build Contract.
County Indemnitee	The County, and its appointed officers, directors, employees, representatives, suppliers, successors, assigns, agents, and contractors
County Property	Means any structures, improvements, equipment, fire alarm systems, wastewater and water mains, valves, pumping systems, hydrants, hydrant connections, duct lines, streets, lamps, lampposts, monuments, sidewalks, curbs, trees or any other systems, fixtures, or real or personal property owned, leased, operated, maintained, or occupied by the County.
CPI	Consumer Price Index for All Urban Consumers (CPI-U), Atlanta, GA, Metropolitan Area (as published monthly by the Department of Commerce, Bureau of Labor Statistics, Chicago, IL).
Data DVD	The DVD (or CD-Rom if applicable) included with the RFP that was developed by the County to provide Proposers with the data relating to the Design/Build Project. The DVD contains all attachments mentioned in the RFP. This term is interchangeable with Data DVD or other media chosen by the County.
Definitions	The list defining terms applicable to the RFPs and upon which the Design/Build Contract is based.
Design and Construction Schedule	A plan for completion of the Design/Build Project in compliance with the Design/Build Contract and specified activities and interim milestones as specified in Appendix 12.
D/B Bid Bond	Surety in penal sum of 5% of Fixed Design/Build Price submitted in each proposal to the County, in accordance with Section 8 of the D/B RFP.
D/B Company	The Selected Offeror (Proposer) with whom the County executes the Design/Build Contract. (The person or entity

	<p>identified as such herein. The Term "D/B Company" means the D/B Company or the D/B Company's designated representative. The D/B Company is the prime entity that provides program verification, professional design and engineering services, space planning, construction services including labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, furnishings, equipment and other facilities and services for execution and completion of the Design/Build Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Design/Build Work. The term "D/B Company" shall be taken to mean the selected proposer with whom the County executes the Design/Build Contract) (shall mean the single corporate entity contractually responsible to the Owner for development of the Project. The D/B Company can be: (1) a firm possessing both design and construction resources in-house; or (2) a construction contractor led team with the engineer in a subcontractor role; or (3) a joint venture team between construction contractor and engineer; or (4) an engineer led team with the construction contractor in a subcontractor role).</p>
D/B Company Construction Supervisor	Has the meaning specified in Article 6 of the Design/Build Contract.
Design/Build Contract	The entire and integrated agreement between the County and the D/B Company concerning the Design/Build Project.
D/B Company Fault	Means any breach (including the untruth or breach of any D/B Company representation or warranty herein set forth), failure, nonperformance or noncompliance by the D/B Company with respect to its obligations under this Design/Build Contract to the extent not directly attributable to any Uncontrollable Circumstance or County Fault, and which materially and adversely affects the County's rights or obligations under this Design/Build Contract.
Design/Build Date	The date on which the Design/Build Date Requirements are met and the Notice to Proceed with the Design/Build Work is issued by the County. The Design/Build Date may occur the same time as the Notice to Proceed.
D/B Escalation Date	Not Used.
Design/Build Project	The Design/Build Work necessary for the D/B Company to meet the obligations of the Design/Build Contract. (including the construction of D/B Work)
Design/Build Request for Proposal (RFP)	Design/Build RFP is the request for proposals to select an entity to deliver the Big Creek WRF Immediate Needs

	Rehabilitation project using Design/Build delivery method specified above.
Design/Build Work	The employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, insurance, temporary facilities, and other things and services of every kind whatsoever necessary for the full performance and completion of the D/B Company's permitting, design, engineering, construction, management, start-up, training, equipment testing, acceptance testing, and related obligations with respect to the Design/Build Project. A reference to Design/Build Work shall mean any part and all of the Design/Build Work unless the context otherwise requires, and shall include all extra Design/Build Work authorized by Change Order.
Design Flow	The average daily flow during the maximum month.
Draft NPDES Permit	Not Used
Draw Down Schedule	Not Used.
Diversion Pump Station	Not used.
Effluent	Wastewater discharged from the Existing Plant.
Effluent Requirements	The most stringent of the requirements pertaining to the discharge of Effluent established by the Contract Standards.
Emergency Response Plan	The plan prepared by the D/B Company to serve as a guide in responding to emergency situations as defined in Appendix 13.
Encumbrance	Means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Design/Build Project or the New Plant.
EPA or USEPA	United States Environmental Protection Agency or any successor agency.
EPD or GAEPD	Georgia Environmental Protection Department or any successor department.
Equipment	Equipment incorporated or to be incorporated into the D/B Work.
Evaluation Committee	The committee of individuals assigned by the County to evaluate the Proposals in order to determine the most advantageous Proposal.
Event of Default	Means, with respect to the D/B Company, those items specified in Section 15.2 of the Design/Build Contract, and with respect to the County, those items specified in Article 12 of the Design/Build Contract.
Existing Influent Pump Station	Not used.
Existing Plant	Collectively, all process systems, structures, tanks, pipes, pumps, and equipment, together with all appurtenant and ancillary systems, used to handle and treat the Influent into the

	Big Creek Water Reclamation Facility, and as generally described in Appendix 1.
Extension Period	Has the meaning specified in Article 7 of the Design/Build Contract.
Field Order	A written order issued by the Construction Manager which requires minor changes in the D/B Work, but does not involve a change in project scope, fixed D/B Price or the Term of the D/B Contract.
Final Completion	The date of final completion of the work is the date certified by the Engineer and the Construction Manager when all construction is fully complete, including certification of all punch list items, and when all records documentation and other closeout items required by the Contract Documents have been reviewed and found acceptable by the County.
Final NPDES Permit	Not used.
Fixed Design/Build Price	The guaranteed price set forth on the Cost Proposal Summary to perform the Design/Build Work.
Fixed Design/Build Price Adjustment Factor	Not used.
Fixed Membrane System Price	Not used.
Fixed Membrane System Price Adjustment Factor	Not used.
General Conditions	The General Conditions of the Agreement for construction that govern the rights, duties, and obligations of the parties.
Good Engineering and Construction Practice	The methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction, and commissioning practices in the municipal wastewater treatment industry as followed in the Southeast region of the United States.
Good Industry Practice	Those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good operation, maintenance, repair, replacement, and management practices in the municipal wastewater treatment industry as observed in the Southeast region of the United States.
Governmental Approvals	All approvals, permits, licenses, authorizations, consents, certifications, exemptions, registrations, rulings, and entitlements of whatever kind and however described which

	are required under Applicable Law to be obtained or maintained by any person with respect to the Design/Build Project.
Governmental Body	Any federal, state, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction over the Existing Plant or any aspect thereof including, without limitation, the design, operation, repair, maintenance, construction and upgrade thereof.
Guaranteed Maximum Price (GMP)	The full payment for performance of the work and covers all costs of whatever nature incurred by the D/B Company in accomplishing the work in accordance with the provisions of the contract. The D/B Company is responsible for cost overruns, unless the GMP has been increased via formal change order in compliance with Fulton County Policies and Procedures 800-6 (only as a result of additional scope request from the County, not price overruns, errors or omissions).
Guarantor	Not Used.
Guaranty Agreement	Not Used.
Hazardous Material	Any waste, substance, object or material deemed hazardous under Applicable Law including, without limitation "hazardous material" as defined in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. and "hazardous waste" as defined in the Resource Conservation Recovery Act, 42 U.S.C. § 6901 et seq.
Influent	All wastewater, infiltration, and inflows entering the Existing Plant.
Inspector	An authorized representative of the Owner assigned to make all necessary inspections of any or all portions of the work performed or being performed, or of the materials furnished or being furnished by the D/B Company.
Insurance Requirements	Any rule, regulation, code, or requirement issued by any fire insurance rating bureau or anybody having similar functions or by any insurance company that has issued a policy of insurance as specified in the Design/Build Contract.
Jobsite	Location where construction activity shall be performed under this contract.
Joint Venture (JV)	A contractual agreement joining two or more persons, partnerships, corporations or any combination of business entities partnering as one firm for the purpose of executing a particular project or event. Every entity agrees on percentage of profits, losses and ownership within the organization.

Legal Proceeding	Every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Design/Build Contract, and all appeals therefrom.
Letter of Credit	Not Used.
Loss-and-Expense	Means any and all actual loss, liability, forfeiture, obligation, damage, delay, fine, penalty, judgment, deposit, cost, expense, claim, Tax, or expense, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Design/Build Contract.
Materials	Any substance specified for use in the construction of the contract work.
Membrane System	Not used.
Membrane Bioreactor or "MBR"	Not used.
Membrane System Supplier Bid Bond	Not used.
Membrane System Supplier Escalation Date	Not used.
Membrane System Scope of Supply	Not used.
Milestone	Major milestone and activities identified in the Detailed Design and Construction Schedule to be prepared and submitted by the D/B Company in accordance with Appendix 12.
Minimum Evaluation Criteria	Minimum financial and technical qualification that will be required. Non-qualified proposals not meeting the Minimum Evaluation Criteria will be disqualified.
Minimum Financial Criteria	Financial criteria used to determine if the proposal meets the Minimum Evaluation Criteria listed above.
Minimum Technical Requirements	Minimum technical requirements used to determine if the proposal meets the Minimum Evaluation Criteria listed above.
Minor Change in the Work	Work not involving an adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Minor changes may be issues as a "Field Order."
Mixed Liquor Suspended Solids (MLSS)	The total suspended solids (TSS) concentration of mixed liquor in the aeration basins, as analyzed according to "Standard Methods for the Analysis of Water and Wastewater.
Modifications	Binding changes, addenda, revisions, or the like, to the Work or the Agreement documents, including changes to work made by Change Order or Change Directive.

Non-Binding Mediation	The voluntary system of dispute resolution established by Article 12 of the Design/Build Contract for the resolution of disputes arising under the Design/Build Contract.
Notice of Award	Is applicable to D/B Company. Is provided by the County to the apparent successful D/B Proposer, and indicates that it is the County's intent to award the Design/Build Contract to that D/B Proposer, contingent upon the D/B Proposer's execution of the Design/Build Contract and submission of the other necessary documents as specified in the D/B RFP, and contingent upon the County's subsequent acceptance of same and formal approval of the Contract by the Fulton County Board of Commissioners.
Notice to Proceed	A written notice from the County to the D/B Company to begin the actual contract work on a previously agreed date (The written notification given to the D/B Company by the County to begin work after the Design/Build Date Requirements are satisfied).
Notice of Selection	Not used.
NPDES Permit	The National Pollution Discharge Elimination System Permits as issued by the EPD to control quantity and quality of effluent discharges.
Odor Control	The containment, conveyance, and treatment of odorous air to prevent it from being released into the atmosphere. Generally, the structures, covers, buildings, ductwork, appurtenances, fans, equipment, chemicals, used to contain and to prevent the odorous air from escaping the plant and/or to convey odorous air for treatment.
Offeror	The entity or individual submitting a proposal in response to this RFP. Interchangeable with "Proposer."
Operations and Maintenance Manual	Or O&M Manual means the manual prepared and submitted by the D/B Company in accordance to the requirements outlined in Appendix 13 and the Design/Build Contract, regarding the Good Industry Practice of the Plant, including, but not limited to, detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, and schedules.
Operation & Maintenance Plan	The plan prepared by the D/B Company specifying all maintenance and testing to be conducted specific to and inclusive of all facilities and equipment as defined in Appendix 13.
Overdue Rate	The maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate, whichever is lower.
Owner	Fulton County Government
Owner's	The Owner's Representative Team shall include staff from

Representative Team	Public Works, and other County assigned personnel.
Payment Bond	Means a bond with good and sufficient surety or sureties payable to the governmental entity for which the work is to be done and intended for the use and protection of all subcontractors and all persons supplying labor, materials, machinery, and equipment in the prosecution of the work provided for in the public works construction contract. (The surety bond which guarantees the timely payment by the D/B Company for all labor, materials, supplies, implements, and machinery and equipment furnished with respect to the Design/Build Project, and which shall be provided in accordance with Article 13 of the Design/Build Contract and Section 9 of the D/B RFP).
Performance Bond	Means a bond with good and sufficient surety or sureties for the faithful performance of the contract and to indemnify the governmental entity for any damages occasioned by a failure to perform the same within the prescribed time. Such bond shall be payable to, in favor of, and for the protection of the governmental entity for which the work is to be done. (The surety bond which guarantees the timely performance by the D/B Company of its obligations to construct the Design/Build Project, and which shall be provided in accordance with Article 13 of the Design/Build Contract).
Performance Criteria	Those performance criteria specified in Appendices 2, 5, 14, and 15 of this RFP and the Design/Build Contract that the D/B Company warrants the Plant will continuously meet through Good Industry Practice by the County and its operations contractor.
Plans	The term is used interchangeably with the word "Drawings" and includes without limitation Standard Details and Drawings. The plans for the Big Creek WRF Immediate Needs Rehabilitation Project are included for reference only and are not part of the contract documents. (That portion of the D/B Contract documents describing in drawings, the shape, dimensions, and other similar requirements governing the completion of the various portions of the D/B Work, prepared by the D/B Company and including revisions thereto. The term is used interchangeable with the word, "Drawings").
Plant	The Existing Big Creek Water Reclamation Facility , as applicable and the real property on which they are located as described in Appendix 1, consisting of buildings, structures, fixtures and equipment (both concealed and exposed), and the roads, grounds, fences and landscaping appurtenant thereto, which may be utilized for preliminary treatment, primary

	treatment, secondary treatment and advanced biological treatment (nitrification) of Influent, Effluent disinfection and dechlorination, Plant Sludge treatment, laboratory functions and administration and management of the Plant.
Plant Realty	The parcels of real property upon which the Plant, or any portions thereof, are located.
Pre-Existing Environmental Condition	Limited to, (1) the presence anywhere in, on or under the New Plant on the Proposal Submission Date, if not disclosed to the D/B Company as of the Proposal Submission Date, of underground storage tanks (for the storage of chemicals, fuel oil or diesel fuel) that are not then in use in connection with operation of the New Site; and (2) the presence anywhere in, on or under the New Site, as of the Contract Date, of Hazardous Materials, Contaminated Soil or other Contaminated Materials (but expressly excluding for purposes of this definition (i) any matters disclosed to the D/B Company by the County as of the Proposal Submission Date; and (ii) any matters of which the D/B Company has actual knowledge as of the Proposal Submission Date, and any such excluded matters shall not constitute a Pre-Existing Environmental Condition for which the D/B Company could be afforded relief from its obligations hereunder or additional compensation.
Price Proposal	The section of the Proposal that includes all Proposal cost information in accordance with the RFP and which is to be submitted separately from the Technical Proposal. This term is interchangeable with Cost Proposal Summary.
Prime Rate	The prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.
Process and Instrumentation Diagram (P&ID)	A drawing showing treatment processes, related systems, related equipment, and their connectivity. Specifically, a P&ID includes tankage, equipment, piping, valves, control panels, instrumentation, and the function of instrumentation in control systems.
Project	The project is the total engineering, design, construction, equipment start-up, testing, and acceptance by the County of the Big Creek Water Reclamation Facility Immediate Needs Rehabilitation Project under a Design/Build contract. (The Big Creek Water Reclamation Facility Immediate Needs Rehabilitation Design/Build Project).
Project Manager (PM)	The person designated by the D/B Company in charge to lead the day-to-day activities to manage the project. (Has the meaning specified in Article 5 of the Design/Build Contract).

Proposal	The document submitted by the Offeror in response to this RFP. (The document submitted for evaluation in response to the RFP, detailing the Proposer's plan to perform the work generally described in the RFP, in accordance with the Design/Build Contract and is comprised of the Technical Proposal and the Price Proposal together).
Proposal Bond or Guaranty	The security furnished with the proposal to guarantee that the Offeror will enter into a contract if their proposal is accepted by the County.
Proposal Form	Any of the Technical or Cost Proposal Forms provided in Section 5 that must be completed by Proposer and appended to the Technical and Cost Proposals, respectively.
Proposal Submission Date	The date and time by which the Proposal is required to be submitted to the County by the Proposer, in accordance with Section 3 of the RFP.
Proposer	The entity or individual submitting a proposal in response to his RFP. Interchangeable with "Offeror." (The sole entity (including any corporation, joint venture, partnership, or other business entity) submitting a Proposal in response to the RFP).
Public Education and Community Outreach Plan	The plan prepared by the D/B Company in accordance with Appendix 19 of the RFP.
Punchlist	After Substantially Compete, a list of Design/Build Work that is not complete. This list will be compiled based upon walk-through inspections by the County and deficiencies determined during Acceptance testing. Failure of an acceptance test as delineated in the specifications is not a valid item for the punch list.
QA/QC Program	The D/B Company's program as specified in the QA/QC plan, submitted in accordance with Appendix 13 for the control of the quality of work in the performance of the D/B Work.
Rating Services	Moody's Investors Services, Inc. or Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc., or any of their respective successors and assigns and, if such corporations shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, "Rating Services" shall be deemed to refer to any other nationally recognized securities rating agency designated by the County.
RCRA	The Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et seq., and applicable regulations promulgated thereunder, each as amended from time to time.
Reimbursable Expenses	Costs incurred directly by the D/B Company and any expenses paid or incurred to third parties, which are directly related to the performance of the D/B Company's obligations relating to

	achieving the Design/Build Date.
Relative Evaluation Criteria	The factors related to the Technical Proposal and Price Proposal to be considered in evaluating proposals as defined in Section 4 of the D/B RFP.
Request for Proposal	All documents, whether attached or incorporated by reference, utilized for soliciting sealed proposals
Residuals	Any liquid, semi-solid or solid material generated by or as a result of the operations, maintenance, repair, and management of the Plant, excluding Sludge that is land filled or otherwise disposed of and not further processed.
Responsible Offeror	Means a person or entity that has the capability in all respects to perform fully and reliably the contract requirements.
Responsive Offeror	Means a person or entity that has submitted a bid or proposal that conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.
Retainage	Each milestone payment will be subject to a 10% holdback until 50% of the value of the Design/Build Fixed Price, including change orders and other additions to the D/B Contract, is due and the manner and progress of the Design/Build Work performed is satisfactory to the County, at which time further payments will not be subject to additional retainage holdbacks unless the County determines that the Design/Build Work is unsatisfactory or has fallen behind schedule in which case the amount of retainage will be resumed at the previous level. Upon Substantial Completion the amounts retained minus 200% of the estimated value of the outstanding Design/Build Work will be released to the D/B Company.
RFP or Request for Proposal	The document entitled "Design/Build Services for: S134 - Big Creek WRF Immediate Needs Rehabilitation Project For the Department of Public Works".
Safety and Security Plan	The plan prepared by the D/B Company to describe the responsibilities for maintaining security and safety of all equipment and structures contained within the facility as defined in Appendix 13.
SCADA	In the context of data gathering and telemetry systems, means "Supervisory Control and Data Acquisition".
Schedule of Values	A breakdown of the cost of the Design/Build Work, which totals the Fixed Design/Build Price. The content and level of breakdown of prices is specified in Appendix 12.
Scope of Work ("Work")	All the services specified, indicated, shown, or contemplated by the Contract, and furnishing by the D/B Company of all materials, equipment, labor, methods, processes, engineering,

	design, construction and manufacturing materials and equipment, tools, plants, supplies, power, water, transportation and other things necessary to complete such services in accordance with the Contract.
SEC	Securities Exchange Commission
Security Instruments	The Payment Bond, the Construction Performance Bond, the Proposal Bond or Guaranty.
Senior Supervisors	Has the meaning specified in Article 5 of the Design/Build Contract.
Site or Project Site	The real property designated as the D/B Company's envelope for the location of the Design/Build Project.
Site Access Protocol	The protocol to be executed and delivered by a Proposer with respect to project site access by the Proposer.
Sludge	The biosolids generated by the treatment of Influent at the New Plant.
Small, Minority and Female Owned Business Opportunity Plan	The D/B Company's plan to utilize small minority and female owned businesses in the design and construction of the Design/Build Work as set forth in Technology and D/B RFP Section 3.
Specifications	That portion of the D/B Contract documents describing in words the technical requirements governing the completion of various portions of the D/B Work, deliverable or general conditions for execution of the D/B work. "Appendices" and "Specifications" are used interchangeably
Specified Subsurface Conditions	Is limited to, (1) the presence at the Site of subsurface structures, materials or conditions having historical, archaeological, religious or similar significance, and (2) subsurface geological conditions (i) in areas of the Site at which the D/B Company was prohibited by the County from performing geotechnical inspections prior to the issuance of its Proposal or (ii) which the D/B Company was unable to reasonably discern from the geotechnical reports, Site Related Documents and information prepared by or on behalf of the County, prior to the Contract Date, but only to the extent that a subsurface geological condition causes structural damage to or the collapse of the Plant.
Start-Up & Equipment Testing Plan	The plan prepared by the D/B Company to facilitate equipment start-up and testing as defined in Appendices 5 and 14 of the RFP.
State	The State of Georgia.
Subcontract	An agreement or purchase order by the D/B Company or a Subcontractor to the D/B Company, as applicable.
Subcontractor	An individual, firm, corporation or any combination thereof, having a direct contract with D/B Company for the performance

	of a part of the work at the site. (Every person (other than employees of the D/B Company) employed or engaged by the D/B Company or any person directly or indirectly in privity with the D/B Company (including all Subcontractors and every sub-subcontractor of whatever tier) for any portion of the Design/Build effort, whether for the furnishing of labor, materials, equipment, supplies, Design/Build services, or otherwise).
Substantial Completion	The date certified by the Engineer when all or part of the work, identified in the Engineer's certification, is sufficiently completed in accordance with the requirements of the Agreement documents so that the identified portion of the work can be utilized for the purposes for which it is intended. (Has the meaning specified in Article 7 of the Design/Build Contract).
Supplier	Any individual, firm or corporation who supplies material or equipment for the D/B Work but who does not perform labor at the site. A supplier may provide start-up assistance, training and software installation on site without being reclassified as a sub-contractor.
System	In general, this refers to County Property, Existing Plant, Plant Realty, including the D/B Work .
Tax	Any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.
Technical Proposal	The section of the Proposal that contains the technical and business aspects of the Proposer's plan to perform the Design/Build Work generally described and in accordance with the RFP, and which is to be submitted separately from the Cost Proposal Summary.
Term	Has the meaning set forth in Article 2 of the Design/Build Contract.
Total Suspended Solids or "TSS"	Solids that either float on the surface of, or are in suspension in wastewater, the analysis of which shall conform to 40 C.F.R. 136, "Guidelines Establishing Test Procedures for the Analysis of Pollutants."
Total Residual Chlorine Limit or "TRC"	The residual chlorine limit established in the current NPDES Permit.
Transaction Agreement Form	Any of the Transaction Agreement Forms appended to the Design/Build Contract.
Transition Period	The period between the Acceptance Date and the Completion Date during which the County will assume total operation of the Plant In terms of the D/B Work.
Transition Package	The document to be submitted and by the D/B Company to facilitate a smooth transfer of the Design/Build Project to the

	County after Acceptance, as outlined in Appendix 13 and the Design/Build Contract.
Training Plan	The plan that defines the training programs for all personnel designated by the County to operate the Plant to be prepared and executed by the D/B Company, in accordance to the requirements outlined in Appendix 13 and the Design/Build Contract.
Uncontrollable Circumstance	<p>Any act, event or condition that is beyond the reasonable control of, and is not also the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of the Design/Build Contract on the part of, the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the Design/Build Contract, and that materially interferes with or materially increases the cost of performing its obligations hereunder (other than payment obligations).</p> <p>(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances may include, but shall not be limited to, the following:</p> <ul style="list-style-type: none"> (a) a Change in Law; (b) the receipt of Excessive Influent at the Plant, subject to the terms of Section 8.7 of the Design/Build Contract; (c) the occurrence of an Upset subject to the terms of Section 8.7 of the Design/Build Contract. (d) the existence of a Pre-Existing Environmental Condition; (e) the existence of Specified Subsurface Conditions; (f) naturally occurring events (except weather conditions normal for the service area) such as landslides, underground movement, earthquakes, lightning, fires, tornadoes, hurricanes, floods (but only to the extent the hydraulic capacity of the New Plant is exceeded), epidemics, and other acts of God; (g) explosion, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance; (h) labor disputes, except labor disputes involving the employees of the D/B Company, its Affiliates, or Subcontractors which affect the performance of the Design/Build Work; (i) the failure of any appropriate Governmental Body public utility or private utility having operational jurisdiction in the area in which the New Plant are

	<p>located to provide and maintain Utilities to the New Plant which are required for the performance of the Design/Build Contract;</p> <ul style="list-style-type: none"> (j) any failure of title to the New Plant or any enforcement of any Encumbrance on the New Plant not consented to in writing by, or arising out of any action or agreement entered into by, the party adversely affected thereby; and (k) the preemption of materials or Design/Build effort by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the New Plant. <p>(2) Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:</p> <ul style="list-style-type: none"> (a) any act, event or circumstance with respect to which the D/B Company has assumed the "as-is" risk under Section 6.4, except as specifically provided in subsection 6.4(C) of the Design/Build Contract; (b) terms, conditions and prices prevailing in the market for the transportation and disposal of Residuals; (c) changes in interest rates, inflation rates, wage rates, insurance costs, commodity prices, currency values, exchange rates or other general economic conditions; (d) changes in the financial condition of the County, the D/B Company, the Surety, or their Affiliates or Subcontractors affecting the ability to perform their respective obligations; (e) the consequences of error, neglect or omissions by the D/B Company, the Suretees, any Subcontractor, any supplier, any of their Affiliates or any other person in the performance of the Design/Build Work; (f) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the New Plant or otherwise increasing the cost to the D/B Company of performing the Contract Design/Builds; (g) any impact of prevailing wage or similar laws, customs or practices on the D/B Company's costs; (h) weather conditions normal for the service area; (i) any act, event, circumstance or Change in Law occurring outside of the United States;
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	<ul style="list-style-type: none"> (j) any surface, subsurface geotechnical or hydrological conditions and other Site conditions including without limitation the existence of compressible soil layers, masses, unstable soil, manmade deposits and water table fluctuations, utility lines, pipes and structures (other than Pre-Existing Environmental Conditions and Specified Subsurface Conditions); (k) mechanical failure of equipment to the extent not resulting from a condition that is listed in the "Inclusions" section of this definition; (l) power outages not caused by third party Utilities; (m) a Change in Law pertaining to Taxes; (n) any failure in obtaining EPD approval for any of the Design/Build Project; (o) failure of the D/B Company to secure patents which it deems necessary for the performance of the Design/Build Work; (p) any Change in Law (including the issuance of any Governmental Approval, the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the D/B Company than are imposed by the Contract Standards; and (q) a Non-Georgia Sludge Disposal-Related Change in Law.
Upset	The meaning given such term in the Clean Water Act.
Utilities	Any and all utility work and installations whatsoever (including gas, water, electricity, telephone, and telecommunications), and all piping, wiring, conduits, and other fixtures of every kind whatsoever related thereto or used in connection therewith.
WLA	Waste load allocation.
WPCP	Water pollution control plant.
WRF	Water reclamation facility.
Work	All the services specified, indicated, shown, or contemplated by the Agreement documents and the furnishing by D/B Company of all materials, equipment, labor, methods, processes, construction and other things necessary to complete such services in accordance with the Agreement documents and that will ensure a functional and complete facility.
Written Notice	A written statement transmitted from one party to an authorized representative of another party.

1.2 INTERPRETATIONS

In this Design/Build Contract notwithstanding any other provision hereof:

1.2.1 Applicability and Stringency of Contract Standards. The D/B Company shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the D/B Company hereunder, each such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern.

1.2.2 As Shown, As Indicated, As detailed. These words, and words of like implication, refer to information contained by drawings and/or specifications describing the Design/Build Work, unless explicitly stated otherwise in other contract documents.

1.2.3 Causing Performance. A party shall itself perform, or shall caused to be performed, the obligations affirmatively undertaken by such party under this Design/Build Contract, subject to any limitations specially imposed hereby with respect to Subcontractors or otherwise.

1.2.4 Cost and Expense of Performance. All obligations undertaken by each party hereto shall be performed at the cost and expense of the party undertaking the obligation, unless the other party has explicitly agreed herein to bear all or a portion of the expense either directly or by reimbursement to the other party.

1.2.5 Counterparts. The Design/Build Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Design/Build Contract.

1.2.6 Defined Terms. The definitions set forth in Section 1.1 shall control in the event of any conflict with the definitions used in the recitals hereto.

1.2.7 Delivery of Documents in Digital Format. In this Design/Build Contract, the D/B Company is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The D/B Company agrees that all such documents shall be submitted to the County both in printed form (in the number of copies indicated) and, at the County's request, in digital form. Electronic copies shall consist of computer readable data submitted in any standard interchange format which the County may reasonably request to facilitate the administration and enforcement of this Design/Build Contract.

1.2.8 Directed, Required, Acceptable. When these words refer to work or its performance, "directed", "required", "requested", "authorized", "selected", "permitted", "ordered", "designated", "prescribed", and words of like implication,

mean “by direction of”, the County. Likewise, “acceptable”, “satisfactory”, “in the judgment of”, and words of like import, mean “recommended by”, acceptable to”, “satisfactory to”, or “in the judgment of” the County.

1.2.9 Entire Design/Build Contract. The Design/Build Contract represents the entire and integrated agreement between the parties hereto. The Design/Build Contract includes those items contained in the County's RFP for the Plant, the proposal of the D/B Company submitted in response thereto, and any amendments or supplements to the RFP or the proposal. The Design/Build Contract may be amended or modified only by a modification as defined in Article 8. The Design/Build Contract shall not be construed to create any contractual relationship of any kind between any persons or entities other than the County, including the Construction Managers, and the D/B Company. Nothing contained in the Contract Documents shall create any contractual relationship between the County, Construction Manager, or any other consultant employed by the County, and any of the D/B Company's, engineers, consultants, subcontractors or subcontractors. The County will look solely to the D/B Company to fulfill all terms and conditions of the Design/Build Contract.

1.2.10 Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders, and words importing the singular number mean and include the plural number and vice versa.

1.2.11 Good Industry Practice and Good Engineering and Construction Practice. Good Industry Practice and Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event displace or lessen the stringency of, the Contract Standards. In the event that, over the course of the Term of this Design/Build Contract, Good Industry Practice or Good Engineering and Construction Practice evolves in a manner which in the aggregate materially and adversely affects the cost of compliance therewith by the D/B Company, the D/B Company shall be relieved of its obligation to comply with such evolved Good Industry Practice and Good Engineering and Construction Practice (but not Good Industry Practice and Good Engineering and Construction Practice as of the Contract Date) unless the County agrees to adjust the Fixed Design/Build Price subject to Cost Substantiation, to account for such additional costs. Except to the extent that the D/B Company is relieved of its obligation to comply with such evolved Good Industry Practice or Good Engineering and Construction Practice, as provided above, in no event shall any evolution of Good Industry Practice or Good Engineering and Construction Practice, or any County election to pay or not pay for any increased cost.

1.2.12 Governing Law. This Design/Build Contract shall be governed by and construed in accordance with the applicable laws of the State of Georgia.

1.2.13 Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Design/Build Contract shall be

solely for convenience of reference and shall not affect its meaning, construction or effect.

1.2.14 Internal Conflict or Discrepancy. In the event of a conflict or discrepancy between any of the terms or conditions of this Design/Build Contract, including any conflict or discrepancy between the main body of this Design/Build Contract and any Appendix or Transaction Agreement Form, the interpretation which imposes the terms or conditions of greatest stringency on the D/B Company or results in the lowest Fixed Design/Build Price payable by the County shall govern.

1.2.15 Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

1.2.16 Liquidated Damages and Fixed Design/Build Price Reductions. This Design/Build Contract provides for the payment of liquidated damages and Fixed Design/Build Price reductions in certain circumstances of nonperformance, breach and default. Each party agrees that the damaged party's actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that would occur as a result of such nonperformance, breach or default of the D/B Company) and that the liquidated damages and Fixed Design/Build Price reductions provided for herein with respect to each such circumstance are intended to place the damaged party in the same economic position as it would have been in had the circumstance not occurred. In those cases where additional remedies are provided for, the parties acknowledge and agree that such remedies are intended to address harms and damages which are separate and distinct from those which the liquidated damages or Fixed Design/Build Price reductions are meant to remedy. The amounts of the liquidated damages and Fixed Design/Build Price reductions have been determined, taking into account, among other things, cost savings which a party might realize as a result of the circumstance resulting in the requirement to pay liquidated damages or Fixed Design/Build Price reductions, and any such savings shall not mitigate or off-set the requirement of a party to pay the full amount of such liquidated damage or Fixed Design/Build Price reduction.

1.2.17 Minimum Technical Requirements The Minimum Technical Requirements are intended to include the basic design principles, concepts and requirements for the Design/Build Work but do not include the final, detailed design, plans, drawings or specifications or indicate or describe each and every item required for full performance of the physical Design/Build Work and for achieving Acceptance. The D/B Company agrees to prepare all necessary complete and detailed designs, plans, drawings and specifications and to furnish and perform, without additional compensation of any kind, all Design/Build Work in conformity with the Minimum Technical Requirements and the final designs, plans, drawings and specifications based thereon. Furthermore, the D/B Company agrees that it

shall not have the right to bring any claim whatsoever against the County or any of its consultants or subcontractors, arising out of any design drawings, specifications or design requirements included in the RFP or made available during the procurement process.

1.2.18 No Third Party Rights. This Design/Build Contract is exclusively for the benefit of the County and the D/B Company and shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action, or other rights.

1.2.19 Persons. Words importing persons include firms, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

1.2.20 References to Days. All references to days herein are references to calendar days.

1.2.21 Reference Hereto – The term “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms refer to this Design/Build Contract; and the term “hereafter” means after , and the term “heretofore” means before, the Contract Date.

1.2.22 Reference to Including. All references to "including" herein shall be interpreted as meaning "including without limitation."

1.2.23 Reference to Knowledge. All references to "knowledge", "knowing", "know" or "knew" shall be interpreted as references to a party having actual knowledge.

1.2.24 Severability. If any clause, provision, subsection, Section or Article of this Design/Build Contract shall be ruled invalid by any court of competent jurisdiction, then the parties shall: (1) promptly negotiate a substitute for such clause, provision, subsection, Section or Article which shall, to the greatest extent legally permissible, effectuate the intent of the parties in the invalid clause, provision, subsection, Section or Article; (2) if necessary or desirable to accomplish item (1) above, apply to the court having declared such invalidity for a judicial construction of the invalidated portion of this Design/Build Contract; and (3) negotiate such changes, in substitution for or addition to the remaining provisions of this Design/Build Contract as may be necessary in addition to and in conjunction with items (1) and (2) above to effect the intent of the parties in the invalid provision. The invalidity of such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Design/Build Contract shall be construed and enforced as if such invalid portion did not exist.

1.2.25 Standards of Workmanship and Materials. Any reference in this Design/Build Contract to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the D/B Company to furnish the same in accordance with the grades and standards therefore indicated in this Design/Build Contract. Where this Design/Build Contract does not specify any explicit quality or standard for construction materials or workmanship, the D/B Company shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the Minimum Technical Requirements, and the Minimum Technical Requirements are to be interpreted accordingly.

1.2.26 Technical Standards and Codes. References in this Design/Build Contract to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Minimum Technical Requirements and (2) if any material revision occurs, to the D/B Company's knowledge, after the Contract Date, and prior to completion of the applicable Design/Build Work, the D/B Company shall notify the County. If so directed by the County, the D/B Company shall perform the applicable Design/Build Work in accordance with the revised professional and technical standard, code or specification as long as the D/B Company is compensated, subject to Cost Substantiation, for any additional cost or expense attributable to any such revision.

1.2.27 Treatment of Influent. The terms "treat", "treated", "treatment", "treating" and any similar terms, when used with respect to Influent, shall mean and refer to the operation of the Plant to receive, and process Influent and discharge Effluent, all in accordance with this Design/Build Contract.

1.3 EXECUTION, CORRELATION AND INTENT

1.3.1 Correlated Personnel Observations. Execution of this Design/Build Contract is a representation that the D/B Company and its architects, engineers, consultants and subcontractors have visited the site, have become familiar with the local conditions under which the Design/Build Work is to be performed, and have correlated personal observations with the requirements of the Design/Build Contract.

1.3.2 County Documents. The intent of the Design/Build Contract is to include all items necessary for the proper execution and completion of the Design/Build Work. The Design/Build Contract, the Design/Build RFP, and any other County Furnished Documents are complementary and what is required by any one shall

be as binding as if required by all. Work not covered in the Design/Build Contract shall not be required unless it is consistent there with and is reasonably inferable there from as being necessary to produce the intended results. Words and abbreviations which have well-known technical or trade meanings are used in the Design/Build Contract in accordance with such recognized meanings.

1.3.3 D/B Work Division. The organization of the Design/Build Contract, the Design/Build RFP, and any related Specifications provided to the D/B Company in any manner, shall not control the D/B Company in dividing the Design/Build Work among architects, engineers, consultants, subcontractors and trades or in establishing the extent of work to be performed by any such entity; nor shall any responsibility be assumed by the County or Construction Manager for the manner in which the D/B Company utilizes such documentation provided to divided the Design/Build Work among such entities.

1.3.4 Order of Documents Precedence. If any portion of the Design/Build Contract, the Design/Build RFP, or any other document supplied by the County or its representative shall be in conflict with another portion of such documentation the following shall be the order of precedence: The Design/Build Contract, the General Requirements of the Design/Build RFP, any outline or technical Specifications provided; any drawings provided; any other Design/Build Project data provided. All such discrepancies and/or conflicts shall be submitted in writing to the Construction Manager for clarification.

ARTICLE 2- EFFECTIVE DATE AND CONTRACT TERM

This Design/Build Contract shall commence on the date of the issuance of the Notice to Proceed (NTP) to the D/B Company. The NTP shall be issued after the contract is executed by the Chair of the Board of Commissioners and attested to by the Clerk to the Commission and delivered to the D/B Company, and shall continue in effect until all provisions of the Design/Build Work are complete in accordance with the provisions of the contract, unless earlier terminated pursuant to the termination provisions of Article 12 hereof, in which event the Term shall be deemed to have ended as of the date of such termination. The maximum permissible schedule is 24 months from the issuance of the NTP. All rights, obligations and liabilities of the parties hereto shall commence on the Date of the issuance of the (NTP) to the D/B Company, subject to the terms and conditions hereof. The County shall not be obligated to pay any applicable Design/Build Price until the Design/Build Date. At the end of the Term of this Design/Build Contract, all other obligations of the parties hereunder shall terminate, except as provided in Sections 12.

ARTICLE 3- ADMINISTRATION

3.1 CONSTRUCTION MANAGER

3.1.1 MANAGEMENT APPROACH. The County has established a process for the design and construction of infrastructure and facilities projects in its Capital Improvements Program which utilizes a County Representative with a team support from County staff as a Construction Manager. The Construction Manager has access to a wide range of services to assist and support the County in comprehensive program planning, organization, coordination, control, budgeting, and implementation of the design and construction of each project in the program. It is the County's intent that the Construction Manager, and Design/Builder work as a unified team with the County in the delivery of this project.

3.1.2 THE CONSTRUCTION MANAGER. The Construction Manager is the person or entity identified as such herein. The term "Construction Manager" means the Construction Manager or the Construction Manager's authorized representative. The County has designated the Construction Manager to be responsible for the implementation and delivery of projects within the County Capital Improvements Program. The Construction Manager's services include project-specific planning and management of design, construction, and support services required to complete projects in accordance with performance goals.

3.2 ADMINISTRATION OF THE CONTRACT

3.2.1 County's Primary Representative. The Construction Manager shall provide administration services as hereinafter described. For the administration of this Contract, the Construction Manager shall serve as the County's primary representative during design and construction and until final payment to the Design/Builder is due. The primary point of contact for the Design/Builder shall be the Construction Manager. All correspondence from the Design/Builder to the County shall be forwarded through the Construction Manager. Likewise, all correspondence and instructions to the Design/Builder shall be forwarded through the Construction Manager.

3.2.2 Monitor Performance. The Construction Manager will determine in general that the construction is being performed in accordance with design and engineering requirements, and will endeavor to guard the County against defects and deficiencies in the Work.

3.2.3 Responsibilities Not Required of Construction Manager. The Construction Manager will not be responsible for or, have control or, charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, nor will it be responsible for the Design/Builder's failure to carry out the Work in accordance with the

Contract Documents. The Construction Manager will not be responsible for or have control or charge over the acts or omissions of the Design/Builder, its architects, engineers, consultants, subcontractors, or any of their agents or employees, or any other persons performing the D/B Work.

3.2.4 Access to D/B Work. The Construction Manager and any other consultants employed by the County shall at all times have access to the Work. The Design/Builder shall provide safe facilities for such access so that they may perform their functions.

3.2.5 Application for Payment Observation. Based on the Construction Manager's observations regarding the Design/Builder's Applications for Payment, the Construction Manager shall determine the amounts owing to the Design/Builder, in accordance with the payment terms of the Contract, and shall issue Certificates for Payment in such amount to the County.

3.2.6 Interpretations. The Construction Manager shall render interpretations necessary for the proper execution or progress of the Work. Either party to the Contract may make written requests to the Construction Manager for such interpretations.

3.2.7 Claims, Disputes and Other Matters. In questions between the Design/Builder and the County relating to the progress of the Work or the interpretation of the Contract Documents shall be referred to the Construction Manager for interpretation by the County Attorney. The Construction Manager shall provide a written recommendation. All interpretations of the Construction Manager shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in graphic form.

3.2.8 Artistic Affect. In matters relating to artistic effect, the interpretation of the Design/Builder's architect shall be final, if the County determines that it is consistent with the intent of the Contract Documents.

3.2.9 Decision on Disagreements. Except as otherwise provided in this Contract, the Construction Manager shall issue a decision on any disagreement concerning a question of fact arising under this Contract. The Construction Manager shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Construction Manager shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Contractor files a written appeal with the Public Works Director and mails or otherwise furnishes the Construction Manager a copy of such appeal. The decision of the Public Works Director shall be final and conclusive. Such final decision of the Public Works Director shall not be pleaded in any suit involving a question of fact arising under this Contract, provided such is not fraudulent, capricious, arbitrary, so grossly erroneous as necessarily implying bad faith, or is not supported by substantial evidence. In connection with any

appeal proceeding under this Article, the D/B Company shall be afforded an opportunity to be heard and to offer evidence in support of the D/B Company's appeal. Pending any final decision of a dispute hereunder, the D/B Company shall proceed diligently with the performance of the Contract and in accordance with the Construction Manager's decision.

3.2.10 Authority to Reject Work. The Construction Manager shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Construction Manager's opinion, it is considered necessary or advisable for the implementation of the intent of the Contract Documents, the County shall have authority to require special inspection or testing of the Work in accordance with Subparagraph 7.7.3, whether or not such Work be then fabricated, installed or completed. Neither the Construction Manager's authority to act under this Subparagraph, nor any decision made by the Construction Manager in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Construction Manager to the Design/Builder, any subcontractor, any of their agents or employees, or any other person performing any of the Work.

3.2.11 Submittals. The Construction Manager will determine from the Design/Builder's approved submittal register those shop drawings, product data, and samples requiring review by the County or Construction Manager, and shall communicate that information to the Design/Builder. The D/B Company shall submit and the Construction Manager shall receive submittals in accordance with the provisions in Appendix 10 and other sections of the D/B Contract. All submittals received by the Construction Manager shall include the Design/Builder's architect's or engineers' review comments or approval. The Construction Manager shall review submittals only for compliance with County program and standards and the information given in the Contract Documents, with promptness and in accord with schedule. The Construction Manager shall indicate requirements for resubmittal (if any), or approval of submittal, and return submittals to Contractor for distribution, or for resubmission.

3.2.12 Change Orders. The Construction Manager shall take appropriate action on Change Orders in accordance with Article 8 of this Agreement, and shall have authority to order minor changes in the Work as provided in Subparagraph 8.3 of this Agreement.

3.2.13 Substantial Completion and Final Completion. The Construction Manager shall conduct inspections to determine the dates of Substantial Completion and Final Completion, and shall receive and forward to the County for review written warranties and related documents required by the Contract Documents and assembled by the Design/Builder. The Construction Manager shall approve and issue Certificates for Payment upon compliance with Substantial and Final Completion requirements indicated in Article 9 of this Agreement.

ARTICLE 4- COUNTY

4.1 REPRESENTATIONS AND WARRANTIES OF THE COUNTY

The County represents and warrants that:

4.1.1 Existence and Powers. The County is a political subdivision of the State, validly existing under the Constitution and the laws of the State, with full legal right, power and authority to enter into and to perform its obligations under this Design/Build Contract;

4.1.2 Due Authorization and Binding Obligation. This Design/Build Contract has been duly authorized, executed and delivered by all necessary action of the County and constitutes a legal, valid and binding obligation of the County, enforceable against the County in accordance with its terms, except to the extent that its enforceability may be limited by constitutional, bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application;

4.1.4 No Conflict. To its knowledge, neither the execution nor delivery by the County of this Design/Build Contract nor the performance by the County of its obligations in connection with the transactions contemplated hereby or the fulfillment by the County of the terms or conditions hereof: (a) conflicts with, violates or results in a material breach of any law or governmental regulation applicable to the County; or (b) conflicts with, violates or results in a material breach of any term or condition of any order, judgment or decree, or any contract, agreement or instrument, to which the County is a party or by which the County or any of its properties or assets are bound, or constitutes a material default under any of the foregoing;

4.1.4 No Litigation. Except as disclosed in writing to the D/B Company, to its knowledge, there is no Legal Proceeding before or by any Governmental Body, or proceeding for referendum or other voter initiative, pending or, to the County's knowledge, overtly threatened or publicly announced against the County, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Design/Build Contract by the County or the validity, legality or enforceability of this Design/Build Contract against the County, or any other agreement or instrument entered into by the County in connection with the transactions contemplated hereby, or on the ability of the County to perform its obligations hereunder or under any such other agreement or instrument.

4.1.5 Governmental Approvals. The County has and shall continue to have throughout the Term of this Design/Build Contract, all Governmental Approvals necessary to effectuate its responsibilities under this Design/Build Contract or required of the County as owner of the Existing Plant, and the County has

enacted all municipal laws, ordinances or regulations which are necessary for the performance by the County of this Design/Build Contract; and

4.1.6 Applicable Law Compliance. Except as disclosed in writing to the D/B Company, to its knowledge (1) the County is not in material violation of any Applicable Law pertaining to the Plant, or (2) the County has not received notice of a violation or an alleged violation of any such Applicable Law.

4.2 INFORMATION AND SERVICES REQUIRED OF THE COUNTY

4.2.1 The County shall furnish all reasonably available site information describing the physical characteristics, legal limitations and utility locations for the site of the Design/Build Project, and a legal description of the site.

4.2.2 Except as indicated otherwise, the County shall secure and pay for necessary easements required for the construction of permanent structures.

4.2.3 Information or services under the County's control shall be furnished by the County with reasonable promptness

4.2.4 The County shall forward all instructions to the D/B Company through the Construction Manager.

4.2.5 The County will assure the D/B Company access to the Plant and Plant Site for the performance of its obligations hereunder.

4.2.6 The County will obtain and maintain any Governmental Approvals that are the responsibility of the County, specifically the NPDES Permit. County's assistance of the D/B Company in submission of all information for Government Approvals does not relieve the D/B Company of the responsibility to obtain all required Governmental Approvals as required for the D/B Work.

4.2.7 The County will comply with Applicable Law pertaining to the County as owner of the Plant (except to the extent the D/B Company has agreed to perform and assume any such obligations in this Design/Build Contract.

4.2.8 The County will pay the Design/Build Price and any other amounts due the D/B Company in accordance with the terms and conditions of this Design/Build Contract.

4.3 COUNTY'S RIGHT TO STOP THE DESIGN/BUILD WORK

If the D/B Company fails to correct defective Design/Build Work as required by Section 6.10 or persistently fails to carry out the Design/Build Work in accordance with the Design/Build Contract, the County, by written order signed personally or by an agent specifically so empowered by the County in writing,

may order the D/B Company to stop the Design/Build Work, or any portion thereof, until the cause for such order has been eliminated. The D/B Company shall bear all direct and indirect costs attributable to work stoppage only if stoppage is a result of D/B Company's failure to correct.

4.5 COUNTY'S RIGHT TO CARRY OUT THE DESIGN/BUILD WORK

If the D/B Company defaults or neglects to carry out the Design/Build Work in accordance with the Design/Build Contract, and fails within seven (7) days after receipt of written notice from the County to commence and continue correction of such default or neglect with diligence and promptness, the County may, after four (4) days following receipt by the D/B Company of an additional written notice and without prejudice to any other remedy the County may have, make good such deficiencies. In such case an appropriate Change Order shall be issued deducting from the payments then or thereafter due the D/B Company for the cost of correcting such deficiencies, including compensation for the County's Agents or Professional consultants for additional services made necessary by such default, neglect or failure. If the payments then or thereafter due the County are not sufficient to cover such amount, the D/B Company shall pay the difference to the County.

4.6 COOPERATION WITH OTHERS

The County may award other contracts for additional work, other than the D/B Work at the existing site, and the D/B Company shall fully cooperate with such other entity in order to avoid any interference with each others work. The award of other contracts or the performance of additional work at the existing site does not in and of itself constitute interference with the D/B Work. The D/B Company will have to provide detailed documentation to support any claim of interference with the D/B work prior to the start of other work at the existing site.

ARTICLE 5- D/B COMPANY

5.1 REPRESENTATIONS AND WARRANTIES OF THE D/B COMPANY

The D/B Company represents and warrants that:

5.1.1 Existence and Powers. The D/B Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Georgia and fully authorized to do business in the State of Georgia, with the full legal right, power and authority to enter into and perform its obligations under this Design/Build Contract;

5.1.2 Due Authorization and Binding Obligation. This Design/Build Contract has been duly authorized, executed and delivered by all necessary corporate action of the D/B Company and constitutes a legal, valid and binding obligation of the

D/B Company, enforceable against the D/B Company in accordance with its terms, except to the extent that its enforceability may be limited by constitutional, bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and by equitable principles of general application;

5.1.3 No Conflict. To its knowledge, neither the execution nor delivery by the D/B Company of this Design/Build Contract nor the performance by the D/B Company of its obligations in connection with the transactions contemplated hereby or the fulfillment by the D/B Company of the terms or conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the D/B Company; or (b) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the D/B Company is a party or by which the D/B Company or any of its properties or assets are bound, or constitutes a default under any of the foregoing;

5.1.4 No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Design/Build Contract by the D/B Company or the performance of its payment or other obligations hereunder except such as have been duly obtained or made;

5.1.5 No Litigation. Except as disclosed in writing to the County in a certification of an officer of the D/B Company addressed to the County simultaneously with the execution and delivery of this Design/Build Contract, there is no Legal Proceeding before or by any Governmental Body pending or, to the D/B Company's knowledge, overtly threatened or publicly announced against the D/B Company, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Design/Build Contract by the D/B Company, or the validity, legality or enforceability of this Design/Build Contract against the D/B Company or any other agreement or instrument entered into by the D/B Company in connection with the transactions contemplated hereby, or on the ability of the D/B Company to perform its obligations hereunder or under any such other agreement or instrument;

5.1.6 Claims and Demands. Except as disclosed in writing to the County in a certification of an officer of the D/B Company addressed to the County simultaneously with the execution and delivery of this Design/Build Contract, there are no material and adverse claims and demands based in environmental, contract or tort law pending or to its knowledge, threatened against the D/B Company or any Affiliate of the D/B Company with respect to any water or wastewater plant designed, constructed, operated, maintained or managed by any of the foregoing;

5.1.7 Governmental Approvals. The D/B Company has or will obtain in the course of its performance hereunder, either directly or through qualified Subcontractors, the Governmental Approvals which the D/B Company must obtain in its own name or that of its Subcontractors to provide the contract services;

5.1.8 Applicable Law Compliance. Except as disclosed in writing to the County in a certification of an officer of the D/B Company addressed to the County simultaneously with the execution and delivery of this Design/Build Contract, to its knowledge, the D/B Company is not in material violation of any law, order, rule or regulation applicable to any water or wastewater plant designed, constructed, operated, maintained or managed by the D/B Company or any Affiliate of the D/B Company;

5.1.9 Practicability of Performance. The Minimum Technical Requirements, the technology and the construction practices to be employed in the construction of the Work are furnished exclusively by the D/B Company pursuant to the terms of this Design/Build Contract, and the D/B Company assumes and shall have exclusive responsibility for their efficacy, notwithstanding the inclusion of design drawings, specifications, design principles or other terms and conditions in the RFP or the negotiation of the terms of the Minimum Technical Requirements, Acceptance Test Procedures and Standards, and Performance Guarantees between the D/B Company and the County. The D/B Company assumes the risk of the practicability and possibility of performance of the Design/Build Project on the scale, within the time for completion and in the manner required hereunder, and of treating Influent through the operation of the Plant in a manner which meets all of the requirements hereof, even though such performance and operation may involve technological or market breakthroughs or overcoming facts, events or circumstances which may be different from those assumed by the D/B Company in entering into this Design/Build Contract, and agrees that sufficient consideration for the assumption of such risks and duties is included in the Fixed Design/Build Price. No impracticability or impossibility of any of the foregoing shall be deemed to constitute an Uncontrollable Circumstance;

5.1.10 Patents and Licenses. The D/B Company represents and warrants that the D/B Company owns, or is expressly authorized to use and assign under patent rights, licenses, franchises, trademarks or copyrights, the technology necessary for the Design/Build Work without any material conflict with the rights of others, and the D/B Company is authorized to assign the right to use such technology to the County upon termination of this Design/Build Contract or expiration of the Term without any further approvals, and shall bear all costs incurred by the County in obtaining same should this not be the case;

5.1.11 Information Supplied by the D/B Company. The information supplied and representations and warranties made by the D/B Company and the Surety in all submittals made in response to the RFP and in all post-proposal submittals with

respect to the D/B Company (and, to its knowledge, all information supplied in such submittals with respect to any such Subcontractor) are true, correct and complete in all material respects; and

5.1.12 Suitability of Site. The D/B Company's agents and representatives have visited, inspected and are generally familiar with the Site, its physical conditions relevant to the obligations of the D/B Company pursuant to this Design/Build Contract, including surface conditions, normal and usual soil conditions, roads, utilities, topographical conditions and air and water quality conditions. The D/B Company has performed all subsurface and other investigations necessary to determine the suitability of the Site for foundation work; is familiar with all Site, local and other conditions which may be material to the D/B Company's performance of its obligations under this Design/Build Contract (including, but not limited to transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and utilities); and has received and reviewed the information regarding the Site contained in the Contract Documents. Based on the foregoing, the D/B Company is not aware of any condition which would make the Site unsuitable for the construction and operation of the Design/Build Work in accordance herewith. The investigations referred to in this subsection, performed with this objective, did not reveal the presence of Hazardous Material on the Site.

5.2 D/B COMPANY'S ARCHITECTS AND ENGINEERS

5.2.1 Architects and Engineers of Record. Architects and engineers utilized in the performance of the Work in the capacity of Architect and Engineer(s) of Record, and those who review and approve the design of architectural, structural, civil, mechanical, electrical, and other engineering features of the Work, shall be legally licensed in the State of Georgia. Design and engineering services shall be performed by qualified architects, engineers and other professionals selected and paid for by the D/B Company.

5.2.2 Responsibilities Generally. The D/B Company's architects and engineers shall fully develop the complete process design, architectural design, building systems engineering and design, and site development engineering and design, including the preparation of construction drawings and specifications as necessary, to produce the constructed facility in a complete, finished, and operable condition.

5.2.3 Reviews and Approvals. The D/B Company's architects and engineers shall be responsible, as the Architects and Engineers of Record, for review and approval of shop drawings, product data, and samples produced by the D/B Company and its subcontractors.

5.2.4 Site Visits. The D/B Company's architects and engineers shall visit the site at intervals appropriate to the stage of construction to become familiar with the

progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. Field observation reports shall be produced and distributed for each site visit.

5.3 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE D/B COMPANY

Starting upon the D/B Company's receipt of the Notice to Proceed, the D/B Company shall again carefully study and compare the Contract Documents and field conditions of the jobsite and shall immediately report to the Construction Manager any error, inconsistency, ambiguity or omission that may be discovered; or, if no such errors, inconsistencies, ambiguities or omissions are found, the D/B Company shall so state in writing to the Construction Manager.

5.4 LABOR AND MATERIALS

5.4.1 Timely Payment. The D/B Company shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

5.4.2 Employees. The D/B Company shall at all times enforce strict discipline and good order among the D/B Company's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned them.

5.5 WARRANTY OF MATERIALS AND EQUIPMENT FURNISHED

The D/B Company warrants to the County that all materials and equipment furnished under this Contract shall be new unless otherwise specified, and that all Work shall be of good, first quality, free from faults and defects and in conformance with the Contract Documents. All D/B Work not conforming to these requirements, including substitutions not properly approved and authorized by the County, may be considered defective. If required by the County, the D/B Company shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty is not limited by the provisions under Section 6.5.7 of this Agreement.

5.6 TAXES

The D/B Company shall pay all sales, retail, occupational, service, excise, old age benefit and unemployment compensation taxes, consumer, use and other similar taxes, as well as any other taxes or duties on the materials, equipment, and labor for the work provided by the D/B Company which are legally enacted by any municipal, county, state or federal authority, department or agency at the time bids are received, whether or not yet effective. The D/B Company shall

maintain records pertaining to such taxes as well as payment thereof and shall make the same available to the County at all reasonable times for inspection and copying. The D/B Company shall apply for any and all tax exemptions which may be applicable and shall timely request from the County such documents and information as may be necessary to obtain such tax exemptions. The County shall have no liability to the D/B Company for payment of any tax from which it is exempt.

5.7 PERMITS, FEES AND NOTICES

5.7.1 Permits and Fees. The D/B Company shall apply for, pay for and secure all permits required for the proper execution of the Work. The D/B Company shall secure and pay for all other permits and governmental fees required to execute the Work, including but not limited to licenses and inspections necessary for the proper execution and completion of the Work, and for the occupancy of the Work upon Substantial Completion and which are legally required at the time proposals are received. Other permits required by any department of Fulton County Government, or any other jurisdiction must be obtained by the D/B Company. D/B Company shall be responsible for obtaining interim and/or final Certificates of Occupancy from the authority having jurisdiction. The D/B Company shall be responsible for all costs which may be necessary in order to obtain these certificates, with the exception of those defined below. D/B Company shall be responsible for acquiring and installing water and sewer taps for the project including all fees. Cost of meters and other materials and labor shall be the responsibility of the D/B Company.

5.7.2 Notices. The D/B Company shall give all notices and comply with all laws, codes, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction which bear on the performance of the Work. The Construction Manager shall be notified within two (2) days in writing of any jurisdiction observations or inspections that require changes to the design and engineering requirements in the Contract Documents.

5.7.3 Construction Documents. It is the responsibility of the D/B Company to make certain that the Construction Documents are in accordance with applicable laws, statutes, building codes and regulations. If the D/B Company observes that any of the Construction Documents are at variance therewith in any respect, the D/B Company shall promptly rectify such variance at no cost to the County. Should such variance be due to any inaccuracy or inconsistency in the Contract Documents made part of this Agreement, the D/B Company shall notify the Construction Manager in writing, and any necessary changes shall be accomplished by appropriate modification. All necessary modifications which result from such conflicts shall be issued to the D/B Company in writing by the Construction Manager.

5.7.4 Responsibility for Inaccurate or Inconsistent Work If the D/B Company performs any Work knowing it to be contrary to applicable laws, statutes, building codes, and regulations, and the source of the conflict is an inaccuracy or inconsistency in the Contract Documents made part of this Agreement, and such Work is performed without notice of such having been made to the Construction Manager, the D/B Company shall assume full responsibility therefore and shall bear all direct and indirect costs and liabilities attributable thereto. Nonetheless, as to designer and builder, the D/B Company shall be solely responsible for any work contrary to law or applicable codes.

5.8 ALLOWANCES

5.8.1 Inclusion in the Fixed D/B Price. The D/B Company shall include in the contract sum all allowances stated in the Fixed Design/Build Price Cost Proposal Summary of the D/B RFP.

5.8.2 Monetary Amounts. Allowances have been stipulated in the Fixed Design/Build Price Cost Proposal Summary of the D/B RFP. The performance or non-performance of work under an allowance is solely at the discretion of the Owner. Allowances are provided for work that may or may not be required and may or may not have been defined at the time of the solicitation. The D/B Company shall be entitled to receive payment for only those portions of the allowance authorized by the County.

SECTION 5.9 PROJECT MANAGEMENT

5.9.1 Qualified Personnel. The D/B Company shall provide qualified personnel to supervise and direct the D/B Work. The D/B Company shall be solely responsible for all design, engineering, planning, construction, fabrication, delivery, erection, installation, means, methods, techniques, sequences and procedures, and shall coordinate all portions of the D/B Work.

5.9.2 Acts and Omissions. The D/B Company shall be responsible to the County for the acts and omissions of the D/B Company's officers, servants, directors, consultants, employees, architects, suppliers, engineers, contractors, subcontractors, and their agents and employees, and any other persons performing any of the D/B Work.

5.9.3 Construction Manager. The D/B Company shall not be relieved from obligations to perform the D/B Work in accordance with the County requirements, either by the activities or duties of the Construction Manager in the administration of the Contract, or by inspections, tests or reviews required or performed by persons other than the D/B Company.

5.9.4 Documents Distribution. The D/B Company shall be responsible for printing and distribution of documents including reports, schedules, plans, drawings, project manuals, submittals and other documents associated with the D/B Work in accordance with Appendices 10, 12 and 13.

5.9.5 Personnel Performance. The D/B Company shall enforce discipline and good order at all times among the D/B Company's employees and all subcontractors. All persons engaged by the D/B Company for Design/Build Work shall have all required applicable licenses and requisite skills, for the tasks assigned. The D/B Company shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Design/Build Work. Each such engineer and consultant shall have a current professional registration or certification to practice in the State of Georgia if required by Applicable Law.

5.9.6 Senior Supervisors. The D/B Company shall appoint and inform the County of the identity of the corporate officials of the D/B Company with senior supervisory responsibility from time to time for the D/B Work and the performance of this Design/Build Contract (the "Senior Supervisors"). The D/B Company shall promptly notify in writing to the County of the appointment of any successor Senior Supervisor. The Senior Supervisor shall cooperate with the County in any reviews of the performance of the Project Manager which the County may undertake from time to time, and shall give full consideration to any issues raised by the County in conducting such performance reviews.

5.9.7 Project Manager. The D/B Company shall appoint a manager for the Design/Build Work (the "Project Manager") who is trained, experienced and proficient in the management of design/build projects of the design and construction of wastewater treatment rehabilitation projects comparable to the Design/Build Work, and whose main employment responsibility shall be managing the D/B Company's performance of the Design/Build Work.

5.9.8 Construction Superintendent. The D/B Company shall designate a D/B Company's Construction Superintendent, subordinate to the Project Manager, who shall be present on the Site with any necessary assistance on a full time basis when the D/B Company or any Subcontractor is performing Design/Build Work.

5.9.9 Other Management Personnel. The D.B Company shall appoint in accordance with Section 6.12 other management personnel as required to effectively manage the D/B Work.

5.9.10 Good Order. The D/B Company shall at all times enforce strict discipline and good order among the D/B Company's employees and shall not employ on the D/B Work any unfit person or anyone not skilled in the task assigned them as determined by the Construction Manager.

5.10 D/B COMPANY'S DESIGN/BUILD SCHEDULE

5.10.1 Submission of Schedule The D/B Company shall prepare and submit for the Construction Manager's review a detailed D/B Company's Design/Build Schedule for the D/B Work in accordance with Appendix 12. The schedule shall not exceed time limits indicated in the D/B Company's proposal or under this Agreement. Schedules shall be kept current and updated and submitted monthly in accordance with Appendix 12.

5.10.2 All Submittals Reflected on Schedule The D/B Company shall prepare and keep current, for the Construction Manager's review, a schedule of submittals which is coordinated with the D/B Company's design and construction schedule. Schedule shall show submittal date, date sent to D/B Company's architects and engineers, date sent to Construction Manager, date received from D/B Company's architects and engineers and Construction Manager, dates of receipt from and return to subcontractors and suppliers, and action taken.

5.11 DOCUMENTS AND SAMPLES AT THE SITE

The D/B Company shall maintain at the Project site, on a current basis, one record copy of all Drawings, Specifications, Submittals, Samples, Product Data, Addenda, Change Orders, Modifications and other documents related to the work in good order and marked currently to record all changes made during construction. These shall be available to the Construction Manager's review from time to time and shall be delivered to the Construction Manager for submittal to the County upon completion of the Work. The D/B Company shall advise the Construction Manager on a current basis of all changes in the D/B Work made during construction.

5.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

5.12.1 Submittal Register. The D/B Company shall prepare and submit to the Construction Manager, per the procedures contained in Appendices 10, 12 and 13, a comprehensive Submittal Register for review and approval by the Construction Manager.

5.12.2 Submittal Promptness The D/B Company shall prepare, review, approve and submit to its architects and engineers, and to the Construction Manager if required, with reasonable promptness and in such sequence as to cause no delay in the D/B Work or to any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents. The D/B Company shall coordinate its Shop Drawings, Product Data and Samples with those of other separate contractors, if any.

5.12.3 D/B Company Representations In approving and submitting Shop Drawings, Product Data, and Samples, the D/B Company represents that he has determined and verified all materials, field measurements and field construction criteria related thereto, or shall do so with reasonable promptness, and has checked and coordinated the information contained within such submittals between all trades and with the requirements of the D/B Work, the Project and the Contract Documents.

5.13 SAFETY AND SECURITY

5.13.1 Safety. The D/B Company shall maintain the safety of the services at a level consistent with the Contract Standards and Appendices 9B and 10. Without limiting the foregoing, the D/B Company shall: (1) take all reasonable precautions for the safety of, and provide all reasonable protection to prevent damage, injury or loss by reason of or related to the construction of the D/B Work to, (a) all employees working at the Site and all other persons who may be involved with the operations, construction, maintenance, repair and replacement of the D/B Work, (b) all visitors to the Site, (c) all materials and equipment under the care, custody or control of the D/B Company on the Site, (d) other property constituting part of the Site, and (e) County Property; (2) establish and enforce all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards and promulgating safety regulations; (3) give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss; (4) designate a qualified and responsible employee at the Site. The Site Safety Representative, whose duty shall be the supervision of plant safety, prevention of fires and accidents and the coordination of such activities as shall be necessary with Federal, State and County officials; (5) during Equipment and Start-up Testing and Acceptance Testing operate all equipment in a manner consistent with the manufacturer's safety recommendations; (6) provide for safe and orderly vehicular movements; and (7) develop and carry out a Site-specific Project Safety and Health Program, including employee training and periodic inspections, designed to implement the requirements of this Section.

5.13.2 OSHA. The D/B Company shall construct all D/B Work and take all other actions which may be required in order to bring all associated D/B Work in compliance with the Occupational Safety and Health Act as in effect on the Contract Date at the cost and expense of the D/B Company. Compensation for any such actions or other actions shall be solely through the Fixed Design/Build Price. Any amendments to the Occupational Safety and Health Act or the regulations thereunder which take effect after the Contract Date shall constitute a Change of Law.

5.13.3 Security The D/B Company shall be responsible for the security of the portion of the Site where the D/B Work is undertaken from the Notice to Proceed until the date of acceptance. The D/B Company shall maintain suitable

fences, gates and locks at the Site. The D/B Company shall guard against and be responsible for all damage or injury to such properties caused by trespass, negligence, vandalism or malicious mischief of third parties, and shall provide for safe and orderly vehicular movement.

5.14 USE OF SITE

The D/B Company shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents, and shall not unreasonably encumber the site with any materials or equipment. The D/B Company shall control accessibility to the site and not unreasonably impede the normal flow of traffic in the vicinity, including truck and equipment entrances, allowable use of contiguous sidewalks and streets, and parking facilities.

5.15 UTILITIES

The D/B Company shall coordinate and be responsible for all connections to the existing and/or new utilities.

5.16 CLEANING UP

5.16.1 D/B Company The D/B Company shall at all times keep the premises free from accumulation of waste materials or rubbish caused by the D/B Company's operations, and shall adhere to all of the terms of the General Requirements. At the completion of the Work, the D/B Company shall remove all the waste materials and rubbish from and about the Project as well as all the tools, construction equipment, machinery and surplus materials.

5.16.2 County Rights If the D/B Company fails to clean up adequately, the County may do so as provided in Section 4.4 of this Agreement, and the cost thereof shall be charged directly as a deduct to the Contract Sum.

5.17 COMMUNICATIONS AND MEETINGS

On or before the Design/Build Date, the D/B Company shall inform the County of the telephone, fax numbers, e-mail address and other means by which the Project Manager and Senior Supervisors may be contacted. The County shall furnish to the D/B Company comparable communications information with respect to the Construction Manager. The D/B Company shall meet with the County each month in accordance with Appendix 10 to review the content of the Project Manager's reports required to be prepared pursuant to Appendix 10. The Project Manager and, if requested by the County, the Senior Supervisors each shall personally attend the monthly meetings with the County, and all special meetings which the County may reasonably request from time to time, to review management, operational, performance and planning matters arising with respect to the Design/Build Work and this Design/Build Contract. Any issue in dispute

which the parties are unable to resolve at such monthly and special meetings may be referred for Non-Binding Mediation pursuant to Section 12.10 and resolution of any issue resolved at such meetings or through Non-Binding Mediation shall be reflected in a Contract Administration Memorandum.

5.18 CUSTOMER SERVICE

5.18.1 Single Point of Contact. The D/B Company shall create and support a single point of contact for all complaints, and communications received by the D/B Company and/or the County regarding the Design/Build Project, the Design/Build Work, or related issues. The D/B Company shall respond in a timely and effective manner to all such complaints and communications received by the D/B Company and/or the County regarding the design, construction, any environmental issues regarding wastewater, stormwater, odor and air emissions, noise, or any other matter related to the D/B Work. The D/B Company shall investigate each such complaint and communication and, the D/B Company shall promptly rectify any physical discrepancy and respond back to the source of the inquiry within 24 hours. All customer communications shall be immediately logged and promptly responded to in writing, sent to the County on a daily basis, and reported to the County as part of the routine project reports delivered pursuant to Article 6. The D/B Company shall establish, maintain and make freely known a telephone number, e-mail address and mailing address to which customer complaints and communications may be directed.

5.18.2 Relations with Participating Communities The D/B Company shall cooperate with and assist the County in performing its obligations under its agreements with the Participating Communities relating to the D/B Work, including providing all information, data and reports required under such agreements. The D/B Company shall indemnify and hold harmless the County, in the manner provided in Section 11.4 from any Loss-and-Expense resulting under such agreements from any failure to perform obligations owed to a Participating Community thereunder to the extent the Loss-and-Expense is attributable to an unexcused failure by the D/B Company to perform the D/B Contract.

5.19 COPYRIGHT, ROYALTIES AND PATENTS

5.19.1 Documents. The documents, including but not limited to all plans, designs, drawings, specifications, shop drawings and other documentation resulting from the design, engineering and construction services, shall become the sole property, custody and control of Fulton County. The D/B Company or any other entity associated with the documents shall not receive any additional compensation in the future if Fulton County uses the documents for use in planning, design, engineering and construction of any future project.

5.19.2 Payment The D/B Company shall pay all royalties and license fees, shall defend all suits or claims for infringement of any patent rights, and shall hold the

County, the Construction Manager, and other consultants of the County for the Project, and their agents and employees, harmless from loss on account thereof. If the D/B Company has reason to believe that the design, process or product selected is an infringement of a patent, it shall be responsible for such loss unless such information is promptly given to the County.

ARTICLE 6- DESIGN/BUILD OF THE DESIGN/BUILD PROJECT

6.1 DESIGN/BUILD GENERALLY

6.1.1 Elements of the Design/Build Work In performing the D/B Work generally, the D/B Company shall, in accordance with the Contract Standards and without limitation, as and to the extent applicable hereunder: (1) prepare the Plant for the D/B Work; (2) replace and install equipment; (3) remove from Plant and dispose of any demolition or construction debris resulting from the D/B work and any excess soil excavated therefrom; (4) design and construct the D/B Project; (5) conduct equipment testing and start-up; (6) conduct the Acceptance Tests, all so that the D/B work is suitable and adequate for the purposes thereof. Laydown and staging areas for construction materials shall be located on the Plant realty, or at other locations approved by the County and arranged and paid for by the D/B Company.

6.1.2 Commencement of Design/Build Work On the Design/Build Date, the County shall issue a written Notice to Proceed to the Company to begin the Design/Build Work and thereupon the Design/Build Period shall commence. Immediately following the receipt of the County's written Notice to Proceed, the Company shall commence and proceed to undertake, perform and complete the Design/Build Work in accordance with the Contract Standards. Following receipt of the Notice to Proceed-Design the D/B Company may commence design work, procurement of equipment, investigation of the site and other non-construction activities of the D/B Work. Construction activities are not authorized to commence until a Notice to Proceed –Construction is issued in accordance with Section 6.5. The time to Acceptance of the Design/Build Project shall be computed from the Design/Build Date as proposed in the D/B Company's D/B Schedule. This period can not exceed the term of the D/B Contract as provided in Article 2. The D/B Company's failure to achieve Acceptance on or before the Scheduled Acceptance Date shall result in the assessment of delay liquidated damages under Section 7.9.

6.1.3 Conditions to Commencement of Design/Build Work. Promptly following the Contract Date, the D/B Company shall proceed at its own cost and expense to exercise good faith and due diligence in order to satisfy all of the following D/B Company's responsibilities, continuously, expeditiously and as soon as practicable:

(1) Governmental Approvals. The D/B Company has obtained, on its own behalf or behalf of the County as applicant, all Governmental Approvals necessary to commence or proceed with construction of the Design/Build Project in form and substance satisfactory to the County which with respect to the Big Creek WRF;

(2) Environmental Notification Forms and Impact Reports. The D/B Company has prepared and properly submitted any environmental notification forms and impact reports with respect to the Design/Build Work which is required under Applicable Law to undertake and complete the Design/Build Project;

(3) Utilities. The Company has made all arrangements necessary to secure the availability of all Utilities required to construct the Design/Build Project in the capacities required hereunder, and has evidenced such availability by letters or other appropriate assurances from the providers of such Utilities;

(4) Design Drawings. The D/B Company has submitted to the Construction Manager the Conceptual Design Submittal as detailed in Appendix 10;

(5) Construction Performance Bond and Labor and Materials Payment Bond. The D/B Company has obtained and delivered to the County the Construction Performance Bond and the Payment Bond as required by the RFP. Each such bond shall be substantially in the form set forth in the Transaction Agreement Forms;

(6) Required Design/Build Period Insurance. The D/B Company has obtained and submitted to the County certificates of insurance for all Required Construction Period Insurance for the Design/Build Period specified in Section 7 and Article 11 of the D/B RFP;

(7) Site Plan. The D/B Company shall prepare or have prepared a site plan showing: (a) the exact dimensions and locations of the Plant; (b) the exact location of all means of access thereto and all easements relating thereto; (c) that the proposed location of the Design/Build Work is in compliance with all applicable building and set-back lines and does not encroach on or interfere with existing easements (whether on, above or below ground) nor any wetland or wetland buffers; and (d) no encroachments from the Design/Build Work extending to adjacent property or from adjacent property onto the Site, nor any gaps, gores, projections, protrusions or other survey defects;

(8) D/B Company Law Compliance. The D/B Company certify that they are in substantial compliance with all laws, regulations, rules

and orders applicable to their businesses, non-compliance with which would have a material effect upon their businesses or their ability to perform their respective obligations under this Agreement.

(9) Representations. The D/B Company shall certify that, respectively, the representations of the Company set forth in Section 5.2 shall be true and correct in all material respects as of the Design/Build Date, and the D/B Company shall deliver to the County a certificate of an authorized officer to that effect;

(10) Documents Evidencing Required Activities. The D/B Company shall have provided to the County copies of all filing and reports conducted, prepared or obtained with respect to or evidencing the D/B Company's activities pursuant to this Section;

(11) Financial Condition. The D/B Company shall provide audited consolidated financial statements of the D/B Company for the most recently completed fiscal year and a certificate certified by an authorized officer of the D/B Company stating that as of the quarter immediately preceding the Design/Build Date the D/B Company meets or exceeds the Minimum Financial Criteria. Since the Contract Date, there shall not have occurred any change, financial or otherwise, in the condition of the D/B Company that would materially and adversely affect the ability of the Company to perform its obligations under this Agreement.

(12) Counsel Opinions. The D/B Company shall deliver to the County such favorable opinions of counsel for the D/B Company as to the agreements to be entered into in connection with the transactions contemplated hereby, in customary form for financing transactions, as to the matters of law covered by the representations of the D/B Company set forth in Section 5.2 hereof, similar matters of law with respect to such other agreements and as to such other matters of law as the County may reasonably request, together with appropriate certified authorized resolutions and incumbency certificates;

(13) Construction Schedule. The D/B Company shall prepare and provide to the County the Design/Build Schedule detailing the anticipated dates corresponding to the occurrence of critical path items in connection with the Design/Build Work;

6.1.4 Additional Conditions to Design/Build Date. In addition to the conditions which the Company must satisfy prior to the commencement of construction, the following conditions must be met prior to the Design/Build Date:

(1) Availability of Funds. The proceeds of the bond issuance which the County has obtained for the Design/Build Work, and the

proceeds of any other financing transaction entered into by the County, are available for disbursement in an amount at least equal to the Design/Build Price set forth herein, and all preconditions to the disbursement of proceeds (other than the submission of authorized Requisitions) shall have been satisfied prior to;

(2) Satisfaction of Conditions. Upon the satisfaction or waiver of all of the conditions set forth in Sections 6.1.3 and 6.1.4 above, the parties shall hold a formal closing acknowledging such satisfaction and certifying that the Design/Build Date has occurred. The date of such closing shall be deemed the "Design/Build Date", and thereupon the County shall issue a Notice-to-Proceed. Original or certified copies of all of the documents or instruments constituting or evidencing satisfaction of such conditions shall be furnished to each party prior to or on the Design/Build Date.

6.1.5 Failure of Conditions for the Design/Build Date. If after 90 days of the Contract Date, or such later date upon which the County and the D/B Company may agree any conditions to the issuance of a Notice-to-Proceed set forth in subsections 6.1.3 and 6.1.4, despite the good faith efforts of the parties, have not been achieved, or waived in writing, either party may, by notice in writing to the other party, terminate this Agreement. Neither party shall be liable to the other for the termination of this Agreement pursuant to this subsection 6.1.5 and each of the parties shall bear its respective costs and expenses incurred in seeking to satisfy the conditions of the Design/Build Date. The County shall reimburse the D/B Company its Cost-Substantiated costs incurred directly by the D/B Company and any expenses paid or incurred to third parties from the date of issuance of the NTP to the termination date hereunder, which are directly related to the performance of the D/B Company's obligations relating to achieving the Design/Build Date, and which are necessary to be performed prior to the Design/Build Date ("Reimbursable Expenses"). Notwithstanding the above, in the event the D/B Company fails to achieve any of the conditions set forth in Section 6.1.3 prior to the date the notice of termination and such failure is not due to Uncontrollable Circumstances, the County shall have no payment obligation hereunder.

6.1.6 County Suspension Option During the Design/Build Period. The County shall have the right at any time prior to the Design/Build Date, exercisable in its sole discretion for any reason by three (3) business days' written notice to the D/B Company and without terminating this Agreement, to suspend the obligation of the D/B Company and the County to seek the fulfillment of the conditions to the Design/Build Date. Upon any such suspension, the County shall reimburse the D/B Company for 100% of its Reimbursable Expenses. The D/B company shall not be further obligated during the suspension to seek to fulfill the conditions. The County may in its sole discretion at any time thereafter, upon written notice to the D/B Company, reinstate the obligations of the D/B company to fulfill the conditions, and thereupon an amount equal to all Reimbursable

Expenses previously reimbursed to the D/B Company shall be deducted from the Design/Build Price and the obligations of the D/B Company shall resume.

6.2 DESIGN/BUILD COMPANY PERMITTING

6.2.1 Application for Governmental Approvals. The D/B Company shall make all applications and take all other actions necessary to obtain and maintain all Governmental Approvals necessary to construct the Design/Build Project to commence and complete the D/B Work and to operate during the Acceptance Testing. Where required under Applicable Law, such applications shall be made in the name of the County, subject to the County's right hereunder. The D/B Company shall manage the process of obtaining the Governmental Approvals on behalf of the County for which it is responsible hereunder in a manner which affords the County a reasonable opportunity to review and comment upon material documentation submitted to and issued by any Governmental Body in connection therewith.

6.2.2 No County Liability. While it is the County's intention to provide reasonable assistance to the D/B Company in carrying out its obligations under this Section, the County shall have no legal or contractual obligation to do so, nor shall the County have any liability for the quality, quantity or timeliness of any such assistance it may provide. The D/B Company hereby waives any right to make a claim, counterclaim or set-off against the County for any matter arising out of any action or inaction on the part of the County relating to the process of obtaining Governmental Approvals with respect to the Design/Build Work.

6.2.3 D/B Company Assumption of Permitting Risk. Except, and to the extent, as set forth in subsection 6.1.5 the D/B Company assumes the risk of obtaining and maintaining all Governmental Approvals required under this Section including, without limitation, the risk of delay, non issuance or imposition of any term or condition in connection therewith by a Governmental Body for any reason, and agrees that the occurrence of such risk shall not constitute a Change in Law or Uncontrollable Circumstances hereunder. Except, and to the extent, as set forth in subsection 6.1.5 the cost of any additions or changes to the D/B Work arising in any manner out of the process of obtaining Governmental Approvals for the construction of the Design/Build Project shall be for the account of the D/B Company. Delay in the issuance of any Governmental Approvals required for the construction of the Design/Build Project shall not operate to increase the Fixed Design/Build Price but, as and to the extent provided in Section 7.9 shall extend the Scheduled Acceptance Date.

6.2.4 Change in Law Not Related to Governmental Approvals. Any Change in Law which requires a modification to the design of the Design/Build Project, and with respect to which the D/B Company has not assumed risk under this Section, shall be handled as a Change in Law in accordance with Article 8 and Section 11.3.

6.3 THE SITE

6.3.1 Suitability of Site. The D/B Company's agents and representatives have visited, inspected and are generally familiar with the Site and, its physical conditions relevant to the obligations of the D/B Company pursuant to this Design/Build Contract, including surface conditions, normal and usual soil conditions, road, utilities, topographical conditions and air and water quality conditions. The D/B Company has performed all subsurface and other investigations necessary to determine the suitability of the Site for foundation for the D/B Work; is familiar with all Site, local and other conditions which may be material to the D/B Company's performance of its obligations under this Design/Build Contract (including but not limited to transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; availability and quality of labor and utilities); and has reviewed the information regarding the Site. Based on the foregoing, the D/B Company is not aware of any condition which would make the Site unsuitable for the construction and operation of the Design/Build Project in accordance herewith.

6.3.2 Pre-Existing Environmental Conditions. The D/B Company shall construct the Big Creek WRF Immediate Needs Rehabilitation so as not to aggravate the effect of any Pre-Existing Environmental Condition. If at any time a Pre-Existing Environmental Condition is determined to exist which requires an action under Applicable Law, then the County shall within 60 days after written notice from any Governmental Body or the D/B Company of the presence or existence thereof, commence and diligently prosecute such actions as may be necessary to dispose of, remediate or otherwise correct the Pre-Existing Environmental Condition or otherwise make the Pre-Existing Environmental Condition comply with Applicable Law. The County shall have the right to contest any determination of a Pre-Existing Environmental Condition and shall not be required to take any action under this subsection so long as: (1) the County is contesting any determination of a Pre-Existing Environmental Condition in good faith by appropriate proceedings conducted with due diligence; and (2) Applicable Law permits continued construction of the Big Creek WRF Immediate Needs Rehabilitation pending resolution of the contest, so that the D/B Company shall have no liability as a result of the failure of the County to dispose of, remediate or otherwise correct such purported Pre-Existing Environmental Condition during the period of contest.

6.3.3 Familiarity with the Site. The D/B Company acknowledges that: (1) the Company's agents and representatives have visited, inspected, observed and are familiar with the Site and the physical condition relevant to the obligations of the D/B Company pursuant to this D/B Contract, including roads, utilities, topographical conditions and historical Influent, Effluent and Residuals quality conditions of the Plant; (2) the D/B Company is familiar with all the current local conditions which may be material to the D/B company's performance of its obligations under this D/B Contract (including, but not limited to, transportation;

seasons, climate and ambient air; access, availability and quality of labor and utilities; (3) the D/B Company has received, reviewed and independently verified the Referenced Documents, the background documents provided in the RFP and all other records and information pertaining to the Design/Build Project that it has been deemed necessary to receive, review and verify for the purpose of entering into and performing this D/B Contract, and assumes the risk of incompleteness or inaccuracy in any information provided to it by the County or third parties in the process of entering into this D/B Contract ; and (4) based on the foregoing, the Design/Build Work can be designed, constructed, started up, tested and accepted by the Schedule Acceptance Date, so as to comply with this Design/Build Contract.

6.3.4 “As-Is” Condition of the Site. The County makes no representation or warranty with respect to the Site. Based on its inspections of the Site, and other inquiries and investigations made by the D/B Company prior to the Contract Date, which the D/B Company acknowledges to be sufficient for this purpose, the D/B Company assumes the risk of the adequacy and sufficiency of the “as-is” condition of the Site.

6.3.5 Limitations on the D/B Company’s Assumption of “As-Is” Risk. It is specifically understood that the D/B Company’s assumption of the “as-is” risk of the condition of the Site as provided in subsection 6.3.4 shall not extend to Pre-Existing Environmental Conditions. No other Uncontrollable Circumstances, however, shall relieve or limit the D/B Company’s assumption of the “as-is” risk provided in subsection 6.3.4.

6.4 D/B COMPANY DESIGN

6.4.1 Sole Responsibility and Liability. The D/B Company shall have the sole and exclusive responsibility and liability for the design, construction and performance of the Design/Build Project hereunder, notwithstanding the Contract Standards or the fact that the RFP for the contract services included certain minimum conceptual design criteria for the Design/Build Work and certain performance standards that the Design/Build Project would be required to meet. The Company shall indemnify, defend and hold harmless the County officers, employees, successors, assigns and Construction Manager in accordance with Section 11.4 from any Loss-and-Expense arising out of the design, construction or performance of the Design/Build Project. The D/B Company acknowledges that, in the proposal and negotiating process leading to the execution of this Design/Build Contract, the D/B Company had the unrestricted right and opportunity not to submit a proposal, and not to execute this Design/Build Contract if the D/B Company had determined that such minimum conceptual design criteria would in any manner or to any degree impair the D/B Company's ability to perform the Design/Build Work in compliance herewith.

6.4.2 Conformity of Company Design Documents with Minimum Technical Requirements. The Company shall prepare all plans, technical specifications, drawings, blueprints and other design documents necessary or appropriate to carry out and complete the Design/Build Work. All D/B Company working and final design documents shall comply strictly with the Minimum Technical Requirements and shall ensure that the Design/Build Project is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Minimum Technical Requirements. The County shall have the right to review such design documents as provided in Appendix 10, but shall have no right of approval with respect thereto except in order to confirm the compliance and consistency of the design documents with the Minimum Technical Requirements. Neither compliance by the D/B Company with the Minimum Technical Requirements, nor review and approval by the County of the D/B Company's design documents, shall in any way relieve the D/B Company of full responsibility for the design, construction, operation and performance of the Design/Build Project in accordance with the Contract Standards. Architects and engineers engaged by the D/B Company for the Design/Build Project design services shall be experienced and qualified to perform such services and shall be licensed in the State of Georgia and shall be selected in the manner provided in Section 14.6.

6.4.3 County Interest in Minimum Technical Requirements. The D/B Company acknowledges the County's material interest in each provision of the Minimum Technical Requirements and, notwithstanding the Acceptance Test Procedures and Standards and Performance Guarantees of the D/B Company and the associated non-performance remedies of the County, agrees that no change to the Minimum Technical Requirements shall be made except upon the terms and conditions set forth in this Section and pursuant to a Change Order.

6.4.4 Procedure for County Review of Design Submittals. A protocol for submission of design submittal to the County and for County review and comment shall be established in accordance with Appendix 10. The County shall use good faith efforts to complete its review of each preliminary design submittal within 30 days of receipt, or such longer period as the parties may agree, and shall notify the Company of any concerns, problems or perceived non-compliance with the Minimum Technical Requirements of such submittal within that time. If the County does not respond within that time, the D/B Company shall not be prohibited from submitting such design package to the appropriate Governmental Body for review and approval provided, however, that the failure of the County to comment on any aspect of a design submittal shall in no way be deemed to be an approval or consent or in any way relieve the D/B Company of full responsibility for the design, construction, and performance of the Design/Build work in accordance with the Contract Standards. If the D/B Company is notified of any such concerns, problems or perceived non-compliance with the Minimum Technical Requirements, the D/B Company may resubmit as often as it chooses, with or without modification, and the County

review and comment period upon each such re-submittal shall be 30 days. If a design review meeting has not been scheduled by the 20th day following a design submittal by the D/B Company, the D/B Company shall provide written notice to the County of the need to schedule such a meeting prior to the end of the 30 day review period. References to the County herein shall mean the Construction Manager. This subsection shall have no application to the county in a regulatory capacity.

6.4.5 Change in Law Affecting Design. The parties acknowledge that a Change in law may affect regulator standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Contract Date. In the event a Change in Law occurs, the D/B Company shall not be entitled to relief or additional compensation for design hereunder unless (1) such Change in Law imposes a regulatory standard which is more stringent or burdensome than the D/B Contract Standards applicable to such requirement and/or requires equipment or processes design change, (2) the Notice to Proceed for Construction has been issued and the D/B Company has to change its design and resubmit it to a regulator agency for approval; and (3) the D/B Company is unable, after taking all mitigation measures required under Section 11.2 with respect to such a Change in Law, to avoid the necessity for such performance relief or additional compensation.

6.5 D/B COMPANY CONSTRUCTION

6.5.1 Notice to Proceed for Construction The County shall issue the Notice to Proceed for Construction only if the D/B Company has met the following requirements.

(1) **Governmental Approvals.** The D/B Company has obtained, on its own behalf or behalf of the County as applicant, all Governmental Approvals necessary to commence or proceed with construction of the Design/Build Project in form and substance satisfactory to the County which with respect to the Big Creek WRF Immediate Needs Rehabilitation;

(2) **Environmental Notification Forms and Impact Reports.** The D/B Company has prepared and properly submitted any environmental notification forms and impact reports with respect to the Design/Build Work which is required under Applicable Law to undertake and complete the Design/Build Project;

(3) **Survey.** The D/B Company has prepared the survey of the Plant in reference to the D/B Work;

(4) **Utilities.** The D/B Company has secured all Utilities required to construct the Design/Build Project in the capacities required hereunder,

and has evidenced such availability by letters or other appropriate assurances from the providers of such Utilities;

(5) Design Drawings. The D/B Company has submitted to the Construction Manager the Post Regulatory Review Design Submittal as detailed in Appendix 10;

(6) Required Design/Build Period Insurance. The D/B Company has obtained and submitted to the County certificates of insurance for all Required Construction Period Insurance for the Design/Build Period specified in Section 7 of the D/B RFP;

(7) Site Conditions. The D/B Company shall make all soil test borings, inspections and site history reviews of the Site necessary under good construction and engineering practice as preparation for excavation and construction hereunder in accordance with Applicable Laws;

(8) Site Plan. The D/B Company shall prepare or have prepared a site plan showing; (a) the exact dimensions and locations of the proposed D/B Work in relation with the Plant; (b) the exact location of all means of access thereto and all easements relating thereto; (c) that the proposed location of the Design/Build Work is in compliance with all applicable building and setback lines and does not encroach on or interfere with existing easements (whether on, above or below ground) nor any wetland or wetland buffers; and (d) no encroachments from the design/Build Work extending to adjacent property or from adjacent property onto the Site, nor any gaps, gores, projections, protrusions or other survey defects;

(9) Documents Evidencing Required Activities. The D/B Company shall have provided to the County copies of all filing and reports conducted, prepared or obtained with respect to or evidencing the D/B Company's activities pursuant to this Section;

(10) Construction Schedule. The D/B Company shall prepare and provide to the County the Design/Build Schedule detailing the anticipated dates corresponding to the occurrence of critical path items in connection with the Design/build Work.

6.5.2 Construction Practice. The D/B Company shall perform the Design/Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design/Build Work as required by this Design/Build Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include,

but not be limited to, the obligation of the D/B Company to provide the following construction requirements: temporary power and light; temporary offices and construction trailers; temporary construction related odor control measures; required design certifications; required approvals; weather protection; clean-up and housekeeping; construction trade management; temporary parking, vehicle traffic, safety and first aid facilities; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses, temporary fire protection; security; temporary Utilities, potable water; sanitary Design/Builds; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

6.5.3 Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Design/Build Project shall pass to the County upon delivery to the Plant Realty, incorporation in the Design/Build work, or payment therefore by the County, whichever first occurs. The D/B Company shall, however, bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until the Acceptance Date has occurred, regardless of the extent to which the loss was insured or the availability of insurance proceeds.

6.5.4 Subcontracts Section 14.6 shall be applicable to the D/B Company's use of Subcontracts and Subcontractors in connection with Design/Build Work.

6.5.5 Changes to Design/Build Work. Any deletions from or additions or changes to the Design/Build Work, whether proposed by the D/B Company, necessitated by a Change in Law, or directed by the County, shall be considered to be Change Orders and handled in the manner provided in Article 8.

6.5.6 Encumbrances. The D/B Company shall promptly discharge or bond any Encumbrance arising on the Design/Build Work, Plant Realty arising out of the D/B Company's construction of the Design/Build Project.

6.5.7 Warranties. The D/B Company warrants to the County that the structures, improvements, fixtures, machinery, equipment and materials incorporated in the Design/Build Project will be new, of recent manufacture, of good quality, free from faults and defects, suitable for its intended purpose and in conformity with Appendices 2 and 5 and the Contract Standards. The D/B Company shall, for the protection of the County, obtain from all Subcontractors, vendors, suppliers and other persons from which the D/B Company procures structures, improvements, fixtures, machinery, equipment and materials such warranties and guarantees as are normally provided with respect thereto, each of which shall be assigned to the County to the full extent of the terms thereof. No such warranty or guarantee shall relieve the D/B Company of any obligation hereunder, and no failure of any warranted structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Design/Build Fixed Price or non-

performance of the Contract services unless such failure is itself attributable to an Uncontrollable Circumstance or County Fault.

6.5.8 Change in Law Affecting Construction. The parties acknowledge that a Change in Law may effect Effluent standards, other regulator standards or impose more stringent requirements relating to equipment or processes than those established hereunder as of the Contract Date. In the event a Change in Law occurs, the D/B Company shall not be entitled to relief or additional compensation hereunder unless (1) such Change in Law imposes a regulatory standard which requires a more stringent or burdensome performance than the D/B Contract Standards applicable to requirement, and requires equipment or process change, (2) the Notice to Proceed for Construction has been issued and the D/B Company has issued a design submittal that has been approved by a regulatory agency; and (3) the D/B Company is unable, after taking all mitigation measures required under Section 11.3 with respect to such Change in Law, to avoid the necessity for such action.

6.5.9 Emergency Action Plan As detailed in Appendix 10, the D/B Company shall provide the County with a plan of action to be implemented in the event of an emergency, including fire, weather, environmental, health, safety and other potential emergency conditions during the construction of the D/B Work. The plan shall: (1) provide for appropriate notifications to the County and all Governmental Bodies having jurisdiction and for measures which facilitate coordinated emergency response actions by the County and all such other appropriate Governmental Bodies; (2) specifically include spill prevention and response measures; (3) assure the timely availability of all personnel required to respond to any emergency (no later than two hours during nights, weekends or holidays). The emergency plan shall be reviewed by the parties regularly and updated when necessary.

6.5.10 Emergency Action. Notwithstanding any requirement of this D/B Contract requiring County approval of or consent to reports or submittals, if at any time the D/B Company determines in good faith that an emergency situation exists such that action must be taken to protect the safety of the public or its employees, to protect the safety or integrity of the Site and D/B Work, or to mitigate the immediate consequences of an emergency event, then the D/B Company shall take all such action necessary to remedy such emergency situation. As promptly thereafter as is reasonable, the D/B Company shall notify the County of the event and the D/B Company's response thereto. The cost of the D/B Company's response measure shall be borne by the D/B Company except to the extent the emergency event was caused by an Uncontrollable Circumstance.

6.6 DESIGN AND CONSTRUCTION GOVERNMENTAL APPROVALS

6.6.1 Applications and Submittals The D/B Company shall make all filings, applications and reports necessary to obtain and maintain all Governmental

Approvals required to be made, obtained or maintained by or in the name of the D/B Company or the County under Applicable Law in order to design and construct the Design/Build Project. With respect to Governmental Approvals which are required to be obtained in the name of the County, the D/B Company shall: (1) prepare the application (except with respect to the renewal of the NPDES Permit, for which the County shall prepare the application) and act as the lead interface with the EPD or other Governmental Body and develop and furnish all necessary supporting material; (2) supply all data and information which may be required; (3) familiarize itself with the terms and conditions of such Governmental Approvals; (4) attend all required meetings and hearings; and (5) take all other action necessary or otherwise reasonably requested by the County in order to assist and support the County in obtaining, maintaining, renewing, extending and complying with the terms of Governmental Approvals for the D/B Contract shall be paid by the D/B Company, regardless of the identity of the applicant. The D/B Company shall agree to be named as a co-permittee on any Governmental Approval if so required by the issuing Governmental body or the County. The D/B Company shall not disadvantage the County in any application, data submittal or other communication with Governmental Body regarding Governmental Approvals.

6.6.2 Data and Information All data, information and action required to be supplied or taken in connection with the Governmental Approvals for the D/B Project shall be supplied and taken on a timely basis considering the requirements of Applicable Law and the responsibilities of the County as the legal and beneficial owner of the D/B Work and primary permittee. The data and information supplied by the D/B Company to the County and all regulatory agencies in connection therewith shall be correct and complete in all material respects, and shall be submitted in draft form to the County. The D/B Company shall be responsible for any schedule and cost consequences which may result from the submission of materially incorrect or incomplete information. The County reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by the D/B Company pursuant to this section.

6.6.3 Non-Compliance and Enforcement The D/B Company shall report immediately to the County all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the D/B Project. The County shall have the right independently to enforce compliance with the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body. The failure of the D/B Company to comply with any Governmental Approval shall constitute a breach of this D/B Contract as well as an event of non-compliance with the Governmental Approval.

6.6.4 Reports to Governmental Bodies The D/B Company shall prepare all periodic reports, make all information submittals and provide all notices to all Governmental Bodies required by all Governmental Approvals and under

Applicable Law with respect to the D/B Project, including sampling and testing results during the Acceptance Testing. Such reports shall contain all information require by the Governmental Body. The D/B Company first shall provide the County with copies of such regulatory reports for review, comment and signature, as applicable, at least seven days before their filing with the Governmental Body.

6.6.5 Potential Regulatory Change The D/B Company shall keep the County regularly apprised as to potential changes in regulatory requirements affecting the wastewater treatment industry and the Design/Build Project, and provide recommended responses to such potential changes so as to mitigate any possible adverse economic impact on the County should a Change in Law actually occur. The D/B Company shall participate in performance evaluation surveys conducted by EPD and EPA.

6.7 PAYMENT OF THE DESIGN/BUILD PRICE

6.7.1 County Financing. Payments of the Design/Build Price shall be made by the County to the D/B Company as provided in this Section.

6.7.2 Design/Build Price Generally. The County shall pay the D/B Company the Design/Build Price for the Design/Build Work on a milestone progress basis in accordance with the terms of this Section. The Design/Build Price shall be the sum of the Fixed Design/Build Price and the Fixed Design/Build Price Adjustments. No payment shall be made until the Design/Build Date has been achieved.

6.7.3 Fixed Design/Build Price. The Fixed Design/Build Price shall be _____.

6.7.4 Fixed Design/Build Price Adjustments. The following items shall constitute the Fixed Design/Build Price Adjustments:

(1) An adjustment for the cost of any Change Orders issued by the County with respect to the Design/Build Work; and

(2) An adjustment for the cost of any Uncontrollable Circumstances required pursuant to Section 12.4.2.

6.7.5 Limitation on Payments for Design/Build Improvement Costs. The D/B Company agrees that the Design/Build Price shall be the D/B Company's entire compensation and reimbursement for the performance of the Design/Build Work applicable to the Design/Build Project, including obtaining all Utilities that the D/B Company will require to perform the Design/Build Work, starting up Design/Build Project, and operating the Design/Build Project during the Acceptance Test. In no event shall the D/B Company be entitled to any payment for Design/Build Work costs in excess of the Design/Build Price, notwithstanding any cost

overruns the D/B Company may incur. The Company shall finance and pay for any such excess costs in any manner it chooses subject to the terms and conditions of this Design/Build Contract, without reimbursement from or other claim upon the County.

6.7.6 Payment of Costs. The D/B Company shall pay directly all costs and expenses of the Design/Build Work of any kind or nature whatsoever, including without limitation all costs of permitting (regardless of permittee); regulatory compliance and Legal Proceedings brought against the D/B Company; obtaining and maintaining the Security Instruments; payments due under the Design/Build Contract, subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the D/B Company; sales, use and similar taxes on building supplies, materials and equipment; general supervision by the D/B Company of all Design/Build Work; D/B Company preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to achieve Acceptance.

6.7.7 Financial Books and Records The D/B Company shall prepare and maintain proper, accurate and complete books and records regarding the Design/Build Work and all other transactions related to the permitting, design, construction, start-up and testing (including Acceptance Testing) of the Design/Build Work, including all books of account, bill, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, purchase orders, time books, daily job diaries and reports, correspondence, any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Design/Build Work, this Design/Build Contract, any Subcontract or any operations or transactions in which the County has or may have a financial or other material interest hereunder, in each case to the extent required to determine changes in the Design/Build Price. The D/B Company shall produce such construction books and records (except financial ledger statements) for examination and copying in connection with the costs of Change Order or Uncontrollable Circumstance, or other changes in or additions to the Fixed Design/Build Price for which the County may be responsible with respect to work performed prior to the Acceptance Date. To the extent any such information is delivered or made available to the County, such information shall be presented in a format such that an independent auditor will be able to perform a review of such information in accordance with generally accepted accounting principles. The D/B Company shall keep and maintain all such construction books and records for at least seven (7) years after the Acceptance Date, or such longer period during which any Legal Proceeding with respect to the Design/Build Work commenced within seven (7) years of the Acceptance Date may be pending.

6.7.8 Construction Disbursement Requisition Procedure. Appendix 12 sets forth procedure of payments with respect to the Design/Build Work, and the sum of all such payments equals the Fixed Design/Build Price. Following the Design/Build Date, the Company shall be entitled to submit Requisitions on a monthly basis and receive from the County the payments of the Fixed Design/Build Price, which: (1) shall be made based upon the percent completion of a sum of the percent completion of all activities associated with each milestone on the Design/Build Schedule and Schedule of Values as set forth in Appendix 12; and (2) shall be subject to the conditions of payment set forth in this Section. On the date the Acceptance Date is permanently established under Article 7 the Company shall be entitled to receive all payments due for completed work which remain unpaid as of such date with respect to the Design/Build Project, except for the payment conditioned on Final Completion in the event Final Completion has not occurred prior to the Acceptance Date.

6.7.9 Retainage. Each milestone payment will be subject to a 10% retainage holdback until 50% of the value of the Design/Build Price is due the D/B Company and the Design/Build Work performed is satisfactory to the County, at which time further payments will not be subject to retainage holdbacks, unless the County determines that the Design/Build Work is unsatisfactory or has fallen behind schedule. Upon final Acceptance, the amounts retained minus 200% of the estimated value of the outstanding Design/Build Work will be released to the D/B Company.

6.7.10 Certification of Requisitions. Each Requisition shall be accompanied by a certificate of an authorized officer of the D/B Company certifying: (1) the portion of the Fixed Design/Build Price which is payable to the D/B Company, (2) that the Company is neither in default under this Design/Build Contract nor in breach of any material provision of this Design/Build Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default, (3) that all labor, materials and services rendered through the proceeding Requisition have been paid, and (4) that all items applicable to the milestone entitling the D/B Company to request payment under the milestone payment schedule set forth in Appendix 12 have been completed in accordance therewith and with the Minimum Technical Requirements.

6.7.11 Information Supporting Requisition. The Company shall submit to the County, with a copy to the Construction Manager, with each Requisition:

- (1) A reasonably detailed description of all Design/Build Work actually completed to date;
- (2) Updates and annotations to the Design/Build Schedule which shall reflect the status in the D/B Company's Design/Build Schedule since the date of the last Requisition;

- (3) Revisions to the critical path schedule which shall reflect changes in the D/B Company's critical path schedule since the date of the last Requisition;
- (4) Notice of any Liens or Encumbrances which have been filed, together with evidence that the Company has bonded or discharged such Liens or Encumbrances;
- (5) Any other documents or information relating to the Design/Build Work or this Design/Build Contract requested by the County or the Construction Manager as may be required by Applicable Law or this Design/Build Contract;
- (6) Construction progress photographs; and
- (7) An Exhibit G, Technical Proposal Form 8

6.7.12 Review and Payment of Requisitioned Amounts. The Construction Manager shall review the D/B Company's certified Requisitions to the County for each Fixed Design/Build Price payment, within 10 days of receipt of the D/B Company's written submittal delivered pursuant to Section 6.7.8, shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the D/B Company's certification that the D/B Company has achieved the level of progress indicated and is entitled to payment. If (1) the Construction Manager determines that the work has progressed to the milestone indicated in the D/B Company's certified Requisition or that the costs constituting Fixed Design/Build Price Adjustments have been paid or incurred and the Construction Manager provides written notice thereof to the D/B Company and the County, or (2) the Construction Manager fails to verify or dispute the certified Requisition within 10 days of receipt, thereupon the D/B Company shall be entitled to payment within 30 days of such determination or expiration of such 10 day period. Disputes regarding payments of the Fixed Design/Build Price shall be resolved in accordance with Section 6.7.14.

6.7.13 Permissible Withholdings. The County may disapprove and withhold and retain all or any portion of any payment requested in any Requisition in an amount equal to the sum of:

- (1) Any amounts which are permitted under this Section to be withheld from any payment requested in any Requisition;
- (2) Any delay liquidated damages which are payable under Section 12.8;
- (3) Any indemnification or other amounts which are due and owing to the County under any provision of this Design/Build Contract;
- (4) Any deductions which are required by Applicable Law;

- (5) Any payments with respect to which the documents required to be delivered in connection therewith are not correct and complete;
- (6) An amount equal to the cost to the County of performing any work in the event of a failure by the D/B Company or any Subcontractor to timely perform its obligations under the warranties given pursuant to subsection 6.5.7 or 5.6;
- (7) Any payments with respect to which the Design/Build Work covered by such Requisition (or any previous Requisition) does not comply with this Design/Build Contract;
- (8) Any payments with respect to which any person has filed a Lien or Encumbrance resulting from the acts or omissions of the D/B Company in performing the Design/Build Work, where such Lien or Encumbrance remains unreleased, unbonded or undischarged; and
- (9) All previously requisitioned payments, if an Event of Default of the Company has occurred under Section 12.2.

6.7.14 Disbursement Dispute Procedures. If the Construction Manager determines pursuant to subsection 6.7.12 of this Section that the work required for any payment has not progressed to the milestone indicated, the Construction Manager shall provide prompt written notice to the D/B Company and the County as to the Construction Manager's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the D/B Company may make the necessary corrections and resubmit a certified Requisition to the Construction Manager, or the Construction Manager may agree on a revised amount, Requisition or estimate, as applicable, in which case the D/B Company shall promptly notify the County of such agreement and thereupon be entitled to payment. Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if: (1) the D/B Company demonstrates to the Construction Manager that the work has proceeded to the milestone indicated in the certified Requisition giving rise to the dispute or that any disputed certified Requisition is correct; and (2) the Construction Manager concurs with such demonstration. The D/B Company shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the D/B Company shall be entitled to all requisitioned amounts which are not in dispute. In the event that upon resolution of any such dispute it is determined that the D/B Company was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the D/B Company shall be entitled promptly to receive such disputed amount. Nothing contained in this subsection shall be deemed to alter the rights of the parties, if any, under Article 12 hereof, including the right of either party to request a referral of the dispute to Non-Binding Mediation.

6.7.15 Required D/B Company Oversight Certification. Any notice, certification, report or requisition delivered by the D/B Company to the County in connection with the Design/Build Work or payment therefore under this Article or any Appendix shall be accompanied by a certificate of the chief engineer of the D/B Company or of the D/B Company's design engineering firm personally responsible for designing and overseeing construction of the Design/Build Work, affirming the accuracy thereof to the best of his or her knowledge.

6.7.16 Certification of Amounts Due. Whenever requested by the County, the D/B Company shall submit a sworn statement certifying all amounts then due (or yet to become due) the D/B Company for the Design/Build Work (or any portion thereof) and describing any payment or other dispute which may exist between the D/B Company and any Subcontractor.

6.7.17 Tax Exemption of D/B Project It is the intent of the parties that the D/B Project shall continue to be County owned property and not subject to property taxation. The parties acknowledge that the Fixed Construction Price is based upon assumption that all construction materials and supplies acquired by the D/B Company or any Subcontractor in connection with the Design/Build Work are subject to State sales and use taxes. In the event (1) any such construction materials and supplies can legally and permissibly be acquired by the D/B Company or any Subcontractor in connection with the Design/Build Work in accordance with Applicable Law without the payment of such sales or use taxes is available to the D/B Company under Applicable Law and the D/B Company fails to take advantage of such exemption, then in either case, the County shall be entitled to a credit from the Fixed Design/Build Price in the amount of the sales or use taxes which the D/B Company legally and permissibly did not pay or in the amount of the available exemption.

6.8 PROGRESS SCHEDULE AND REPORTS

The D/B Company shall submit to the County a monthly progress report in accordance with Appendix 10 detailing work accomplished and an annotated D/B Schedule which reflects any change in the D/B Company's Design/Build Schedule. The D/B Company shall provide to the County, for its planning, budgeting and financing purposes, monthly estimates of the date for start-up testing, the date upon which the Acceptance Testing shall commence, and the Acceptance Date. The D/B Company agrees that the D/B Company's submission of the monthly progress schedule (or any revised progress schedule) is for the County's information only, and the County's acceptance of the monthly progress schedule (or any revised progress schedule) shall not bind the County in any manner. Thus, the County's acceptance of the monthly progress report and schedule (or any revised monthly critical path report and schedule) shall not imply County approval or consent to any of the matters set forth therein.

6.9 CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK

6.9.1 Observation and Design Review Program. During the progress of the Design/Build Work through Acceptance, the D/B Company shall at all times during normal working hours afford the County and the Construction Manager every reasonable opportunity for observing all Design/Build Work. During any such observation, all representatives of the County and the Construction Manager shall comply with all reasonable safety and other rules and regulations applicable to their presence in or upon the Site or the Design/Build Project, including those adopted by the D/B Company, and shall in no material way interfere with the D/B Company's performance of any Design/Build Work, except where in the opinion of the Construction Manager, the D/B Work is not being performed in accordance with the Contract Standards.

6.9.2 D/B Company Tests. The D/B Company shall conduct all tests of the Design/Build Work (including shop tests) or inspections required by the Contract Standards. The D/B Company shall give the County and the Construction Manager reasonable advance notice of tests or inspections prior to the conduct thereof; provided, however, that in no event shall the inability, failure or refusal of the County or the Construction Manager to be present at or during any such test or inspection delay the conduct of such test or inspection or the performance of the Design/Build Work. If the D/B Company fails to notify the Construction Manager of such tests or inspections, payment of such work which required tests or inspections shall be subject to permissible withholdings in accordance with Section 6.7.13 until such time the D/B Company conducts re-testing and re-inspection. The costs for conducting re-testing and re-inspection shall be borne by the D/B Company. If required by the Contract Standards, the D/B Company shall engage a registered engineer or architect at its sole cost and expense to conduct or witness any such test or inspection. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the State or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of the County, which consent shall not be unreasonably withheld. In addition to the foregoing, Acceptance Testing of the performance of the completed Design/Build Project shall be conducted in accordance with Article 7 and Appendix 15.

6.9.3 County Tests, Observations and Inspections. The Construction Manager, the County, its employees, agents, representatives and contractors (which may be selected in the County's sole discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice, conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical, chemical, or other tests as the County deems necessary or desirable to ascertain whether the Design/Build Work complies with this Design/Build Contract. The costs of such test, observation or inspection shall be borne by the County unless such test, observation or inspection reveals a

material failure of the Design/Build Work to comply with this Design/Build Contract or Applicable Law, in which event the D/B Company shall bear all reasonable costs and expenses of such test, observation or inspection. In the event that any requested test, observation or inspection causes a material delay in the construction schedule, the Scheduled Acceptance Date shall be adjusted to reflect the actual period of time needed for completion as directly caused by the requested testing, but only if such testing, observation or inspection does not reveal any failure or noncompliance as set forth herein.

6.9.4 Certificates and Reports. The D/B Company shall secure and deliver to the Construction Manager promptly, at the Company's sole cost and expense, all required certificates of inspection, test reports, work logs, certified payroll and approvals with respect to the Design/Build Work as and when required by the Contract Standards. The D/B Company shall provide to the Construction Manager, immediately after the receipt thereof, copies of any notice of default, breach or noncompliance received by the D/B Company under or in connection with any Governmental Approval, Subcontract, or Security Instrument pertaining to the Construction Period.

6.9.5 Notice of Covering Design/Build Work. The D/B Company shall give the Construction Manager notice in the monthly progress report of its upcoming schedule with respect to the covering and completion of any Design/Build Work, and shall update such notice, if necessary, within a reasonable time period before such covering and completion. The County shall give the D/B Company reasonable notice of any intended inspection or testing of such Design/Build Work in progress prior to its covering or completion, which notice shall be sufficient to afford the County a reasonable opportunity to conduct a full inspection of such Design/Build Work prior to such covering or completion. At the County's written request, the Company shall take apart or uncover for inspection or testing any previously-covered or completed Design/Build Work. The cost of uncovering, taking apart, or replacing such Design/Build Work along with the costs related to any delay in performing Design/Build Work caused by such actions, shall be borne as follows:

- (1) by the D/B Company, if such Design/Build Work has been covered prior to any observation or test required by the Contract Standards or if such Design/Build Work has been covered prior to providing the County with reasonable notice required herein of its schedule with respect to the covering of such Design/Build Work, or prior to any observation or test as to which the County has provided reasonable advance notice hereunder of its intention to conduct; and
- (2) in all other cases, as follows:
 - (a) by the D/B Company, if such observation or test reveals that the Design/Build Work does not comply with this Design/Build Contract;
or

(b) by the County, if the cost of such observation or test reveals that the Design/Build Work complies with this Design/Build Contract.

In the event such Design/Build Work does comply with this Design/Build Contract, the delay caused by such uncovering, observation or test shall be treated as having been caused by an Uncontrollable Circumstance only if the cost of such uncovering, testing and inspection is required to be borne by the County pursuant to subparagraph 2(b) above, in all other cases any such delay shall not afford the D/B Company schedule relief.

6.9.6 Meetings and Design/Build Review. During the Design/Build Period, the D/B Company and the County shall conduct meetings on a monthly basis (or more frequently as determined by the Construction Manger) at a minimum. At such meetings, discussions shall be held concerning all aspects of the Design/Build Work including, but not limited to construction schedule, progress payments, Design/Build Work, shop drawings, catalogued and dated progress photographs, and any soil boring data and shop test results. Monthly reports containing all relevant information shall be prepared by the D/B Company and provided to the County at least 10 days prior to each monthly meeting, together with an agenda for the meeting. The D/B Company shall also attend any on-call meeting which may be required by the County from time to time in connection with the Design/Build Work, provided that the D/B Company has at least 24 hours telephone or written notice of such meeting.

6.10 CORRECTION OF WORK

6.10.1 Correction of Non-Conforming Design/Build Work. Throughout the Term of this Design/Build Contract, the D/B Company shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design/Build Work which does not conform with the Contract Standards.

6.10.2 Election to Accept Non-Conforming Design/Build Work. The County may elect, in its sole discretion, by Change Order, at the D/B Company's request, to accept non-conforming Design/Build Work and charge the D/B Company (by a reduction in the Fixed Design/Build Price) for the amount agreed upon by the parties by which the value of the D/B Company's Design/Builds or Design/Build Work has been reduced.

6.11 DELIVERABLE MATERIAL

As the Design/Build Work progresses (or upon the termination of the D/B Company's right to perform the Design/Build Work), the D/B Company shall deliver to the County all documents, reports, submittals and other materials ("Deliverable Material") required to be delivered under the D/B Contract. The provisions of Section 14.3 shall apply to any Deliverable Material used by the D/B Company in the Design/Build Work. The County shall have the right from and

after the Contract Date to use (or permit use of) all such Deliverable Material, all oral information received by the County in connection with the Design/Build Work, and all ideas or methods represented by such Deliverable Material without additional compensation.

6.12 PERSONNEL

6.12.1 Project Manager. The D/B Company shall appoint a manager for the D/B Work (the "Project Manager"), as required in section 5.10 who is trained, experienced and proficient in the management of design/build projects of the design and construction of wastewater treatment system projects comparable to the Big Creek WRF Immediate Needs Rehabilitation project, and whose main employment responsibility shall be managing the D/B Company's performance of the Design/Build Work. The Project Manager shall reside within a fifty mile radius of the Site. The D/B Company acknowledges that the performance of the individual serving from time to time as the Project Manager will have a material bearing on the quality of the Design/Build Project provided hereunder, and that effective cooperation between the County and the Project Manager will be essential to effectuating the intent and purposes of this Design/Build Contract. Accordingly, not fewer than 30 days prior to the date on which any candidate for Project Manager from time to time during the Term of this Design/Build Contract is proposed by the D/B Company to assume managerial responsibility for the Design/Build Work, the D/B Company shall: (1) provide the County with a comprehensive resume of the candidate's training, experience, skills and approach to management and customer relations; and (2) afford the County an opportunity to interview the candidate with respect to such matters. The County shall have the right within 20 days following such interview to disapprove the hiring of the proposed candidate, which right of disapproval shall not be exercised unreasonably. The D/B Company shall replace the Project Manager at the request of the County, after notice and reasonable opportunity for corrective action, in the event the County determines, in its sole discretion that an unworkable or unsatisfactory relationship has developed between the Project Manager and the County.

1) The D/B Company shall require that its Project Manager be available at the job site when the D/B Company or any Subcontractor is performing Design/Build Work or a designated representative, equal in qualifications with the Project Manager and subject to the approval of the County, be appointed in writing during each specific absence from the project area. The D/B Project Manager shall be available on call in the event of emergency which involves or affects the D/B Work in whole or portion thereof.

2) The D/B Company's Project Manager shall document D/B Work activities and conditions on a daily basis.

3) The D/B Company's Project Manager shall be the primary point of contact for the Construction Manager on all issues of the D/B Project and the D/B Work.

6.12.2 Construction Superintendent. The D/B Company shall designate a D/B Company's Construction Superintendent, subordinate to the Project Manager, who shall be present on the Site with any necessary assistants on a full time basis when the D/B Company or any Subcontractor is performing Design/Build Work. The D/B Company's Construction Superintendent shall also be available on call in the event of emergency which involves or affects the Design/Build Work in whole or portion thereof. The D/B Company's Construction Superintendent shall, among other things:

- 1) Be familiar with the Design/Build Work and all requirements of this Design/Build Contract;
- 2) Coordinate the Design/Build Work and give the Design/Build Work regular and careful attention and supervision;
- 3) Maintain a daily status log of the Design/Build Work and any other meeting relating to the Design/Build Work requiring the attendance of the D/B Company under the Design/Build Contract; and
- 4) Attend monthly construction progress meetings with the County and the Construction Manager.

The D/B Company may change the person assigned as the D/B Company's Construction Superintendent, subject to the provisions of this Section.

6.12.3 Site Safety Representative The D/B Company shall designate a D/B Company Site Safety Representative, subordinate to the Project Manager, who shall be present on the Site with any necessary assistance during times when the D/B Company or any Subcontractor is performing Design/Build Work. The D/B Company Site Safety Representative shall, among other things:

- 1) Administer and be responsible for the implementation of all requirements of the D/B Company's Safety and Health Program in accordance with Section 10.2., Article 10 and Appendix 9.
- 2) Attend all Construction Period Progress Meetings and report on safety training, accidents and incidents in accordance with Appendix 9 and all safety site safety inspections conducted by the D/B Company, the County or any other entity.
- 3) Provide input to the Monthly Project Progress Report on safety training, accidents and incidents and safety inspections of site performed by the D/B Company, County or any other entity.

- 4) Be responsible for the corrective action resulting from deficiencies report and during any safety inspection of the site, the D/B work or the D/B Project any any entity.

6.12.4 Quality Assurance/Quality Control (QA/QC) Manager The D/B Company shall designate a D/B Company's QA/QC Manager subordinate to the Project Manager, who shall be present on the Site with any necessary assistance during times when the D/B Company or any Subcontractor is performing Design/Build Work. The D/B QA/QC Manager shall, among other things:

- 1) Administer the D/B Company's QA/QC Program, in accordance with the approved QA/QC Plan.
- 2) Provide input to the Construction Period Progress Meetings and Monthly Project Progress Report on the results of all testing conducted during the previous period.
- 3) Maintain all QA/QC records in accordance with the approved QA/QC Plan.
- 4) Provide QA/QC Reports to the Construction Manager in a weekly basis.

6.12.5 County Rights with Respect to Key Personnel. The D/B Company acknowledges that the identity of the key management and supervisory personnel proposed by the D/B Company and its Subcontractors in its proposal submitted in response to the RFP was a material factor in the selection of the D/B Company to perform this Design/Build Contract. Such personnel and their affiliations are set forth in Appendix 12. The Company shall utilize such personnel to perform such services unless such personnel are unavailable for good cause shown. "Good cause shown" shall not include performing services on other projects but shall include termination for cause, employee resignation, illness and death. In the event of any such permissible unavailability, the Company shall utilize replacement key management and supervisory personnel of equivalent skill, experience and reputation. Any on-Site personnel change of key management and supervisory personnel shall be proposed to the County for its review, consideration and determination of compliance with this subsection with reasonable advance notice.

6.12.6 Labor Disputes. The D/B Company shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design/Build Work. The D/B Company shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the D/B Company or its Subcontractors, whether pertaining to organization of the Design/Build Work, arrangement or subdivision of the Minimum Technical Requirements, employee hiring, or any other matters.

The County shall have no responsibility whatsoever for any such disputes or issues.

ARTICLE 7 - ACCEPTANCE OF THE DESIGN/BUILD PROJECT

7.1 SUBSTANTIAL COMPLETION AND ACCEPTANCE TESTING

7.1.1 Submittal of Transition Package. At least 30 days before the earlier of the Scheduled Acceptance or the date upon which the D/B Company plans to begin Acceptance Testing, the D/B Company shall prepare and submit to the County for its approval a Transition Package. The Transition Package contains the Acceptance Test Plan, The Training Plan, Draft Operations and Maintenance Manual, and an update to the Emergency Response Plan.

1) The Acceptance Test Plan Shall define a test program for each objective specified in Appendix 15 and shall detail all procedures to be used, specific measurements to be made, the use of permanent and temporary instrumentation, the tests schedule (including the expected date, time and duration of each test) and the operating and maintenance schedule for the D/B Work during testing. The Acceptance Test Plan shall conform to the requirements of Appendix 15 in all respects. If the D/B Company and County are unable to agree upon an Acceptance Test Plan within 30 days of such submission, their inability to agree may be mediated as provided in Section 12.10.

2) The Training Plan Shall define a training program in accordance with Appendix 13. The Training Plan shall define classroom and hands-on training curriculum for County Contract Operators and County Personnel. The Training Plan shall be designed such that at the completion of Acceptance Testing, the County Contract Operators and County Personnel shall be sufficiently trained in the operation of the Plant relating to the D/B Work.

3) The Emergency Response Plan The Plan submitted prior to the Design/Build Date in accordance with Appendix 10 shall be updated to include specific responses to plan operational emergencies as detailed in Appendix 13 during the Acceptance Testing Period and for use by the County Contract Operators.

4) Draft Operations and Maintenance Manual Shall be prepared in accordance with Appendix 13 and shall detail the operational and maintenance practices and routines that shall be used in the operation and maintenance of the Big Creek WRF Immediate Needs Rehabilitation Project.

7.1.2 Notice of Substantial Completion The D/B Company shall give the Construction Manager at least 10 days prior written notice of the expected date of Substantial Completion. Substantial Completion shall occur on any date certified by the County, which shall have discretion to waive any of the conditions in subsection 7.3.1.

7.1.3 Notice of Commencement of Acceptance Testing The D/B Company shall also provide the Construction Manager with at least 10 days prior written notice of the expected initiation of an Acceptance Test. The D/B Company shall certify that it is ready to begin Acceptance Testing in accordance with the Acceptance Test Plan and Appendix 15.

7.2 FINAL PUNCH LIST

The D/B Company shall submit a proposed Pre-Final Punch List to the Construction Manager when the D/B Company believes that the Design/Build Work has been substantially completed in compliance with this Design/Build Contract. The "Pre-Final Punch List" shall be a statement of repairs, corrections and adjustments to the Design/Build Project, and incomplete aspects of the applicable Design/Build Work, which in the Company's opinion:

- 1) The Company can complete before the Company's agreed date for Final Completion and with minimal interference to the occupancy, use and lawful operation of the Design/Build Project; and
- 2) Would represent, to perform or complete, a total cost of not more than 2.5% of the portion of the Fixed Design/Build Price (unless the County determines that a higher percentage is acceptable).

The Pre-Final Punch List shall be reviewed and approved by the County. If upon review the Construction Manager agrees and approved the list, the Pre-Final Punch List becomes the Final Punch List. Otherwise, the Construction Manager shall make comments to the Pre-Final Punch List and transmit it back to the D/B Company for revision. The completion of the Final Punch List work shall be verified by a final walk-through of the Design/Build Project conducted by the County and the Construction Manager with the D/B Company and the D/B Company Engineer.

7.3 SUBSTANTIAL COMPLETION

7.3.1 The D/B Company shall not commence the Acceptance Testing until Substantial Completion has occurred. Substantial Completion shall occur only when all of the following conditions have been satisfied:

- 1) A preliminary or temporary certificate of occupancy has been issued, if required by Applicable Law;

2) The D/B Company is authorized to conduct the Acceptance Testing and to operate the Design/Build Work under Applicable Law, and such authorization has not been withdrawn, revoked, superseded, suspended, or materially impaired or amended;

3) All utilities specified or required under this Design/Build Contract to be arranged for by the D/B Company are connected and functioning properly;

4) The D/B Company and the County have agreed in writing upon the Final Punch List (or, if they are unable to agree, the County shall have prepared and issued to the D/B Company the Final Punch List to the D/B Company within 15 business days of the Company having submitted its Final Punch List to the County which shall be conclusively deemed the Final Punch List);

5) The County has received (at least seven (7) days prior to the date on which Substantial Completion is deemed achieved), the certification by the D/B Company that all Design/Build Work pertaining to the Design/Build Project, excepting the items on the Final Punch List, is complete and in all respects is in compliance with this Design/Build Contract, and the County has not notified the D/B Company of any disagreement with the contents of such certification;

6) The D/B Company has delivered to the County written certification from the machinery and equipment manufacturers that all major items of machinery and equipment included in the Design/Build Project have been properly installed and tested in accordance with the manufacturers' recommendations and requirements;

7) All warranties required to be obtained under subsection 11.1(l) have been delivered to the County;

8) The D/B Company has delivered to the County a claims statement setting forth in detail all claims of every kind whatsoever of the Company connected with, or arising out of, the Design/Build Work pertaining to the Design/Build Project and arising out of or based on events prior to the date when the Company gives such statement to the County;

9) The D/B Company has delivered the Operation and Maintenance Manual for the Design/Build Project to the County;

10) The D/B Company has submitted to the County and the County has reviewed and approved the plan for Acceptance Testing, the Transition Plan and the Training Plan;

11) If required by Applicable Law, the EPD has approved the plan for any required Acceptance Testing and has issued a notice of permission to conduct the Acceptance Tests;

12) The Construction Manager has certified, that the construction and installation of the Design/Build Project have been completed in accordance with the plans and specifications therefore;

13) The D/B Company has submitted written certification that all of the foregoing conditions have been satisfied and the Construction Manager has not disputed the Company's certification.

7.4 CONDUCT OF ACCEPTANCE TEST

The D/B Company shall conduct the Acceptance Tests in accordance with Appendix 15 and the Acceptance Test plan, and shall notify the Construction Manager when the test shall occur. The D/B Company shall permit the designated representatives of the Construction Manager to inspect the preparations for the Acceptance Test and to be present for the conduct of Acceptance Test.

7.4.1 Training. The D/B Company shall submit a Training Plan to be responsible for training all County or Contract Operations personnel to operate the Plant relating to the D/B Work, in accordance with Appendix 10. As part of the Transition Package the D/B Company shall submit to the County for its review and comment a personnel training program which the D/B Company proposes to institute in order to ensure that the Big Creek WRF Immediate Needs Rehabilitation is operated in accordance with all State and Federal Regulations, the Operations and Maintenance Manual, all manufacturer's instructions, Applicable Law, and other pertinent requirements.

7.4.2 Unauthorized Releases Prohibited. The D/B Company shall conduct Acceptance Tests in such a manner that influent, effluent, residuals and hazardous materials will not contaminate, or be released, leak or spill on or into the environment other than as permitted by the D/B Contract Standards.

7.4.3 Notification and Reporting. The D/B Company, after first notifying the County, shall be responsible for fulfilling all notification and reporting requirements established by Applicable Law related to any unauthorized release into the environment from or in connection with its conduct of the Acceptance Tests. The D/B Company shall prepare a memorandum evidencing such notification and reporting and provide copies thereof to the County, along with

any documents provided to the relevant Governmental Body regarding the release.

7.4.4 Cleanup and Costs. The D/B Company shall coordinate with the County in identifying the source of any unauthorized release and cooperate with the County and all appropriate Governmental Bodies in effectuating the prompt remediation thereof. The D/B Company shall, in the most expeditious manner possible under the circumstances, cause any waste or material release without authorization to be cleaned up, removed from Big Creek WRF or other point of release, and transported to and discharged or disposed of at a landfill or other disposal site which constitutes an Acceptable Disposal Site, and perform necessary remediation measures to be performed. All costs associated with the identification, testing, cleanup, removal, transportation and disposal of such waste or material and performing necessary remediation measure shall be borne by the D/B Company, except to the extent the release of the waste or material resulted from an Uncontrollable Circumstance or County Fault, in which case such costs shall be borne by the County.

7.4.5 Indemnity for Loss-and-Expense from Non-Complying Effluent In the event that any effluent discharged by the D/B Company as result of the conduct of the Acceptance Tests fails to comply with the requirements of the Operational Performance Guarantee, except to the extent such failure of compliance subsections is caused by Uncontrollable Circumstance, the D/B Company shall indemnify, defend and hold harmless the County and the County Indemnitees in accordance with Section 11.4 from the Loss-and-Expense of any tort, environmental or other liability resulting from the discharge of such Non-Complying Effluent. This indemnity shall extend to any liability property loss or damage or death or personal injury suffered or alleged to be suffered by any person from exposure to such Non-Complying Effluent based on any theory of recovery, including theories of toxic tort or environmental impairment. The Loss-and-Expense to which the indemnity provided in this Section extends shall not be construed to constitute consequential or other damages as set forth in Section 12.8, as to which both parties have waived any rights of recovery.

7.4.6 Change in Law Affecting Effluent The parties acknowledge that a Change in Law may affect Effluent standards or impose more stringent requirements relating to the equipment or processes than those established hereunder as of the Contract Date. In the event a Change of Law occurs, the D/B Company shall not be entitled to performance relief or additional compensation hereunder unless (1) such Change in Law imposes a regulatory standard or operating requirement with respect to any particular Effluent characteristic or parameter which is more stringent or burdensome to comply with than the Contract Standards applicable to such characteristic or parameter, or requires equipment or process not then in place or practiced at the Big Creek WRF, and (2) the D/B Company is unable, after taking all mitigation measures required

under Section 11.3 with respect to such Change in Law, to avoid the necessity for such performance relief or additional compensation.

7.5 ACCEPTANCE DATE CONDITIONS

7.5.1 The following conditions shall constitute the "Acceptance Date Conditions," each of which must be satisfied in all material respects by the D/B Company in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date:

1) Achievement of Acceptance Test Procedures and Standards. The D/B Company shall have completed any required Acceptance Test and such test shall have demonstrated that the Design/Build Project have met the Acceptance Test Procedures and Standards;

2) Substantial Completion. The D/B Company shall demonstrate that Substantial Completion has occurred;

3) Operating Governmental Approvals. The EPD shall have issued its determination, if required, that the Design/Build Work conforms to the applicable order of approval, and all other applicable Governmental Approvals required under Applicable Law which are necessary for the routine operation of the Design/Build Project shall have been duly obtained by the D/B Company and shall be in full force and effect. Copies of all such Governmental Approvals, to the extent not in the County's possession, shall have been delivered to the County certified by the D/B Company;

4) Record Drawings. The D/B Company shall have delivered to the County a final and complete reproducible set of record drawings, together with six copies thereof, in a size and form required by the County and as required by the Minimum Technical Requirements, and shall have certified that the Design/Build Project were constructed in accordance with the Minimum Technical Requirements, including any Change Orders. Such record drawings shall include one mylar copy. The D/B Company shall also provide an electronic file in AutoCad and PDF format to the extent drawings are prepared in such format or any other format mutually agreed to between the parties;

5) Equipment Warranties and Manuals. The D/B Company shall be in possession of, and shall have delivered to the Construction Manager, copies of the warranties of machinery, equipment, fixtures and vehicles constituting a part of the Design/Build Project, together with copies of all related operating manuals supplied by the equipment supplier; and

7.6 TEST REPORT

Within 30 days following conclusion of the Acceptance Tests, the D/B Company shall furnish the Construction Manager with a certified written report describing and certifying (1) the Acceptance Tests conducted, (2) the results of the Acceptance Tests, and (3) the level of satisfaction of the Acceptance Standards relating thereto and all other requirements specified in Appendix 15. The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the Acceptance Tests, and copies of laboratory reports conducted in conjunction with the Acceptance Tests, including all laboratory sampling and test results.

7.7 CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS

7.7.1 Acceptance Date Concurrence. The "Acceptance Date" shall be the day on which the Acceptance Test Procedures and Standards have been achieved. If the D/B Company certifies in its written report delivered pursuant to Section 7.6 that the full Acceptance Test Procedures and Standards have been achieved, the County shall determine, within 15 days of its receipt of the report, whether it concurs in such certification. If the County states in writing that it concurs with the D/B Company's certification, the Design/Build Project shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on a permanent basis from the date of the D/B Company's original certification of the Acceptance Date.

7.7.2 Acceptance Date Disagreement. If the County determines at any time during such 15-day review period that it does not concur with such certification, the County shall immediately send written notice to the D/B Company of the basis for its disagreement. In the event of any such non-concurrence by the County, either party may elect to refer the dispute to non-binding mediation for resolution pursuant to Section 12.10. Mediation shall be concluded within 60 days of the dispute referral unless both parties agree that more time is appropriate. In the event that the Mediator fails to issue a decision within 60 days, then either party may initiate judicial proceedings. The parties acknowledge and agree that the Mediator shall not be empowered to render a binding decision. Acceptance shall not be deemed to have been achieved unless the Acceptance Test, conducted in a unified and continuous manner as provided in the Acceptance Test plan and Appendix 15, demonstrates that all of the Acceptance Test Procedures and Standards have been met. In the event the D/B Company, in conducting the Acceptance Test, does not successfully meet the applicable Acceptance Test Procedures and Standard, the County shall have the right, in its sole discretion, to permit the D/B Company to re-test the Design/Build Project for compliance only with the Acceptance Test Procedures and Standards not previously achieved through an earlier Acceptance Test. Nothing in this Section shall prevent the D/B Company from bringing an action or

from repeating any Acceptance Test in order to establish the achievement of an Acceptance.

7.8 EXTENSION PERIOD

If Acceptance shall not have occurred on or before the Scheduled Acceptance Date as set forth in, and as adjusted pursuant to, Section 7.9, the D/B Company shall be entitled to conduct or repeat the Acceptance Tests as often as it desires in order to secure Acceptance of the Design/Build Project during the applicable Extension Period. The "Extension Period" shall mean an additional period of 30 days beyond the applicable Scheduled Acceptance Date. During the Extension Period, the D/B Company shall be responsible for and shall pay any fines and penalties assessed by a Governmental Body against the County or the D/B Company due to the failure to achieve Acceptance by the Scheduled Acceptance Date, together with liquidated damages as set forth in Section 7.9.

7.9 SCHEDULED ACCEPTANCE DATE

7.9.1 Schedule for Completing the Design/Build Project. The D/B Company shall cause the Acceptance Date to occur on or prior to the Scheduled Acceptance Date. If the Acceptance Date occurs subsequent to the Scheduled Acceptance Date, then, in addition to the amounts payable under Section 7.8, the County may assess liquidated damages of \$1,000 per day not as a penalty for each day that the Acceptance Date falls after the Scheduled Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this Design/Build Contract for an Event of Default. The parties acknowledge that such amount is a reasonable estimate of the County's extended duration cost associated with any such delay. The parties also acknowledge that the liquidated damages set forth in this Section shall be the sole and exclusive remedies of the County with respect to losses resulting from the failure to meet the scheduled acceptance date.

7.9.2 Adjustment of Scheduled Acceptance Date. The Scheduled Acceptance Date shall be adjusted to account for (1) delay caused by Uncontrollable Circumstances, County Fault or County-requested Change Orders not due to D/B Company Fault, and (2) the number of days of delay by EPD in issuing required Governmental Approvals beyond 90 days following a submittal which is deemed "complete" by the EPD, reduced by the number of days the EPD delayed issuing the required Governmental Approval due to the failure of the D/B Company to exercise reasonable diligence in securing the Governmental Approval following submittal of the complete application, but only to the extent any such EPD delay actually caused delay in the overall progress of the Design/Build Work after the exercise of all commercially reasonable mitigation efforts by the D/B Company. Any such EPD delay in issuing required Governmental Approvals shall entitle the D/B Company only to an extension of time as provided in this subsection, and shall not entitle the D/B Company to any

price adjustment or any other relief from its other performance obligations hereunder.

7.10 FAILURE TO MEET ACCEPTANCE STANDARD

If, as of the last day of an Extension Period, the Acceptance Tests have not been conducted or have failed to demonstrate that the Design/Build Project operate at a standard equal to or greater than the full Acceptance Standard, an Event of Default by the D/B Company will be deemed to have occurred under Section 12.2 notwithstanding any absence of advance notice, further cure opportunity or other procedural rights accorded the D/B Company thereunder, and the County shall thereupon have the right to terminate this Design/Build Contract upon written notice to the D/B Company. Upon any such termination, the County shall have all of the rights provided in Article 12 hereof upon a termination of the D/B Company for cause.

7.11 FINAL COMPLETION AND COUNTY ASSUMPTION OF DESIGN/BUILD PROJECT

7.11.1 Requirements. The D/B Company shall achieve Final Completion of the Design/Build Project within 30 days after the Scheduled Acceptance Date. When all conditions for Final Completion have been met the County will assume responsibility for all operational requirements of the D/B Work. The Transition Period shall have ended. "Final Completion" shall occur when all of the following conditions have been satisfied:

1) Acceptance Achieved. The Acceptance Tests have been conducted, the Acceptance Test Procedures and Standards have been achieved, and Acceptance has occurred;

2) Design/Build Work Completed. All applicable Design/Build Work (including all items on the Final Punch List and all clean up and removal of construction materials and demolition debris) is complete and in all respects is in compliance with this Design/Build Contract;

3) Operating Governmental Approvals. EDP shall have issued its determination, if required, that the Design/Build Work conforms to the applicable order of approval.

4) Spare Parts In Storage. All spare parts required by the applicable Minimum Technical Requirements have been delivered and are in storage at the Plant.

5) Deliverable Material Furnished. The D/B Company has furnished to the County all Deliverable Material required to be delivered prior to an Acceptance;

6) Record Drawings. The D/B Company shall have delivered to the County a final and complete reproducible set of record drawings, together with six copies thereof, in a size and form required by the County and as required by the Minimum Technical Requirements and shall certify that the Design/Build Project were constructed in accordance with the Minimum Technical Requirements, including any Change Orders. Such record drawings shall include one Mylar copy. The D/B Company shall also provide an electronic file in AutoCad and PDF (latest versions) format to the extent drawings are prepared in such format; and

7) Equipment Warranties and Manuals. The D/B Company shall be in possession of, and shall have delivered to the County, copies of the warranties of machinery, equipment, fixtures and rolling stock constituting a part of the Design/Build Project, together with copies of all related operating manuals supplied by the equipment supplier.

8) Training Plan Complete. The D/B Company shall have accomplished all the goals of the training plan to the County's satisfaction.

9) Transition Plan Complete. The D/B Company shall have accomplished all the steps of the transition plan to the County's satisfaction.

If the D/B Company fails to achieve Final Completion within 30 days following the Scheduled Acceptance Date, the D/B Company shall be responsible for and reimburse the County for all costs and expenses incurred by the County as a result of such failure to achieve Final Completion within such period, including, but not limited to, the cost of the construction monitor and reasonable attorneys' fees (if any).

7.11.2 Close out or Final Voucher and Claims Statement. The D/B Company shall prepare and submit to the County as soon as practicable following the Acceptance Test, for purposes of demonstrating Final Completion: (1) a certificate of the D/B Company Contract Representative certifying (a) that all applicable Design/Build Work has been completed in accordance herewith and with the Minimum Technical Requirements, and (b) that Acceptance of the Design/Build Project have occurred; and (2) a claims statement setting forth a detailed, itemized description, related dollar amount and grounds for all claims of every kind whatsoever against the County in connection with or arising out of the Design/Build Work the D/B Company may have; (3) a final invoice; and (4) other documents and requirements as specified in Appendix 12. The Construction Manager shall review the certificate and the claims statement and shall verify or dispute them in writing within 30 days of receipt.

7.12 NO ACCEPTANCE, WAIVER OR RELEASE

Unless other provisions of this Design/Build Contract specifically provide to the contrary, none of the following, without limitation, shall be construed as the County's acceptance of any Design/Build Work which is defective, incomplete, or otherwise not in compliance with this Design/Build Contract, as the County's release of the D/B Company from any obligation under this Design/Build Contract, as the County's extension of the D/B Company's time for performance, as an estoppel against the County, or as the County's acceptance of any claim by the D/B Company:

- 1) Any payment by the County to the D/B Company or any other person with respect to the Design/Build Project;
- 2) The County's approval or acceptance of any drawings, submissions, punch lists, other documents, certifications, or Design/Build Work of the Company or any Subcontractor;
- 3) The Construction Manager's review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Design/Build Work;
- 4) The Construction Manager entry at any time on the Site (including any area in which the Design/Build Work is being performed);
- 5) Any inspection, testing, or approval of any Design/Build Work (whether finished or in progress) by the Construction Manager or any other person;
- 7) The failure of the Construction Manager or any County consultant to respond in writing to any notice or other communication of the D/B Company; or
- 8) Any other exercise of rights or failure to exercise rights by the County hereunder.

7.13 COMPLIANCE WITH CONTRACT STANDARDS NOT EXCUSED

No delay or failure by the D/B Company in achieving Substantial Completion, Final Completion or Acceptance with respect to any Design/Build Project shall excuse the D/B Company from its obligation to comply with the Contract Standards.

ARTICLE 8 - CHANGES IN THE WORK

8.1 CHANGE ORDERS

8.1.1 A Change Order is a written order to the D/B Company signed to show the recommendation of the Construction Manager, and the approval and the authorization of the County, issued after execution of the Contract, authorizing a change in the Work and/or an adjustment in the Contract Sum or the Contract Time. Change Orders shall be written using the latest version of *AIA Document G701/CMA, Change Order – Construction Manager-Advisor Edition*, or similar form and must be approved pursuant to Fulton County Policy 800-6. The Contract Sum and the Contract Time may be changed only by approved Change Order. A Change Order signed by the Company indicates the D/B Company's agreement therewith, including the adjustment in either or both of the Contract Sum or the Contract Time.

8.1.2 The County, without invalidating the Contract, may order changes in the D/B Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and the Contract Time being adjusted accordingly as determined by the Construction Manager. All such changes in the Work shall be documented by Change Order, and shall be performed under the applicable conditions of the Contract Documents. The D/B Company shall proceed with the change to the Work as soon as the change order is approved by the County, pursuant to Fulton County Policy 800-6, and the D/B Company is given notice by the Construction Manager.

8.1.3 The cost or credit to the County resulting from a change in the Work shall be determined in one or more of the following ways:

- (1) By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- (2) By unit prices stated in the Contract Documents or subsequently agreed upon;
- (3) By cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- (4) By the method provided in Subparagraph 8.1.4 below.

8.1.4 If none of the methods set forth in Subparagraphs 8.1.3(1), 8.1.3(2) or 8.1.3(3) above is agreed upon, the D/B Company, provided a written order, based on Board of Commissioner's approval, signed by the County's authorized representative is received, shall promptly proceed with the Work involved. Should the D/B Company decide to proceed with a change in the work prior to Board of Commissioner approval, pursuant to Policy 800-6, the D/B Company will be proceeding at it's own risk. The cost of such Work shall then be determined by the County with assistance by the Construction Manager on basis of the reasonable expenditures and savings of those performing the Work attributable

to the change. The cost of the change shall include only the items listed in Subparagraph 8.1.5(1) below, and in the case of either a decrease or an increase in the Contract Sum, an allowance for overhead and profit in accordance with the schedules set forth in Subparagraphs 8.1.5(2) and 8.1.6 below shall be applied to the cost or credit.

- (1) In such case, and also under Subparagraph 8.1.3(3) above, the D/B Company shall keep and present, in such form as the Construction Manager may prescribe, an itemized accounting of all actual costs expended, together with appropriate supporting data for inclusion in a Change Order.
- (2) All hourly rate charges shall be submitted to the Construction Manager for prior review and approval by the County. All hourly rate charges shall be properly supported as required by the Construction Manager with certified payrolls, or their acceptable equivalent. When authorized to proceed for a given change and actual expenditures have been made prior to execution of a Change Order for the entire change, such actual expenditures may be summarized monthly, and if approved, incorporated into a Change Order. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any, with respect to that change.

8.1.5 In Subparagraphs 8.1.3 and 8.1.4 above, the items included in "Cost" and "Overhead" shall be based on the following schedule:

- (1) Unless otherwise provided in the Contract Documents, "Cost" shall be limited to the following: cost of materials incorporated into the Work, including sales tax and cost of delivery; cost of direct labor (labor cost may include a pro rata share of foreman's account of the change) including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' or workmen's compensation insurance; rental value of equipment and machinery; costs for preparing Shop Drawings.
- (2) Unless otherwise provided in the Contract Documents, "Overhead" shall include the following: bond and insurance premiums including increase and decreases from change in the Work, supervision, superintendence, construction parking, wages of timekeepers, watchmen and clerks, small tools, consumable supplies, expendables, incidentals, general office expense, the cost of additional reproduction for the Company's subcontractors beyond that agreed upon in the Contract Documents, construction parking, any additional costs of craft supervision by the D/B Company's or

subcontractors' superintendents, and overhead charges which would be customary and expended regardless of the change in the Work due to other overlapping activities which are included as part of the original Contract, and all other expenses not included in "Cost" above.

- (3) In the event that a change is issued by the Owner which would require the expenditure of substantial amounts of special supervision (beyond the foreman level) by the D/B Company, the D/B Company may, at the sole direction of the County, be allowed to incorporate these charges into the agreement cost for the change.

8.1.6 In Subparagraphs 8.1.3 and 8.1.4 above, the allowance for overhead and profit combined, included in the total cost or credit to the County, shall be based on the following schedule:

- (1) For the D/B Company, for any work performed by the D/B Company's own forces, ten (10) percent of the cost.
- (2) For the D/B Company, for any work performed by a D/B Company's subcontractor, five (5) percent of the amount due the subcontractor.
- (3) For each subcontractor or sub-subcontractor involved, for any work performed by that subcontractor's or sub-subcontractor's own forces, ten (10) percent of the cost.
- (4) For each subcontractor, for work performed by a sub-subcontractor, five (5) percent of the amount due to the sub-subcontractor.
- (5) Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 8.1.5 above unless modified otherwise.

8.1.7 In order to facilitate checking of quotations for extras or credits, all proposals or bids, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor cost, materials and subcontracts. Labor and materials shall be itemized in the manner defined in Subparagraph 8.1.4 above. Where major cost items are subcontracts, they shall be itemized also. In no case shall a change be approved without such itemization.

8.1.8 No payment shall be made for any changes to the contract that are not included in a fully executed Change Order that has been approved by the Fulton County Board of Commissioners, pursuant to Fulton County Policy 800-6.

8.2 REQUESTS FOR ADDITIONAL COST

8.2.1 If the D/B Company wishes to request an increase in the Contract Sum, the D/B Company shall give the Construction Manager written notice thereof within twenty (20) days after the occurrence of the event, or identification of the conditions, giving rise to such request. This notice shall be given by the D/B Company who shall not proceed with the work without the prior approval of the County, except in an emergency endangering life or property in which case the D/B Company shall proceed in accordance with Paragraph 10.7 of this Agreement, and Subparagraph 8.1.4 above. No such request shall be valid unless so made within the twenty (20) days specified above. Any change in the Contract Sum resulting from such request for equitable adjustment shall be documented by Change Order and approved by the Fulton County Board of Commissioners, pursuant to Fulton County Policy 800-6.

8.2.2 If the D/B Company considers that additional cost is involved because of, but not limited to (1) any written interpretation pursuant to Subparagraph 2.2.7 of this Agreement, (2) any order by the County to stop the Work pursuant to Paragraph 3.3 of this Agreement where the D/B Company was not at fault, or any such order by the Construction Manager as the County's agent, or (3) any written order for a minor change in the Work issued pursuant to Paragraph 8.3 below, the D/B Company shall submit a request for an increase in the Contract Sum as provided in Subparagraph 8.2.1 above. No such request shall be valid unless the Company complies with Subparagraph 8.2.1 above.

8.3 FIELD ORDERS

The Construction Manager will have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order issued by the Construction Manager, and shall be binding on the D/B Company. The D/B Company shall carry out such written orders promptly.

ARTICLE 9 - DESIGN/BUILD GUARANTEES

9.1 DESIGN/BUILD GUARANTEES GENERALLY

The Big Creek WRF Immediate Needs Rehabilitation is a Design/Build delivery project which is performance based. However, contained in the D/B RFP, the D/B Contract and Appendices are specific process, equipment and material specifications which the Owner has dictated will be used in the Design. The D/B Company shall be responsible to seek clarification of any specification contained in the D/B RFP, the D/B Contract and the Appendices that precludes achieving the expected performance. The D/B Company is expected to understand the risk associated with each of the performance guarantees in this article. These Design/Build Guarantees are significant to the success of the project. Appendix 18 contains more details of the Design/Build Guarantees.

9.2 NOISE GUARANTEE

9.2.1 During Construction. The D/B Company shall take action to minimize the noise created during construction of the Design/Build Work and to comply with the requirements of Appendices 2 and 18 with regard to noise. The D/B Company shall comply with Fulton County and City of Roswell Noise Ordinances and all Applicable Law with regard to noise.

9.2.2 Background Noise Measurement. Prior to start of construction, the D/B Company shall measure the background noise levels at two points at the Plant envelope, near where the public has access and where people are living or engaging in recreational activities. The average value for each monitoring point will be used as the benchmark for the required performance criteria. Should construction activities occur outside of the regular construction hours, noise levels shall be measured at the two monitoring points. Measurements shall be taken while construction activities are occurring. Measurements shall not be taken when no construction activity is occurring. The sound level measured shall not exceed the benchmark level by more than 3 dB. An increase in noise by 5 dB is a readily perceptible change, impacting residents in the community. Should the noise level exceeds the benchmark level, the D/B Company shall take every action to meet the maximum sound level.

9.3 FIXED DESIGN/BUILD PRICE GUARANTEE

The County requires that the Fixed Design/Build Price from each proposer be the total compensation for the planning, design, permitting, construction, testing and acceptance of the D/B Work in accordance with the D/B Contract. The risk associated with this project is detailed in the D/B RFP and the D/B Contract. The proposer will evaluate the risk, provide detailed technical explanation of its plans to mitigate the risk and successfully complete the Big Creek WRF Immediate Needs Rehabilitation. Each proposer shall assume the total of the risk detailed in

the D/B RFP, D/B Contract and the Appendices and will propose a Fixed Design/Build Price that reflects all the risk.

9.4 PLANT CONTINUOUS OPERATION GUARANTEE

The County requires that the Plant be in continuous operation while the D/B Company undertakes the D/B Work. In performing the D/B Work, the D/B Company shall not in any way interfere with the operation of the Plant. In the event that a shutdown of a system or portion of the plant is necessary to perform the D/B Work, the D/B Company shall coordinate with the Plant Contract Operators through the Construction Manager.

9.5 ODOR CONTROL GUARANTEE

The BCWRF is to be kept from becoming an odor nuisance during construction. The D/B Company is to control concentrations of odor causing compounds such that they are not released in greater quantity while the D/B Work is going on than during normal plant operation.

The D/B Company is to take measurements of the air at the BCWRF property lines at the closest points to residents and businesses near where the D/B Work is to be done. The D/B Company is to justify which type of measurements are to be done so that it can be demonstrated this goal is met, either using calibrated gas detection meters or by determining the Dilution-to-Threshold (D/T) odor concentration, or both. D/T is as defined in ASTM E-679: Standard of Practice for Determination of Odor and Taste Thresholds by a Forced-Choice Ascending Concentration Series Method of Limits, current version. Field measurements of D/T odor concentration shall be done simultaneously by one member each of D/B Company staff, Fulton County staff, and Fulton County's Contract Operations staff. Pre-construction measurements are to be done at various times of the day and at various flows. The atmospheric and wind conditions are to be measured at the time of reading. The pre-construction readings shall be submitted to the Owner prior to start of the work. Similar measurements are to be done while the D/B Work is being performed, specifically while covers are open and/or odor control systems are being modified.

During construction, there shall not be more than a maximum concentration of any odor causing compounds of 10 parts per billion (ppb) greater than the concentration indicated in the pre-construction odor measurements, as measured at the property line, nor shall there be any odor at the property line greater than 5 D/T odor concentration indicated in the pre-construction odor measurements, as measured at the property line. Odor concentrations are to be measured while the D/B Work is being performed.

Failure of the Odor Guarantee constitutes an increase of odor concentrations, quantified above, for a duration of greater than 4 hours and will require the D/B

Company to immediately apply corrective measures to reduce the odors to an acceptable level. Should the D/B Company fail to correct the excess odor and the County is required to take action to do so, the D/B Company is to compensate the County for the cost to bring the odor level into compliance. Failure of the Odor Guarantee is not a reason for stoppage or slowdown of the work, nor is it a reason for lengthening the contract period.

ARTICLE 10 - SAFETY

10.1 DESIGN BUILDER'S SAFETY, HEALTH AND LOSS PREVENTION PROGRAM

10.1.1 The D/B Company shall be responsible for designing and implementing a comprehensive project-specific safety, health and loss prevention process and/or program and employee substance abuse program for this project. All Sub-Contractors must either implement their own program that meets these requirements or follow the Company's safety, health and loss prevention process and/or employee substance abuse program.

10.1.2 The safety, health and loss prevention process and/or employee substance abuse program must meet or exceed all governmental regulations (OSHA, EPA, DOT, State, local), comply and other specific Fulton County requirements, and with any other safety, health and loss prevention requirements detailed in the contract documents including the requirements of the Contractor Safety and Health Management Process which is attached hereto and incorporated herein.

10.1.3 Prior to issuing the Notice to Proceed (NTP), the D/B Company shall submit in writing to the Construction Manager, the D/B Company's written Safety, Health and Loss Prevention Process and/or Program and Employee Substance Abuse Program and those of Sub-Contractors that meet or exceed the requirements referenced in the contract documents. Included in this submittal will be the name and qualifications of the site safety representative.

10.1.4 Prior to issuing the Notice to Proceed (NTP), a meeting will be held with the D/B Company and all Sub-Contractors to review the safety, health and loss prevention process and/or program requirements, submittals to be provided by the D/B Company.

10.1.5 These program submittals must be reviewed and accepted by the Construction Manager as meeting or exceeding safety, health, and loss prevention process and/or program requirements. A Notice to Proceed (NTP) will not be issued until these submittals have been accepted by the Construction Manager.

10.2 DESIGNATION OF SAFETY REPRESENTATIVE

10.2.1 The D/B Company will designate an employee by (name, phone number, pager number) as Site Safety Representative. This employee will have sufficient training and knowledge of safety and health principles, regulations, and procedures to report to the D/B Company's Project Manager. Since the Big Creek WRF Immediate Needs Rehabilitation project has significant risk or hazard potential, the D/B Company must designate a qualified employee to be the Site Safety Representative in accordance with Article 6.12.3. This person should address safety, health and loss prevention activities for the complete project including Sub-Contractors.

10.3 FULTON COUNTY'S SAFETY, HEALTH, AND LOSS PREVENTION PROCESS GUIDELINES AND REQUIREMENTS

10.3.1 The County and its agents reserve the right, but assume no duty, to establish and enforce safety, health, and loss prevention guidelines and to make the appropriate changes in the guidelines, for the protection of persons and property and to review the efficiency of all protective measures taken by the D/B Company. The D/B Company shall comply with all safety, health, and loss prevention process guidelines and requirements and changes made by the County or its agent(s). The issuance of any such guidelines or changes by the County or its agent(s) shall not relieve the D/B Company of its duties and responsibilities under this Agreement, and the County or its agent(s) shall not thereby assume, nor be deemed to have assumed, any such duties or responsibilities of the D/B Company.

10.4 COMPLIANCE OF WORK, EQUIPMENT, AND PROCEDURES WITH ALL APPLICABLE LAWS AND REGULATIONS

10.4.1 All Work, whether performed by the D/B Company or its Sub-Contractors of any tier, or anyone directly or indirectly employed by any of them, and all equipment, appliances, machinery, materials, tools and like items incorporated or used in the Work, shall be in compliance with and conform to:

- 1) All applicable laws, ordinances, rules, regulations and orders of any public, quasi-public or other governmental authority relating to the safety of persons and their protection against injury, specifically including, but in no event limited to, the Federal Occupational Safety and Health Act of 1970, as amended, and all rules and regulations now or hereafter in effect pursuant to said Act.
- 2) All rules, regulations, and requirements of the County or its agent(s) and its insurance carriers relating there to. In the event of a conflict or differing requirements the more stringent shall govern.

10.5 PROTECTION OF THE WORK

10.5.1 The D/B Company shall, throughout the performance of the Work, maintain adequate and continuous protection of all Work and temporary facilities against loss or damage from whatever cause, shall protect the property of the County and third parties from loss or damage from whatever cause arising out of the performance of the Work, and shall comply with the requirements of the County or its agent(s) and its insurance carriers, and with all applicable laws, codes, rules and regulations, (as same may be amended) with respect to the prevention of loss or damage to property as a result of fire or other hazards.

10.5.2 The Construction Manager may, but shall not be required to, make periodic inspections of the Project work area. In such event, however, the D/B Company shall not be relieved of its aforesaid responsibilities and the Construction Manager shall not assume, nor shall it be deemed to have assumed, any responsibility otherwise imposed upon the assurance of D/B Company by this Agreement.

10.6 SAFETY EQUIPMENT

10.6.1 The D/B Company shall provide to each worker on the Project work area the proper safety equipment for the duties being performed by that worker and will not permit any worker on the Project work area who fails or refuses to use the same. The County or Construction Manager shall have the right, but not the obligation, to order the removal of a worker from the Project work site for his/her failure to comply with safe practices or substance abuse policies, and the D/B Company shall promptly comply with the Safety Program or Substance Abuse Program and all such orders.

10.7 EMERGENCIES

10.7.1 In any emergency affecting the safety of persons or property, or in the event of a claimed violation of any federal or state safety or health law or regulation, arising out of or in any way connected with the Work or its performance, the D/B Company shall act immediately to prevent threatened damage, injury or loss and to remedy said violation. Failing such action the County or Construction Manager may immediately take whatever steps it deems necessary including, but not limited to, suspending the Work as provided in this Agreement.

10.7.2 The County or Construction Manager may offset any and all costs or expenses of whatever nature, including attorneys' fees, paid or incurred by the County or Construction Manager (whether such fees are for in-house counsel or counsel retained by the County or Construction Manager), in taking the steps authorized by Section 10.7.1 above against any sums then or thereafter due to the D/B Company. The D/B Company shall defend, indemnify and hold the

County, its officers, agents, and employees harmless against any and all costs or expenses pursuant to Section 10.7.1, by whomsoever incurred. If the D/B Company shall be entitled to any additional compensation or extension of time change order on account of emergency work not due to the fault or neglect of the D/B Company or its Sub-Contractors, such additional compensation or extension of time shall be determined in accordance with Articles 8 and 12 of this Agreement.

10.8 SUSPENSION OF THE WORK

10.8.1 Should, in the judgment of the Construction Manager, the D/B Company or any Sub-Contractor fail to provide a safe and healthy work place or fail to follow the safety requirements defined in the contract documents and approvals, the County or Construction Manager shall have the right, but not the obligation, to suspend work in the unsafe areas until deficiencies are corrected. All costs of any nature (including, without limitation, overtime pay, liquidated damages or other costs arising out of delays) resulting from the suspension, by whomsoever incurred, shall be borne by the D/B Company.

10.8.2 Should the D/B Company or any Sub-Contractor fail to provide a safe and healthy work place or fail to follow the safety requirements defined in the contract documents and approvals after being formally notified in writing by the County or Construction Manager of such non-compliance, the D/B Contract may be terminated in accordance with Article 12 of the D/B Contract.

10.9 COMPANY'S INDEMNITY OF THE COUNTY FOR COMPANY'S NON-COMPLIANCE WITH SAFETY PROGRAM

10.9.1 The D/B Company recognizes that it has sole responsibility to assure its Safety Program is implemented and to assure its construction services are safely provided. The D/B Company shall indemnify, defend and hold the County and its agents harmless, from and against any and all liability (whether public or private), penalties (contractual or otherwise), losses, damages, costs, attorneys' fees, expenses, causes of action, claims or judgments resulting, either in whole or in part, from any failure of the D/B Company, its Sub-Contractors of any tier or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, to comply with the safety requirements of the contract. The D/B Company shall not be relieved of its responsibilities under the safety requirements of the Contract should the County or its agent(s) act or fail to act pursuant to its rights hereunder. The County, and its agents shall not assume, nor be deemed to have assumed, any responsibilities otherwise imposed upon the D/B Company by this Agreement, by virtue of providing the Safety Program Guidelines.

10.9.2 The D/B Company shall not raise as a defense to its obligation to indemnify under this Section 10.9 any failure of those indemnified hereunder to

assure D/B Company operates safely, it being understood and agreed that no such failure shall relieve the D/B Company from its obligation to assure safe operations or from its obligation to so indemnify. The D/B Company also hereby waives any rights it may have to seek contribution, either directly or indirectly, from those indemnified hereunder.

10.9.3 In any and all claims against those indemnified hereunder by any employee of the D/B Company, any Sub-Contractor of any tier or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 10.9 shall not be limited in any way as to the amount or type of damages, compensation or benefits payable by or for the D/B Company or any Sub-Contractor of any tier under any workers' compensation act, disability benefit or other employee benefit acts.

ARTICLE 11 - INSURANCE, UNCONTROLLABLE CIRCUMSTANCES AND INDEMNIFICATION

11.1 INSURANCE

11.1.1 D/B Company Insurance. At all times during the Term of this Design/Build Contract, the D/B Company shall obtain and maintain or cause to be obtained and maintained the Required Insurance in accordance with the requirement of the RFP and the D/B Contract and shall pay all premiums with respect thereto as the same become due and payable.

11.1.2 Insurers, Deductibles and County Rights. All insurance required by this Section shall be obtained and maintained from financially sound and generally recognized responsible insurance companies meeting the qualifications set forth in Sections 2 and 7 of the RFP. The insurers shall be selected by the D/B Company with the consent of the County, which consent shall not be unreasonably withheld, and shall be authorized to write such insurance in the State. The insurance coverage may be written with deductible amounts within the limits allowed in Section 7, and the D/B Company shall be responsible for paying all deductible amounts. The D/B Company shall be responsible for all self-insured retentions contained in its insurance coverages, as well as any excluded losses if such losses are within the liability of the D/B Company hereunder. All policies evidencing such insurance shall provide for: (1) payment of the losses to the County and to the D/B Company as their respective interests may appear; and (2) at least 30 days prior written notice of the cancellation thereof to the D/B Company and the County. All policies of insurance required by this Section shall be primary insurance without any right of contribution from other insurance claim settlement negotiations and to approve all final insurance settlements, which approval shall not be unreasonably withheld.

11.1.3 Certificates, Policies and Notice The delivery by the D/B Company to the County of certificates of insurance is required by this Design/Build Contract as a condition to the occurrence of the Design/Build Date. The D/B Company shall also supply the County, upon request, with certified copies of such policies promptly following issuance by the insurers. Whenever a Subcontractor is utilized, the D/B Company shall either obtain and maintain or require the Subcontractor to obtain and maintain insurance in accordance with the applicable requirements of Sections 2 and 7.

11.1.4 Maintenance of Insurance Coverage If the D/B Company fails to pay any premium for Required Insurance, or if any insurer cancels any Required Insurance policy and the D/B Company fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, then, at the County's election (but without any obligation to do so), the County, following notice to the D/B Company, may pay such premium or procure similar insurance coverage from another company or companies and upon such payment by the County the amount thereof shall be immediately reimbursable to the County by the D/B Company. The D/B Company shall not perform Design/Build Work during any period when any policy of Required Insurance pertaining to the Design/Build Work is not in effect. The D/B Company shall comply with all applicable Required Insurance and take all steps necessary to assure the Design/Build Work remain continuously insured in accordance with the requirements of this Design/Build Contract during the Term hereof. The failure of the D/B Company to obtain and maintain any Required Insurance shall not relieve the D/B Company of its liability for any losses intended to be insured thereby. Should any failure to provide continuous insurance coverage occur, the D/B Company shall indemnify and hold harmless the County against any Loss-and-Expense arising out of such failure. The purchase of insurance to satisfy the D/B Company's obligations under this Section shall not be a satisfaction of any D/B Company liability under this Design/Build Contract or in any way limit, modify or satisfy the D/B Company's indemnity obligations hereunder.

11.2 LOSS, DAMAGE OR DESTRUCTION TO THE D/B WORK

11.2.1 Prevention and Repair The D/B Company shall use care and diligence, and shall take all appropriate precautions, to protect the Design/Build Work from loss, damage or destruction. The D/B Company shall immediately notify the County and the insurers of any damage or destruction to the Design/Build Work and as soon as practicable thereafter shall submit a full report to the County. The D/B Company shall also submit to the County within 24 hours copies of all accident and other reports filed with, or given to the D/B Company by, any insurance company, adjuster or Governmental Body. The D/B Company shall immediately repair, replace and restore the Design/Build Work to at least the character or condition thereof existing immediately prior to the loss, damage or destruction, in accordance with and subject to the procedures set forth in Article 8 and this Article, as applicable. The County shall have the right to monitor,

review and inspect the performance of any repair, replacement and restoration work by the D/B Company as if such work constituted Design/Build Work hereunder.

11.2.2 Insurance and Other Third Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, the D/B Company shall assist the County in exercising such rights as it may have to effect such recovery. The D/B Company shall provide the County with copies of all relevant documentation at no cost to the County, and shall assist the County at the County's request, including participating in conferences, negotiations and litigation regarding insurance claims.

11.2.3 Uninsured Costs. The D/B Company shall provide all funds necessary to pay the costs of repairing, replacing and restoring the Design/Build Work in accordance with this Section, and all insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Design/Build Work shall be for the account of the County and shall be applied to pay the D/B Company for undertaking such repair, replacement and restoration; provided, however, that such costs not covered by insurance proceeds or third party payments shall be borne by the County to the extent the loss, damage or destruction was caused by Uncontrollable Circumstances or County Fault.

11.2.4 Repair of County and Private Property The D/B Company shall promptly repair or replace all County Property and all private property damaged by the D/B Company or any officer, director, employee, representative or agent of the D/B Company in connection with the performance of, or the failure to perform, the Contract Services. The repair and replacements shall restore the damaged property to its character and condition existing immediately prior to the damage.

11.3 UNCONTROLLABLE CIRCUMSTANCES

11.3.1 Relief from Obligations Except as expressly provided under the terms of this Design/Build Contract, neither party to this Design/Build Contract shall be liable to the other for any loss, damage, delay, default or failure to perform any obligation to the extent it results from an Uncontrollable Circumstance. The parties agree that the relief for an Uncontrollable Circumstance described in this Section shall apply to all obligations in this Design/Build Contract, except to the extent specifically provided otherwise, notwithstanding that such relief is specifically mentioned with respect to certain obligations in this Design/Build Contract but not other obligations. The occurrence of an Uncontrollable Circumstance shall not excuse or delay the performance of a party's obligation to pay monies previously accrued and owing under this Design/Build Contract, or to perform any obligation hereunder not affected by the occurrence of the Uncontrollable Circumstance. The County shall pay the Design/Build Fee during

the continuance of any Uncontrollable Circumstance, adjusted to account for any cost reductions achieved through the D/B Company mitigation measures required by subsection 11.3.2 of this Section, as well as for any cost increases to which the D/B Company is entitled under subsection 11.3.3 of this Section.

11.3.2 Notice and Mitigation. The party that asserts the occurrence of an Uncontrollable Circumstance shall notify the other party by telephone or facsimile, on or promptly after the date the party experiencing such Uncontrollable Circumstance first knew of the commencement thereof, followed within 5 days by a written description of: (1) the Uncontrollable Circumstance and the cause thereof (to the extent known); and (2) the date the Uncontrollable Circumstance began, its estimated duration, and the estimated time during which the performance of such party's obligations hereunder shall be delayed, or otherwise affected. As soon as practicable after the occurrence of an Uncontrollable Circumstance, the affected party shall also provide the other party with a description of: (1) the amount, if any, by which the Fixed Design/Build Price is proposed to be adjusted as a result of such Uncontrollable Circumstance; (2) any areas where costs might be reduced and the approximate amount of such cost reductions; and (3) its estimated impact on the other obligations of such party under this Design/Build Contract. The affected party shall also provide prompt written notice of the cessation of such Uncontrollable Circumstance. Whenever an Uncontrollable Circumstance occurs, the party claiming to be adversely affected thereby shall, as promptly and as reasonably possible, use all reasonable efforts to eliminate the cause thereof, reduce costs resulting therefrom, mitigate and limit damage to itself and the other party, and resume full performance under this Design/Build Contract. While the Uncontrollable Circumstance continues, the affected party shall give notice to the other party, before the first day of each succeeding month, updating the information previously submitted. The party claiming to be adversely affected by an Uncontrollable Circumstance shall bear the burden of proof, and shall furnish promptly any additional documents or other information relating to the Uncontrollable Circumstance reasonably requested by the other party.

11.3.3 Conditions to Performance, Design/Build Price, and Schedule Relief. If an to the extent that Uncontrollable Circumstance interfere with, delay or increase the cost of the D/B Company's performing the Design/Build Work in accordance herewith, and the D/B Company has given timely notice as required by this Section, the D/B company shall be entitled to relief from its performance obligations, an increase in the Fixed Design/Build Price, or an extension of schedule which properly reflects the interference with performance, the amount of the increased cost, or the time lost as a result thereof, in each case only to the minimum extent reasonably forced on the D/B Company by the event, and the D/B Company shall perform all other Contract services. The proceeds of any Required Insurance available to meet any such increased cost, and the payment by the D/B Company of any deductible, shall be applied to such purpose prior to any determination of cost increase payable by the County under this Section.

Any cost reduction achieved through the mitigating measures undertaken by the D/B Company pursuant to subsection 11.3.2 of this Section upon the occurrence of an Uncontrollable Circumstance shall be reflected in a reduction of the amount by which the Design/Build Price would have otherwise been increased or shall serve to reduce the Design/Build Price to reflect such mitigation measures, as applicable. In the event that the D/B Company believes it is entitled to any performance, price or schedule relief on account of any Uncontrollable Circumstance, it shall furnish the County written notice of the specific relief requested and detailing the event giving rise to the claim within 30 days after the giving of notice delivered pursuant to subsection 11.3.2 of this Section. Within 30 days after receipt of such a timely submission from the D/B Company the County shall issue a written determination as to the extent, if any, it concurs with the D/B Company claim for performance, price or schedule relief, and the reason therefore.

11.3.4 Acceptance of Relief Constitute Release. The D/B Company's acceptance of any performance, price or schedule relief under this Section shall be construed as a release of the County by the D/B Company (and all persons claiming by, through, or under the D/B Company) for any and all Loss-and-Expense resulting from, or otherwise attributable to, the event giving rise to the relief claimed.

11.4 INDEMNIFICATION

To the fullest extent of the Law, Contractor/Vendor hereby agrees to release, indemnify, defend and hold harmless Fulton County, its Commissioners, officers, employees, subcontractors, successors, assigns and agents, from and against any and all losses (including death), claims, damages, liabilities, costs and expenses (including but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgments, settlements, court costs, attorney's fees or expenses, regardless of the outcome of any such action, proceeding, or investigation), caused by, relating to, based upon or arising out of any act or omission by Contractor/Vendor, its directors, officers, employees, subcontractors, successors, assigns or agents, or otherwise in connection (directly or indirectly) with its acceptance, or the performance, or nonperformance, of its obligations under these agreements. Such obligations shall not be construed to negate, abridge or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person as set forth in this paragraph.

Contractor/Vendor's obligation to protect, defend, indemnify and hold harmless, as set forth hereinabove, shall also include, but is not limited to, any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or other actual or alleged unfair competition disparagement of product or service, or other tort or any type whatsoever, or any actual or alleged violation of trade regulations.

Contractor/Vendor further agrees to protect, defend, indemnify and hold harmless Fulton County, its Commissioners, officers, employees, subcontractors, successors, assigns and agents from and against any and all claims or liability for compensation under the Worker's Compensation Act, Disability Benefits Act, or any other employee benefits act arising out of injuries sustained by any employees of Contractor/Vendor. These indemnities shall not be limited by reason of the listing of any insurance coverage.

ARTICLE 12 - BREACH, DEFAULT, REMEDIES AND TERMINATION

12.1 REMEDIES FOR BREACH

The parties agree that, except as otherwise provided in Section 12.2, 12.3, and 12.4 with respect to termination rights, in the event that either party breaches this Contract, under the Security Instruments and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Design/Build Contract for cause except upon the occurrence of an Event of Default.

12.2 EVENTS OF DEFAULT BY THE D/B COMPANY

12.2.1 Events of Default Not Requiring Previous Notice or Further Cure Opportunity for Termination Each of the following shall constitute an Event of Default by the D/B Company upon which the County, by written notice to the D/B Company and its Surety, may terminate the Design/Build Contract without any requirement of having given notice previously or of providing any further cure opportunity.

1) Security for Performance. The failure of the D/B Company to obtain, maintain in full force and effect or renew within 30 days to expiration any Security Instrument required by Article 13 as security for the performance of this Design/Build Contract, without excuse for Uncontrollable Circumstances or County Fault;

2) Failure to Achieve Acceptance. The failure of the D/B Company to achieve the Acceptance Date prior to the end of Extension Period;

3) Gross Misfeasance. The failure or refusal of the D/B Company to perform a material obligation hereunder such that the failure or refusal constitutes a gross misfeasance of duty, notwithstanding the fact that at the time the notice of an Event of Default is given such failure or refusal to perform may no longer exist or be continuing;

4) Insolvency. The insolvency of the D/B Company as determined under the Bankruptcy Code;

5) Voluntary Bankruptcy. The filing by the D/B Company of a petition or voluntary bankruptcy under the Bankruptcy Code; the consenting of the D/B Company to the filing of any bankruptcy or reorganization petition against the D/B Company under Bankruptcy Code; or the filing by the D/B Company of a petition to reorganize the D/B Company pursuant to the Bankruptcy Code;

6) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the D/B Company of a major part of the D/B Company's property, respectively, or the filing against the D/B Company of a petition to reorganize the D/B Company pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing , respectively; or

12.2.2 Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the D/B Company upon which the County may terminate this Design/Build Contract, by written notice to the D/B Company and its surety if: (1) any representation or warranty of the D/B Company hereunder under the Guaranty Agreement was false or inaccurate in any material respect when made, and the legality of this Design/Build Contract or the ability of the D/B Company to carry out its obligation hereunder to carry out its obligation thereunder is thereby adversely affected; or (2) the D/B Company fails, refuses or otherwise defaults in its duty (a) to pay any amount required to be paid to the County under this Design/Build Contract within 60 days following the due date for such payment, or (b) to perform any material obligation under this Design/Build Contract (unless such default is executed by an Uncontrollable Circumstance or County Fault as and to the extent provided herein), except that no such default (other than those set forth in subsection 12.2.1 of this Section) shall constitute an Event of Default giving the County the right to terminate this Design/Build Contract for cause under this subsection unless:

1) The County has given prior written notice to the D/B Company and its surety that in its opinion a specified default in its duty to pay or perform exists which gives the County a right to terminate this Design/Build Contract for cause under this Section, and describing the default in reasonable detail; and

2) The D/B Company has not initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

3) If the D/B Company shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as the D/B Company shall continue with due diligence to carry out to completion all such actions.

12.2.3 Other Remedies Upon D/B Company Event of Default The right of termination provided under this Section upon an Event of Default by the D/B Company is not exclusive. If this Design/Build Contract is terminated by the County for an Event of Default by the D/B Company, the County shall have the right to pursue a cause of action for actual damages and, subject to the prior rights of the Surety, to exercise all other remedies which are available to it under this Design/Build Contract, under the Security Instruments and under Applicable Law. Without limiting the foregoing, including the prior rights of the Surety, upon any termination of the D/B Company for an Event of Default the damages payable by the D/B Company to the County shall include: (1) the costs of completing the Design/Build Project and any Change Orders then under construction, (2) making all repairs and replacements to the Plant caused by the Event of Default, (3) remedying any public health and safety problems, and (4) paying all unpaid fines and penalties payable to any Governmental Body, in each case resulting from any breach of this Design/Build Contract by the D/B Company. The D/B Company shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for an Event of Default under this Section.

12.3 EVENTS OF DEFAULT BY THE COUNTY

12.3.1 Events of Default Permitting Termination. Each of the following shall constitute an Event of Default by the County upon which the D/B Company, by notice to the County, may terminate the Design/Build Contract:

(1) **Representation and Warranties.** Notwithstanding Section 2.15 of this RFP, any representation or warranty of the County was deliberately false or inaccurate in any material respect when made, and the legality of this Design/Build Contract or the ability of the County to carry out its obligations hereunder is thereby adversely affected; or

(2) **Failure to Pay or Perform.** The failure, refusal or other default by the County in its duty: (a) to pay the amount required to be paid to the D/B Company under this Design/Build Contract within 60 days following the due date for such payment; or (b) to perform any other material obligation under this Design/Build Contract (unless such default is excused by an Uncontrollable Circumstance or D/B Company Fault).

12.3.2 Notice and Cure Opportunity. No such default described in subsections 12.3.1(1) or (2) of this Section shall constitute an Event of Default giving the D/B Company the right to terminate this Design/Build Contract for cause under this subsection unless:

(1) The D/B Company has given prior written notice to the County Stating that a specified default exists which gives the D/B Company a right to terminate this Design/Build Contract for cause under this Section, and describing the default in reasonable detail; and

(2) The County has not initiated within a reasonable amount of time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

(3) If the County shall have initiated within such reasonable time and continued with due diligence to carry out to completion all such actions, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as the County shall continue with due diligence to carry out to completion all such actions.

12.4 COUNTY CONVENIENCE TERMINATION DURING THE DESIGN/CONSTRUCTION PERIOD

12.4.1 Termination Right and Fee The County shall have the right at any time after the Design/Build Date, exercisable in its sole discretion, for its convenience and without cause, to terminate this Design/Build Contract upon 90 days written notice to the D/B Company. If the County exercises its right to terminate the Design/Build Contract pursuant to this Section, the County shall pay the D/B Company a convenience termination fee as allowed by Applicable Law. If the County exercises its right pursuant to this Section subsequent to the issuance of the Notice to Proceed with the Design/Build Work and before the Acceptance Date, the County shall also pay the D/B Company the unreimbursed Cost-Substantiated amounts incurred by the D/B Company in connection with the Design/Build Work.

12.4.2 Uncontrollable Circumstances In the event an Uncontrollable Circumstance causes a total constructive loss of the Plant, or in the event an Uncontrollable Circumstance causes an extraordinary increase in County costs, and thereupon the County elects to exercise its right of convenience termination under this Section, the amount specified in subsection 12.4.1 shall be excluded from the termination fee payable by the County. A "total constructive loss" for this purpose shall be deemed to have occurred: if so determined by the casualty insurance carrier.

12.4.3 Termination Fee Payment Contingent Upon Surrender of Possession

The County shall have no obligation to pay the convenience termination fee provided for under this Section except concurrently with the surrender of possession and control by the D/B Company of the D/B Work to the County.

12.4.4 Adequacy of Termination Payment

The D/B Company agrees that the applicable convenience termination fee provided in this Section shall fully and adequately compensate the D/B Company and all Subcontractors for Reimbursable Expenses, attributable to the termination of the D/B Company's right to perform this Design/Build Contract.

12.4.5 Consideration for Convenience Termination Payment

The right of the County to terminate the Design/Build Contract for its convenience and its sole discretion in accordance with this Article constitute as essential part of the overall consideration for this Design/Build Contract, and the D/B Company hereby waives any right it may have under Applicable Law to assert that the County owes the D/B Company a duty of good faith dealing in the exercise of such right.

12.4.6 Completion of Continuance by County

After the date of termination under this Section, the County may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Design/Build Project so terminated, including, without limitation, entering into contracts with other contractors.

12.4.7 Cost Records and Reporting

The D/B Company shall prepare and maintain proper, accurate and complete books and records of the cost and description of the permitting and other necessary and appropriate development work which the D/B Company has performed since the Contract Date which is directly related to the D/B Company's obligations under this Agreement, the cost of which would be the responsibility of the County if the County were to elect to terminate this Agreement or suspend the D/B Company's Design/Build Work obligations pursuant to this Section 12.4. The D/B Company shall submit such books and records or a reasonably detailed summary thereof acceptable to the County, together with a summary statement of monthly and aggregate Reimbursable Expense incurred, to the County on a monthly basis after the Contract Date until either the County exercises its right to terminate or suspend this Agreement or until the Design/Build Date occurs, whichever is earlier. Specific requests by the D/B Company for the payment of Reimbursable Expenses shall be supported by the Cost Substantiation. Within 10 days of receipt of such information the County will advise the D/B Company as to whether and to what extent the County disputes such information contained in such books and records. In addition, on the Contract Date and on the first day of each month thereafter the D/B Company shall provide to the County an itemized list of all development work expected to be undertaken in the following two months, and the expected costs thereof. The County shall have the right to question the D/B Company's decision to undertake such activities within 10 days

of receipt of such information and to provide notice to the D/B Company that such costs will not be Reimbursable Expenses.

12.4.8 Delivery of Development Work Product to the County Upon any termination or suspension of this Agreement under this Section, the D/B Company shall deliver to the County all its development work product. Such work product shall include, without limitation, all plans, specifications, designs (including CADD files in a format requested by the County), drawings, rendering, blueprints, manuals, equipment layouts, and Governmental Approvals and related applications, submittals and other information prepared for the purpose of planning, designing, and constructing the Big Creek WRF Immediate Needs Rehabilitation Project.

12.5 OBLIGATIONS OF THE D/B COMPANY UPON TERMINATION OR EXPIRATION

12.5.1 The D/B Company Obligation. Upon a termination of the D/B Company's right to perform this Design/Build Work under Sections 12.2, 12.3 or 12.4, or upon the expiration of this Design/Build Contract under Section 2, the D/B Company shall, as applicable:

- (1) Stop the Design/Build Work on the date and to the extent specified by the County;
- (2) Promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities and other property;
- (3) Remove from the Plant Site all construction equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by the D/B Company (including, but not limited to sheds, trailers, workshops, and toilets), and repair any damage caused by such removal;
- (4) Clean the Plant Site, and leave them in a neat and orderly condition;
- (5) Promptly remove all employees of the D/B Company and any Subcontractors and vacate the Plant Site;
- (6) With respect to Change Orders, promptly deliver to the County a list of all supplies, materials, machinery, equipment, property and special order items previously delivered or fabricated by the D/B Company or any Subcontractor but not yet incorporated in the Plant;
- (7) Deliver to the County any Operation and Maintenance Manuals or drafts thereof;

(8) Advise the County promptly of any special circumstances which might limit or prohibit cancellation of any Subcontract;

(9) Promptly deliver to the County copies of all Subcontracts, together with a statement of: (a) the items ordered and not yet delivered pursuant to each agreement; (b) the expected delivery date of all such items; (c) the total cost of each agreement and the terms of payment; and (d) the estimated cost of cancelling each agreement;

(10) Assign to the County any Subcontract that the County elects in writing, at its sole election and without obligation, to have assigned to it. The County shall assume, and the D/B Company shall be relieved of its obligation under, any Subcontract so assigned from the date of such assignment;

(11) Terminate all Subcontracts which the County has not directed the D/B Company to assign, and make no additional agreements with Subcontractors;

(12) As directed by the County, transfer to the County by appropriate instruments of title, and deliver to the Plant (or such other place as the County may specify), all special order items pursuant to this Design/Build Contract for which the County has made or is obligated to make payments;

(13) Promptly transfer to the County all warranties given by any manufacturer or Subcontractor with respect to particular components of the Plant or the Design/Build Work;

(14) Notify the County promptly in writing of any Legal Proceedings against the D/B Company by any Subcontractor or other third parties relating to the termination of the Design/Build Work (or any subcontracts);

(15) Give written notice of termination, effective as of date of termination of this Design/Build Contract, promptly under each policy of Required Insurance (with a copy of each such notice to the County), but permit the County to elect to continue such policies in force thereafter at its own expense, if possible;

(16) Take such other actions, and execute such other documents as may be necessary to effectuate and confirm the foregoing matters, or as may be otherwise necessary or desirable to minimize the County's costs, and take no action which shall increase any amount payable to the County under this Design/Build Contract.

12.5.2 D/B Company Payment of Certain Costs If termination is pursuant to Section 12.2, the D/B Company shall be obligated to pay the costs and expense of undertaking its post-termination responsibilities under this Section. If the D/B Company fails to comply with any obligation under this Section, the County may perform such obligation and the D/B Company shall pay on demand all reasonable costs thereof subject to Cost Substantiation.

12.5.3 County Payment of Certain Costs If termination is for the convenience of the County under Section 12.4 or due to a County Event of Default pursuant to Section 12.3, the County shall pay to the D/B Company within 60 days of the date the County receives the D/B Company's invoice supported by Cost Substantiation all reasonable reimbursable costs incurred by the D/B Company in satisfying the requirements of this Section.

12.6 SURVIVAL OF CERTAIN PROVISIONS UPON TERMINATION

All representations and warranties of the parties hereto contained in Articles 4 and 5 hereof and the rights and obligations of the parties hereto pursuant to Sections (1.2.14, 9.2.3, 11.2.1, 11.2.2, 6.4, 7.8, 7.2, 7.1, 7.3, 7.4, 7.5, 7.7., 7.10, 7.11, 7.12, 11.3, 11.4, 13.3, 13.4, 14.3, 14.6.4, 1.2.17, 6.5.7, and 10.9) hereof shall survive the termination of this Design/Build Contract. No termination of this Design/Build shall limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination.

12.7 NO WAIVERS

No action of the County or the D/B Company pursuant to this Design/Build Contract (including, but not limited to, any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party's compliance with any term or provision of this Design/Build Contract. No course of dealing or delay by the County or the D/B Company in exercising any right, power or remedy under this Design/Build Contract shall operate as a waiver thereof or otherwise prejudice such party's right, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the County or the D/B Company under this Design/Build Contract shall preclude any other or further exercise thereof of the exercise of any other right, power and remedy.

12.8 NO CONSEQUENTIAL OR PUNITIVE DAMAGES

The D/B Company is to indemnify the County pursuant to Section 11.4; however, each party shall be entitled to pursue damages allowable by law in event of breach of contract.

12.9 FORUM FOR DISPUTE RESOLUTION

It is the express intention of the parties that all Legal Proceedings related to this Design/Build Contract or the Plant or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in the appropriate Courts of Fulton County, Georgia.

12.10 NON-BINDING MEDIATION

12.10.1 Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Design/Build Contract, whether technical or otherwise. The non-requesting party may decline the request in its sole discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply.

12.10.2 Procedure. The mediator shall be a professional engineer, attorney or other professional mutually acceptable to the parties who has no current or on-going relationship to either party. The mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its sole discretion that its interests are not being served by the mediation.

12.10.3 Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Design/Build Contract. No mediator shall be empowered to render a binding decision.

12.10.4 Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Design/Build Contract by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non- Binding Mediation.

ARTICLE 13 - SECURITY FOR PERFORMANCE

13.1 GENERALLY

The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the D/B Company's obligations hereunder shall be borne by the D/B Company without reimbursement from the County.

13.2 BONDS

13.2.1 Construction Performance Bonds and Payment Bonds On or before the Design/Build Date, the D/B Company shall provide financial security for the

performance of its construction obligations hereunder through a Construction Performance Bond and Payment Bond issued by a surety company: (1) approved by the County having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bond and as Acceptable Reinsurance Companies"; and (3) properly registered and licensed to conduct business in the State. The Construction Performance Bond and Payment Bond shall be issued in the name of the D/B Company and the County, substantially in the form ordinarily used by the American Institute of Architects for such purpose, substantially in the amount of the Fixed Design/Build Price, plus a reasonable amount to be determined by the parties for any estimated Fixed Design/Build Price Adjustments, and shall remain open until the final acceptance of the Design/Build Project

13.2.2 Monitoring of Sureties. The D/B Company shall be responsible throughout the Term of this Design/Build Contract for monitoring the financial condition of any surety company issuing bonds under this Design/Build Contract and for making inquiries no less often than annually to confirm that each such surety company maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing surety company falls below such minimum level, the D/B Company shall promptly notify the County of such event and shall promptly furnish or arrange for the furnishing of a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the County agrees to accept the surety company or agrees to an alternative method of assurance. Upon such notice by the D/B Company of such an event, the County shall not unreasonably withhold its approval of such assurance.

ARTICLE 14 - MISCELLANEOUS PROVISIONS

14.1 D/B COMPANY BUSINESS

The D/B Company agrees that its resources involved with this contract will be limited to that contemplated by this Design/Build Contract and it will not engage in activities or incur liabilities other than in connection with the D/B Company's performance of this Design/Build Contract and the transactions contemplated hereby.

14.2 RELATIONSHIP OF THE PARTIES

The D/B Company is an independent contractor of the County and the relationship between the parties shall be limited to performance of this Design/Build Contract in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Design/Build Contract shall be

deemed to constitute either party a partner, agent or legal representative of the other party, except as explicitly provided hereunder. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Design/Build Contract or the performance thereof.

14.3 PROPERTY RIGHTS

14.3.1 Protection from Infringement. The D/B Company shall pay all royalties and license fees payable in connection with the performance of the Design/Build Work. The D/B Company shall protect, indemnify and hold harmless the County, and any of the County Indemnitees, from and against all Loss-and-Expense, and shall defend the County Indemnitees in any Legal Proceeding arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the performance of the Design/Build Work, or at its option, shall acquire the rights of use under infringed patents, or modify or replace infringing equipment with equipment equivalent in quality, performance, useful life and technical characteristics and development so that such equipment does not so infringe. The D/B Company shall not, however, be required to reimburse or indemnify any person for any Loss-and-Expense to the extent due to the negligence or willful conduct of such person. The provisions of this Section shall survive termination of this Design/Build Contract.

14.3.2 Intellectual Property Developed by the Company. All intellectual property developed by the D/B Company at or through the Design/Build Work or otherwise in connection with the performance of the Design/Build Contract shall be owned by the D/B Company, and shall be made fully available to the County on demand. Such intellectual property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. The D/B Company hereby grants the County an irrevocable, perpetual and unrestricted right, at no additional cost to the County, to use such intellectual property for any County purpose, whether before or following any Termination Date. Neither the County nor the D/B Company shall license, transfer or otherwise make available such intellectual property to any third party for remuneration except with the consent of the other, which consent may be conditioned upon mutual agreement as to the sharing of any such remuneration.

14.4 INTEREST ON OVERDUE OBLIGATIONS

Except as otherwise provided herein, all amounts due the County hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at

any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

14.5 COST SUBSTANTIATION

14.5.1 Substantiating Non-Fixed Costs. The Fixed Component of the Design/Build Fee and the Fixed Design/Build Price have been negotiated by the parties and fixed by the terms of this Design/Build Contract. Any other cost proposed or incurred by the D/B Company which is directly or indirectly chargeable to the County in whole or in part hereunder shall be the fair market price for the good or Design/Build provided, or, if there is no market, shall be a just and commercially reasonable price. The D/B Company shall provide certified Cost Substantiation for all such other costs invoiced to the County hereunder, and for all estimates and quotations furnished to the County hereunder for the purpose of negotiating a fixed or lump-sum price for Change Orders, or other additional work necessitated on account of Uncontrollable Circumstances, County Fault or County direction.

14.5.2 Cost Substantiation Certificate. Any certificate delivered hereunder to substantiate cost shall state the amount of such cost and the provisions of this Design/Build Contract under which such cost is properly chargeable to the County, shall describe the competitive or other process utilized by the D/B Company to obtain a fair market price, and shall state such cost is a fair market price for the services or materials to be supplied (or, if there is no market, that such cost is just and commercially reasonable) and that such services and materials are reasonably required pursuant to this Design/Build Contract. The certificate shall be accompanied by copies of such documentation as shall be necessary to reasonably demonstrate that the cost as to which Cost Substantiation is required has been paid or incurred. Such documentation shall be in a format reasonably acceptable to the County and shall include reasonably detailed information concerning: (1) all Subcontracts; (2) the amount and character of materials and services furnished, the persons from whom purchased, the amounts payable therefore and related delivery and transportation costs and any sales or personal property Taxes; (3) a statement of the equipment used and any rental payable therefore; (4) D/B Company and Subcontractor worker hours, duties, wages, salaries, benefits and assessments; and (5) D/B Company and Subcontractor profit, administration costs, bonds, insurance, taxes, premiums overhead, and other expenses. The D/B Company's entitlement to reimbursement of Cost Substantiated costs of the D/B Company shall be subject to the limitations set forth in this Section.

14.5.3 Technical Services. The D/B Company personnel and personnel of Subcontractors providing technical services shall be billed at their then currently applicable rates for similar services on projects of similar size and scope to the Design/Build Work.

14.5.4 Mark-Up. The D/B Company will be entitled to a mark-up pursuant to the provisions of Article 8 of the Contract, for a combination of overhead, risk, profit and contingency on costs of its own personnel, except with respect to work due to Uncontrollable Circumstances, for which the D/B Company shall be entitled to no mark-up for overhead, risk, profit and contingency. No mark-up will be added to the D/B Company's costs for Subcontractors, lodging and meals or travel. Construction and operation Subcontractors similarly will be entitled to such mark ups with respect to its personnel costs but no mark ups for costs for their subcontractors, lodging and meals or travel.

14.5.5 Evidence of Costs Incurred. To the extent reasonably necessary to confirm direct costs required to be Cost Substantiated, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be delivered to the County with the request for reimbursement of such costs.

14.6 SUBCONTRACTORS

14.6.1 Use Restricted. Subcontractors may be used to perform other Contract services, subject to the County's right of approval set forth in subsection 14.6.2 of this Section.

14.6.2 Limited County Review and Approval of Permitted Subcontractors. The County shall have the right, based on the criteria provided below in this Section, to approve all Subcontractors which the D/B Company is permitted to engage under subsection 14.6.1 of this Section for Contract services, except: (1) Affiliates of the D/B Company; (2) equipment suppliers; (3) Governmental Bodies; and (4) approved Subcontractors listed on Appendix 6 and (5) Subcontractors hired by the D/B Company for purposes of remedying an emergency situation. The D/B Company shall furnish the County written notice of its intention to engage such Subcontractors, together with all information requested by the County pertaining to the demonstrated responsibility of the proposed Subcontractor in the following areas: (1) any conflicts of interest; (2) any record of felony criminal convictions or pending felony criminal investigations; (3) any final judicial or administrative finding or adjudication of illegal employment discrimination; (4) any unpaid federal, State, County or local Taxes; and (5) any final judicial or administrative findings or adjudication of non-performance in contracts with the County or the State. The approval or withholding thereof by the County of any proposed Subcontractor shall not create any liability of the County to the D/B Company, to third parties or otherwise. In no event shall any Subcontract be awarded to any person debarred, suspended or disqualified from State or County contracting for any services similar in scope to the Design/Build Work.

14.6.3 Subcontract Terms and Subcontractor Actions. The D/B Company shall retain full responsibility to the County under this Design/Build Contract for all

matters related to the Contract services notwithstanding the execution or terms and conditions of any Subcontract. No failure of any Subcontractor used by the D/B Company in connection with the provision of the Contract services shall relieve the D/B Company from its obligations hereunder to perform the Contract services. The D/B Company shall be responsible for settling and resolving with all Subcontractors all claims arising out of delay, disruption, interference, hindrance, or schedule extension caused by the D/B Company or inflicted on the D/B Company or a Subcontractor by the actions of another Subcontractor. In addition, no expiration of any warranty provided by any subcontractor shall relieve the D/B Company of its obligation to correct any insufficient work or honor D/B Company's obligations under its warranties to the County.

14.6.4 Indemnity for Subcontractor Claims. The D/B Company shall pay or cause to be paid to all direct Subcontractors all amounts due in accordance with their respective subcontracts. No Subcontractor shall have any right against the County for labor, services, materials or equipment furnished for the Design/Build Work. The D/B Company acknowledges that its indemnity obligations under Section 11.4 shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Contract services.

14.6.5 Design Contract. The Design Contract shall provide for the design of the Design/Build Project. The Design Contract shall be subject to review and comment by the County for consistency with the applicable requirements of this Design/Build Contract, and shall not contain any provision which is material and adverse to the County. No such review or comment shall amend, alter or affect this Design/Build Contract or the D/B Company's obligations hereunder in any manner, nor shall the County incur any liability or expense as a result thereof.

14.6.6 Construction Contract. The Construction Contract shall provide for the construction, installation and equipping of the Design/Build Work and the performance of all Design/Build Work except work to be performed by the D/B Company, work to be performed by other submitted and concurred in subcontract, design or Acceptance Testing, based upon detailed design drawings, blueprints, plans and specifications furnished by the D/B Company for such purpose. All such drawings, blueprints, plans and specifications shall be based on and consistent with the Minimum Technical Requirements and all other terms and conditions of this Design/Build Contract. The Construction Contract shall be subject to review and comment by the County for consistency with the requirements of this subsection, and shall not contain any provision which is material and adverse to the County. No such review or comment by the County shall amend, alter or affect this Design/Build Contract or the D/B Company's obligations hereunder in any manner, nor shall the County incur any liability or expense as a result thereof.

14.6.7 Notice to County of Amendments, Breaches and Defaults. The D/B Company shall give prior written notice to the County of any proposed and final amendments to the Design Contract and Construction Contract, and shall not enter into any such amendment which is material and adverse to the rights and obligations of the County hereunder without the County's prior written consent. The D/B Company shall notify the County promptly of any material breach or event of default occurring under the Construction Contract or the Design Contract and the probable effect on the Design/Build Work. The D/B Company shall keep the County apprised of the course of the dispute and shall advise the County of its ultimate resolution.

14.6.8 Assignability. All Subcontracts entered into by the D/B Company with respect to the Contract services shall be assignable to the County, solely at the County's election and without cost or penalty, upon the expiration or termination of this Design/Build Contract.

14.7 ACTIONS OF THE COUNTY IN ITS GOVERNMENTAL CAPACITY

14.7.1 Rights as Government Not Limited. Nothing in this Design/Build Contract shall be interpreted as limiting the rights and obligations of the County in its governmental or regulatory capacity, (including actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the D/B Company to bring any action against the County, not based on this Design/Build Contract, arising out of any act or omission of the County in its governmental or regulatory capacity.

14.7.2 No County Obligation to Issue Governmental Approvals. Nothing in this Design/Build Contract shall obligate the County to issue or approve any Governmental Approval required with respect to the Plant or the Design/Build Work, and the County shall not be deemed to be in breach or default hereunder as a result of any delay or failure in the issuance or approval of any such Governmental Approval. The County retains all issuance and approval rights it has under Applicable Law with respect to such Governmental Approvals, and none of such rights shall be deemed to be waived, modified or amended as a consequence of the execution of this Design/Build Contract.

14.8 ASSIGNMENT

14.8.1 By the D/B Company. The D/B Company shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Design/Build Contract, its right to execute the same, or its right, title or interest in all or any part of this Design/Build Contract or any monies due hereunder whatsoever, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the County. Any such approval given in one instance shall not relieve the D/B Company of its obligation to obtain the prior written approval of the County to any further assignment. Any assignment of this Design/Build Contract which is

approved by the County shall require the assignee of the D/B Company to assume the performance of and observe all obligations, representations and warranties of the D/B Company under this Design/Build Contract, and no such assignment shall relieve the Guarantor of any of its obligations under the Guaranty Agreement, which shall remain in full force and effect during the Term hereof. The approval of any assignment, transfer or conveyance shall not operate to release the D/B Company in any way from any of its obligations under Design/Build Contract unless such approval specifically provides otherwise.

14.8.2 By the County. The County may assign its rights and obligations under this Design/Build Contract, without the consent of the D/B Company, to a trustee in connection with future bond issuances as security for such bonds, and another Governmental Body if such assignee assumes, and is legally capable of discharging, the duties and obligations of the County hereunder.

14.9 BINDING EFFECT

This Design/Build Contract shall bind and insure to the benefit of and shall be binding upon the County and the D/B Company and any assignee acquiring an interest hereunder consistent with Section 14.8.

14.10 AMENDMENT AND WAIVER

This Design/Build Contract may not be amended except by a written amendment signed by the parties. Any of the terms, covenants, and conditions of this Design/Build Contract may be waived at any time by the party entitled to the benefit of such term, covenant, or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

14.11 NON-DISCRIMINATION IN PURCHASING AND CONTRACTING

It is the policy of Fulton County Government that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the Board of Commissioners ("Board") that Fulton County and all vendors and contractors doing business with Fulton County shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the Board without regard to the race, color, gender or national origin of the ownership of any such business. Similarly, it is the policy of the Board that the contracting and procurement practices of Fulton County should not implicate Fulton County as either an active or passive participant in the discriminatory practices engaged in by private contractors or vendors seeking to obtain contracts with Fulton County.

14.12 SOURCES OF FUNDS

Notwithstanding anything to the contrary in this Design/Build Contract, payments of the Design/Build Price and all other amounts of any kind or nature whatsoever that may at any time be due and owing to the D/B Company pursuant to the terms of, or resulting from, this Design/Build Contract are intended by the parties to and shall be strictly limited to and payable solely out of revenues derived from the sewer revenue fund and, with respect to the Design/Build Work, from the proceeds of bonds issued therefore, and shall not be payable from any other source. No such payments shall be, or be deemed to be, a debt of the County under any circumstance or for any purpose whatsoever, nor shall this Design/Build Contract constitute a pledge of the full faith and credit of the County, or shall the County appropriate or be required to appropriate funds to pay for any amounts due under this Design/Build Contract. The D/B Company will never have the right to compel the exercise of any taxing power of the County to pay any amount due to the D/B Company under this Design/Build Agreement, nor to enforce payment thereof against any property of the County other than the funds available in the County's water and sewer fund. The Company shall have no recourse for payment hereunder against any other source of funds, and the D/B Company hereby irrevocably and unconditionally waives any recourse or claim it may or could otherwise have or allege to have against any other payment source other than the water and sewer fund. The County agrees to continue the water and sewer fund, which shall receive all revenues from the Plant, pursuant to the terms and conditions of the applicable financing documents and which shall be responsible for the payment, solely from such funds, of all amounts due the D/B Company under this Design/Build Contract. In the event the D/B Company shall receive any funds or proceeds attributable to or collected with respect to the Plant, the D/B Company shall immediately deposit such funds into the water and sewer fund. The County and the D/B Company acknowledge that as a requirement under the financing documents, the water and sewer fund has been created and that all revenues from the Plant are now and shall continue to be deposited into the water and sewer fund. Disbursements for the Design/Build Fee shall only be made from the water and sewer fund for payments of expenses relating to the Plant pursuant to the financing documents.

14.13 NOTICES

All notices, consents, approvals or written communications given pursuant to the terms of this Design/Build Contract shall be: (1) in writing and delivered in person to the Construction Manager; or (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally recognized overnight courier services with signed verification of delivery; or (3) given by electronic transmission, if a signed original is deposited on the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with

respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notice to County, shall be addressed as follows:

Assistant Director, Water Services
141 Pryor Street SW
Suite 6001
Atlanta, Georgia 30303
Telephone:
Email: kun.suwanarpa@fultoncountyga.gov
Attention: Kun Suwanarpa, PE

With a copy to:

Department of Purchasing & Contract Compliance
Director
130 Peachtree Street, Suite 1168
Atlanta, Georgia 30303
Telephone: (404) 612-5800
Email: cecil.moore@fultoncountyga.gov
Attention: Cecil S. Moore

Notices to the D/B Company shall be addressed as follows:

[Insert D/B Company Representative for project]

[Insert D/B Company Address]

Telephone:

Email:

Attention: **[Insert D/B Company Representative for project]**

14.14 COMPANY BANKRUPTCY MATTERS

14.14.1 Exclusive Jurisdiction. It is expressly agreed and understood by the parties hereto that, in the event the D/B Company shall be or become the subject of any bankruptcy proceeding, the United States Bankruptcy Court for the Northern District of Georgia, Division (the "Bankruptcy Court") shall have the sole and exclusive jurisdiction of such bankruptcy proceeding.

14.14.2 Waiver of Automatic Stay; Entitlement to Lift of Stay. The D/B Company hereby acknowledges that the continuous provision of wastewater treatment is critical and essential to the public welfare of the citizens of the County and other jurisdictions which may be served by the Plant. Accordingly, due to the

paramount public interest affected by its management of the Plant, the D/B Company hereby unconditionally and irrevocably waives the benefits of the automatic stay set forth in Section 362 of the Bankruptcy Code in the event the D/B Company files for bankruptcy, and agrees not to oppose in any respect whatsoever a motion confirming the enforceability and efficacy of this waiver or a motion for relief from stay filed by the County to enforce the rights and remedies granted to the County in the Design/Build Contract. Moreover, the D/B Company hereby acknowledges and agrees that the automatic stay set forth in Section 362(a) of the Bankruptcy Code would not apply to the County's enforcement of its rights and remedies under the Design/Build Contract because any such enforcement would be in furtherance of the County's policy and regulatory power that is expressly excepted from Section 362(a) of the automatic stay under Section 362(b)(4) of the Bankruptcy Code. In addition to and not in limitation of the foregoing, however, in the event that the automatic stay set forth in Section 362(a) of the Bankruptcy Code were deemed to be applicable to the County's enforcement of its rights under this Agreement, in the event any voluntary bankruptcy petition is filed by, or any involuntary bankruptcy petition is caused to be filed by the D/B Company or any Affiliate of the D/B Company against the D/B Company, pursuant to any bankruptcy, insolvency, reorganization, liquidation, dissolution or similar law, the D/B Company agrees that the County shall be entitled to obtain upon ex parte application therefore, and without further notice or action of any kind or nature whatsoever, an order from the Bankruptcy Court granting immediate relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code so as to permit the County to exercise all of its rights and remedies pursuant to this Design/Build Contract, including, without limitation, termination of this Design/Build Contract pursuant to Section 12.2 hereof, the causing of the assignment by the D/B Company to the County pursuant to Subsection 14.6.10 hereof of such third party contracts as the County shall elect, and at law and in equity.

14.14.3 Executory Contract Issues. The D/B Company agrees due to the paramount public interest affected by its design and construction of the Plant pursuant to this Design/Build Contract as aforesaid that, in the event the D/B Company files for bankruptcy, the D/B Company shall, within two (2) Business Days of a bankruptcy filing, file a motion pursuant to Section 365 of the Bankruptcy Code to either assume or reject the Agreement (the "Section 365 Motion"). If the D/B Company fails to file the Section 365 Motion, the D/B Company agrees not to oppose, in any respect whatsoever, any motion filed by the County with respect to the Design/Build Contract, including, but not limited to, a (a) motion for relief from stay under Section 362 of the Bankruptcy Code to terminate the Design/Build Contract; or (b) motion to compel the D/B Company to assume or reject the Design/Build Contract promptly under Section 365(d)(2) of the Bankruptcy Code.

14.14.4 Property of the Estate. The D/B Company agrees that it owns no right, title or interest of any kind or nature whatsoever in the Plant, the revenues or proceeds generated thereby or any equipment, materials, supplies or other real or personal property hereafter located on, in or used in connection with the operation and maintenance of the Plant, all of which is and shall remain solely and exclusively the property of the County. Accordingly, neither the Plant nor any part thereof, nor any such revenues or proceeds generated thereby, shall constitute property of the D/B Company's bankruptcy estate under Section 541 of the Bankruptcy Code in the event that the D/B Company files for bankruptcy and the D/B Company hereby covenants and agrees not to assert any position to the contrary at any time or in any judicial proceedings.

14.15 NOTICE OF LITIGATION

In the event the D/B Company receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the System, the D/B Company receiving such notice or undertaking such prosecution shall give the County timely notice of such proceedings and shall inform the County in advance of all hearings regarding such proceedings.

14.16 FURTHER ASSURANCES

The County and the D/B Company each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Design/Build Contract. The County and the D/B Company, in order to carry out this Design/Build Contract, each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Design/Build Contract and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

ARTICLE 15 - FULL PERFORMANCE REPRESENTATION

The D/B Company agrees to complete the project within the time prescribed in, for the prices set out in, and as required by, the contract documents. The undersigned D/B Company declares and represents that he has reviewed and understands the Contract Documents and has examined the site of the Design/Build Work and informed himself fully in regard to all conditions pertaining to the place where the Design/Build Work is to be done, including those conditions affecting the cost of the Design/Build Work and the delivery, handling and storage of equipment and materials at the place where the Design/Build Work is to be executed; that the D/B Company and its subcontractors, architects, and engineers have examined and read the Contract Documents; and he has satisfied himself that the Contract Documents are an adequate and acceptable reflection of the Design/Build Work which is required to be performed, and that

he is willing and able to perform all of the necessary Design/Build Work based upon the information and representations contained within the Contract Documents. The D/B Company hereby agrees that no additional information is required to complete the Design/Build Work within the cost and schedule constraints established and agreed upon within this Agreement.

ARTICLE 16 - RECORDS RETENTION

The D/B Company and its Subcontractors shall maintain records and accounts in connection with the performance of this Design/Build Contract, which will accurately document incurred costs, both direct and indirect, of whatever nature, during and for a period of three (3) years from the expiration or other termination of this Design/Build Contract, unless otherwise specified by Applicable Law. The County may examine and copy, at all reasonable times, with advance notification, those records and accounts. The D/B Company shall maintain all records in a central location in the Metropolitan Atlanta area.

ARTICLE 17 - JURISDICTION

This Agreement will be executed and implemented in Fulton County. Further, this Agreement shall be administered and interpreted under the laws of the State of Georgia. Jurisdiction of litigation arising from this Agreement shall be in the Fulton County Superior Courts. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

Whenever reference is made in the Agreement to standards or codes in accordance with which work is to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

ARTICLE 18 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, D/B Company agrees as follows:

Section 18.01 D/B Company will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin;

Section 18.02 D/B Company will, in all solicitations or advertisements for employees placed by, or on behalf of, D/B Company state that all qualified applicants, will receive consideration for employment without regard to race, creed, color, sex or national origin;

Section 18.03 D/B Company will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Agreement so that such provision

will be binding upon each sub-contractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

ARTICLE 19 - FORCE MAJEURE

Neither County nor D/B Company shall be deemed in violation of this Agreement if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to acts of God, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation, provided however, that nothing herein shall relieve or be construed to relieve D/B Company from performing its obligations hereunder in the event of riots, rebellions or legal strikes.

ARTICLE 20 - OPEN RECORDS ACT

The Georgia Open Records Act, O.C.G.A. Section 50-18-70 et seq., applies to this Agreement. The D/B Company acknowledges that any documents or computerized data provided to the County by the D/B Company may be subject to release to the public. The D/B Company also acknowledges that documents and computerized data created or held by the D/B Company in relation to the Agreement may be subject to release to the public, to include documents turned over to the County. The D/B Company shall cooperate with and provide assistance to the County in rapidly responding to Open Records Act requests. The D/B Company shall notify the County of any Open Records Act requests no later than 24 hours following receipt of any such requests by the D/B Company. The D/B Company shall promptly comply with the instructions or requests of the County in relation to responding to Open Records Act requests.

ARTICLE 21 - INVOICING AND PAYMENT

D/B Company shall submit monthly invoices for work performed during the previous calendar month, in a form acceptable to the County and accompanied by all support documentation requested by the County, for payment and for services that were completed during the preceding phase. The County shall review for approval of said invoices. The County shall have the right not to pay any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined by the County, are reasonably in excess of the actual stage of completion.

21.1 TIME OF PAYMENT

Invoices for payment shall be submitted to County for processing in accordance with Article 6 and Appendix 12 of the Contract Documents. The County shall make payments to Consultant by U.S. mail approximately thirty (30) days after receipt of a proper invoice. Parties hereto expressly agree that the above

contract term shall supersede the rates of interest, payment periods, and contract and subcontract terms provided for under the Georgia Prompt Pay Act, O.C.G.A. 13-11-1 et seq., pursuant to 13-11-7(b), and the rates of interest, payment periods, and contract and subcontract terms provided for under the Prompt Pay Act shall have no application to this Agreement; parties further agree that the County shall not be liable for any interest or penalty arising from late payments.

21.2 SUBMITTAL OF INVOICES

The D/B Company shall submit six (6) sets of original invoices to the Construction Manager.

21.3 COUNTY'S RIGHT TO WITHHOLD PAYMENTS

The County may withhold payments for services that involve disputed costs, involve disputed audits, or are otherwise performed in an inadequate fashion. Payments withheld by the County will be released and paid to the D/B Company when the services are subsequently performed adequately and on a timely basis, the causes for disputes are reconciled or any other remedies or actions stipulated by the County are satisfied. The County shall promptly pay any undisputed items contained in such invoices.

21.4 PAYMENT OF SUBCONTRACTORS/SUPPLIERS

The D/B Company must certify in writing that all sub-contractors and suppliers of the D/B Company have been promptly paid for work and materials and previous progress payments received. In the event the D/B Company is unable to pay sub-consultants or suppliers until it has received a progress payment from Fulton County, the D/B Company shall pay all sub-contractors or supplier funds due from said progress payments within forty-eight (48) hours of receipt of payment from Fulton County and in no event later than fifteen days as provided for by State Law.

21.5 ACCEPTANCE OF PAYMENTS BY D/B COMPANY; RELEASE

The acceptance by the D/B Company of any payment for services under this Agreement will, in each instance, operate as, and be a release to the County from, all claim and liability to the D/B Company for work performed or furnished for or relating to the service for which payment was accepted, unless the D/B Company within five (5) days of its receipt of a payment, advises the County in writing of a specific claim it contends is not released by that payment.

ATTACHMENT

**“Revised Cost Proposal Summary
Fixed Design/Build Price Form”**

**EXHIBIT 10.2
REVISED COST PROPOSAL SUMMARY
FIXED DESIGN-BUILD PRICE**

It is not the County's intention to dictate the design of the Big Creek WRF Immediate Needs Rehabilitation Project. This form was developed to assist the Offeror in determination of their Fixed Design-Build Price and for the County to understand the allocation of cost among a selected number of line items. The specific processes on this form do not predispose that any single process will necessarily be included in the proposers design. Addition of a specific process or a piece of equipment is permitted. Do not remove any items from the form; "NA" all not applicable items, add additional process and equipment items as necessary, and provide an explanation in the cost proposal for all NA's and for any specific additional process or equipment.

SUMMARY OF FIXED DESIGN-BUILD PRICE				
A. Project Development Costs:				
	QUANTITY	UNITS	UNIT PRICE	TOTAL PRICE
1			\$	\$
2			\$	\$
3			\$	\$

SUMMARY OF FIXED DESIGN-BUILD PRICE				
B. Site Work:				
	QUANTITY	UNITS	UNIT PRICE	TOTAL PRICE
1			\$	\$
2			\$	\$
3			\$	\$
4			\$	\$
5			\$	\$
6			\$	\$

SUMMARY OF FIXED DESIGN-BUILD PRICE		QUANTITY	UNITS	UNIT PRICE	TOTAL PRICE
C. Core Process Work:					
1	Headworks Rehabilitation			\$	\$
2	Lime Slaker Replacement			\$	\$
3	New Ferric Chloride Building			\$	\$
4	Aeration Basin Blower Modifications			\$	\$
5	Aeration Basin Rehabilitation			\$	\$
5a	Disposal costs for process waste (grit, scum, sludge, debris) from process tanks, channels, pipes.	3,500	Cubic Yards	\$	\$
6	Mixed Liquor Splitter Box Hydraulic Improvements			\$	\$
7	Secondary Clarifier & Scum Removal Rehabilitation			\$	\$
8	Return Activated Sludge Pumping System Rehabilitation			\$	\$
9	Mixed Liquor Polymer System			\$	\$
10	Aerobic Digester Improvements			\$	\$
11	Dewatering Rehabilitation			\$	\$
12	Equalization Tank and Associated Work			\$	\$
12a	D/B Company's calculated volume of contaminated soil requiring special disposal.		Cubic Yards		
12b	Disposal of contaminated soil in excess of D/B Company's design requiring special disposal, to be used only if needed.	60,000	Cubic Yards	\$	\$
12c	Volume of suitable fill material for D/B Company's design.		Cubic Yards		
12d	Volume of suitable fill material from offsite in excess of D/B Company's design, to be used only if needed.	30,000	Cubic Yards	\$	\$

SUMMARY OF FIXED DESIGN-BUILD PRICE					
D. Start-up and Commissioning:					
	QUANTITY	UNITS	UNIT PRICE	TOTAL PRICE	
1			\$		\$
2			\$		\$

E. Other Direct and Indirect Costs:					
1			\$		\$
2			\$		\$
3			\$		\$
4			\$		\$
5			\$		\$
6			\$		\$

TOTALS:					
F.	Subtotal Design/Build Price (A+B+C+D+E)		\$		
G.	Owner's Directed Allowance				\$ 3,000,000.00
H.	Base Bid (F+G)		\$		
I.	Alternate Bid		\$		

Explanation of Items:

Item C.

5a.: This item will be approved to be used by the Construction Manager to pay for disposal of process waste removed from the tanks, channels, and pipes necessary to complete the D/B Work. This item only covers process waste of an unconfirmed quantity prior to the start of the D/B Work and does not include things such as equipment or construction debris.

12a. – 12d.: The design for the equalization tank is not known. The quantity of contaminated soil which is to be is not known. Contaminated soil will be soil, rock, and construction debris that requires special disposal in an approved landfill per the prevailing rules and regulations of the authorities having jurisdiction in these matters. These items are to be used to quantify the costs of disposing of contaminated rock, construction debris, and soil, that cannot be used as fill or landscaping. Rock, construction debris, soil unsuitable for fill material but otherwise not considered special waste, and soil that is able to be reused on this site or another, stockpiled, or stored on site will not be included in these items.

Item 12a.: the D/B Company is to insert their calculated volume of contaminated soil, based on their design, to be disposed of offsite in an approved landfill. This is to take into account structures and the D/B Company's construction methods. This value is to be validated in the D/B Company's Technical Proposal. The cost to dispose of this contaminated soil based on the D/B Company's design is to be included in item 12.

Item 12b.: the D/B Company is to insert the cost to dispose of the specified amount of soil listed in this item. If needed, this item will be approved to be used by the Construction Manager to pay for proper disposal of contaminated soil, in excess of that listed in item C.12a. Only the cost of disposal will be covered by this item, all other costs (excavation, removal, storage, etc.) are to be the responsibility of the D/B Company. If the quantity of soil actually disposed of offsite is less than what is listed in item C.12a, then the County is to be credited for item C.12b and the quantity of soil in item C.12a not requiring special disposal. Credits and payments for disposal of contaminated soil will be at the price listed in item C.12b.

Item 12c.: the D/B Company is to insert their calculated volume of required fill material based on their design. The D/B Company may use suitable fill material from onsite. The cost for suitable fill material used from onsite will be included in item 12. Should additional material be needed, which cannot be used from onsite, the D/B Company may bring in suitable fill material from offsite, which will be paid for from item C.12d.

Item 12d.: the D/B Company is to provide the cost to bring in suitable fill material from offsite. If needed, this item will be approved to be used by the Construction Manager. This item is only to be used if item C.12b is used and only for suitable fill material brought in from offsite. No payment for any quantity greater than that paid from item C.12b will be made.

Item G:

Owner's Directed Allowance: are defined as sums of monies within the Contract Sum which may, at Owner's option and under terms established in the Contract, be utilized at the Owner's discretion to supplement corresponding basic requirements of the Contract Documents. Allowances are exclusively for any necessary Engineering/design work, the cost of materials, delivery to the site and associated installation. The total allowance amount is exclusively for Owner's use, and shall include no mark-up by the D/B Company or by its sub-contractors.

Item I:

Alternate Bid: shall be the cost of one influent screen with control panel subtracted from item H, the Base Bid.

The **Total Fixed Design/Build Price** shall be either the Base Bid, item H, or the Alternate Bid, item I. The County shall have the option in selecting which item is to become the Total Fixed Design/Build Price.

“Equipment Proposal Form”

EQUIPMENT PROPOSAL FORM

EQUIPMENT DESCRIPTION	IDENTIFICATION			DESIGN/OPERATIONAL PARAMETERS										PHYSICAL CHARACTERISTICS		WARRANTY INFORMATION	
	MANUFACTURER/ CONSTRUCTION DATA	IDENTIFICATION/ MODEL NUMBER	QUANTITY	TYPE	CAPACITY (each)	PSI	TDH (FT)	DISCHARGE/SUCTION (in)	Voltage/Phase/ Hz	Horse Power	kW	HRS/day	days per week	kV	WEIGHT (each)		DIMENSIONS
<i>Headworks</i>																	
6mm Screens																	
Screenings Conveyor																	
Screenings Compactor																	
<i>Lime System</i>																	
Lime Slakers																	
Lime Feeders																	
Lime Slurry Tanks																	
Lime Slurry Pumps																	
<i>Ferric Chloride Feed Rehabilitation</i>																	
Metering Pumps																	
<i>Polymer Blending & Feed System</i>																	
Polymer Metering Pumps																	
Polymer Blending Units																	
<i>Secondary Clarifier & Scum Removal</i>																	
Secondary Clarifier																	
Scum Transfer Pumps																	
<i>RAS Pump Station</i>																	
RAS Pumps (VFD)																	
<i>Aerobic Digester</i>																	
Blower Motor																	
<i>Dewatering Rehabilitation</i>																	
Belt Filter Press Feed Pumps (VFD)																	
Sludge Cake Pumps (VFD)																	
<i>EQ Tank Pump Station</i>																	
Transfer Pumps (VFD)																	
Rinse Pumps (VFD)																	
Odor Control Treatment Units																	
Recirculation Pumps																	
Odor Control Fans																	
Chemical Storage Tanks																	
Chemical Metering Pumps																	

The Proposer is to use this form to name the manufacturer of the major equipment for this project. This form is to be included in the Proposer's Technical Proposal.

Note the following:

Proposer shall include all additional parameters regarding the design/operational requirements that are applicable to the given system and/or equipment. This shall include items such as flow rates, ratios, or other appropriate measurements. Specific information shall include the appropriate measurements and units (e.g., gpm, volts, ft2, etc.). Proposer shall identify each major component of the equipment and system (e.g., tank walls, casings, enclosures, cores, etc.); Proposer shall identify the corresponding material of the listed component (e.g., concrete, type of metal, etc.).