

**Phase I Downtown
Restoration/Redevelopment
Project**

Guaranteed Fixed Price Design-Build Delivery

Request for Qualifications/Proposals

Two Step Selection Process

City of Clarkesville
Solicitation Number: DRP-I-15
Date Issued: May 8, 2015

May 8, 2015

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Two-Step Selection Process Request for Qualifications/Proposals

The purpose of this Request for Qualifications (RFQ)/Request for Proposals (RFQ/RFP) is to obtain the most qualified-price competitive Design Builder to design and construct Phase I of a two phased redevelopment project known as the Clarkesville Downtown Redevelopment Project. The City intends to follow a two step process to identify and select said contractor. The first step entails identifying qualified contractors and then secondly receiving price proposals for the project only from such qualified contractors.

Proposals will be considered in two parts. Interested Proponents will complete a separate Qualification Questionnaire. (As found in Attachment C) All Qualification Questionnaires must be submitted no later than the deadline stated in Section 5.1 of this document. Qualification Questionnaires will be opened and scored prior to the submission of Proposals. Contractors meeting the qualifications requirements will be asked to submit Proposals for a Guaranteed Fixed Price Contract.

From those Qualified Contractors, Sealed Pricing Proposals will be received by the City of Clarkesville no later than the deadline stated in Section 5.1 of this document. The Proposals shall contain all information that is required in this RFQ/RFP.

Failure to submit information in accordance with the requirements and procedures listed herein may be cause for disqualification. The successful Proponent must hold all licenses as required by Georgia State Statutes, and will be required to furnish same with the required bonds and insurance. Details for this Request for Qualifications/Request for Proposals (RFQ/RFP) and Scope of Work (SOW) are detailed further in the sections below and attachments.

SECTION 1: BACKGROUND

1.1 Introduction

This Request for Qualifications (RFQ)/Request for Proposals (RFQ/RFP) for the City of Clarkesville, Phase I Downtown Restoration/Redevelopment Project invites Proposals according to the requirements set forth in this RFQ/RFP, including the format and content guidelines in Section 5. The Proposals will be reviewed and evaluated by following the best-value (one-step) selection process described in Section 6. The acronyms used in this RFQ/RFP are defined in Attachment A and within the text of this RFQ/RFP.

The City of Clarkesville is a municipal government located in the northeast Georgia mountains. The City was chartered in 1823 as the county seat for Habersham County and remains the current county seat. Clarkesville serves an area population of approximately 2,000 citizens with an annual growth rate of approximately 4%. Clarkesville provides local services including Public Safety, Water, Sewer, Municipal Court, Sanitation, and Fire. The City employs approximately 40 people.

In March of 2014 Downtown Clarkesville suffered a devastating fire that damaged or destroyed five key downtown buildings. Four of these buildings are located on Washington Street in the main downtown square. The City has purchased these four buildings and plans to restore/redevelop the buildings in two phases. Phase I includes the restoration of the two buildings that are the least damaged. The City is making application to include these buildings on the National Historic Register and to qualify the development costs for Historic Tax Credits. To that extent, contractors with historic design, renovation, and restoration experience will be given preference. The City is also applying for USDA RBDG funds, which will require adherence to Davis Bacon Wage laws.

The City anticipates that by using both Historic Tax Credits and the USDA RBDG grant funds these sources of equity will provide approximately 50% cost of this project thereby reducing the City's debt requirements to fund the project. Therefore, the lowest Pricing Proposal that precludes or restricts the City's use of either or both sources of equity, may in fact cause an increase to the overall Project Budget which will need to be evaluated to determine if this Pricing Proposal is in fact the lowest.

This Downtown Restoration/Redevelopment project is to be designed and constructed using the Guaranteed Fixed Price, Design-Build (DB) delivery method. The project scope includes engineering and design services, permitting, procurement, and construction of Phase I, provided however, the Owner reserves the right, in the sole discretion of the Owner, to amend any contract awarded pursuant hereto to include such project scope as is required to complete Phase II of the Project. The project scope and design standards are described further in Attachments B.

The Proposal shall contain all information required in this RFQ/RFP and will be evaluated by a committee(s) chosen by the City of Clarkesville. At completion of the evaluation process, the City of Clarkesville (Owner) will select the most qualified and price competitive Proponent to enter into negotiations for award of the Guaranteed Fixed Price, Design-Build Contract. Criteria for evaluations are contained in Section 6 of this RFQ/RFP. All Proposals will be held in confidence until award. At the discretion of the City of Clarkesville, interviews may be requested.

The scheduled completion of Phase I of the Downtown Redevelopment Project is on or before December 31, 2015.

The City of Clarkesville reserves the right to reject any or all Proposals, to waive minor irregularities, and to contact Proponents as needed.

Proponents are prohibited from lobbying, individually or collectively, any appointed or elected City of Clarkesville Public Official, any City of Clarkesville employee, and any City contracted consultant or technical advisor regarding this solicitation. Any Proponent who violates this requirement shall be immediately disqualified and their proposal removed from the evaluation process.

Any questions concerning this RFQ/RFP should be directed to:

**Kirby Glaze or Bill York
4PM, Public Private Partnership Management, Inc.
120 North McDonough Street
Jonesboro, GA 30236**

Kirby Glaze's Contact Information:	kglaze@4pmcdp.com	770-401-4990
Bill York's Contact Information:	ymconsulting@mindspring.com	770-367-1441

The City of Clarkesville is an equal employment opportunity employer. The City endeavors to do business with firms sharing the City's commitment to equal opportunity and will not do business with any firm that discriminates based on race, religion, color, ancestry, age, gender, sexual orientation, disability, medical condition, or place of birth.

Copies of this RFQ/RFP can be obtained from the City of Clarkesville's website at <http://www.clarkesvillega.com> or at the City of Clarkesville, City Hall, 123 North Laurel Drive, Clarkesville, GA 30523. No fees for this RFQ/RFP will be required. All RFQ/RFP documents will be available via electronic downloading from the City of Clarkesville's website. This RFQ/RFP is subject to revision after the date of issuance via written electronic addenda. Any such addenda will be posted on the City's website and not distributed directly to potential Proponents. It is each Proponent's responsibility to obtain all RFQ/RFP addenda prior to submitting a Proposal. Under no circumstances will the City be liable for any costs incurred by any Proponent or any other party in developing, preparing, or submitting a Proposal in response to this RFQ/RFP.

1.2 RFQ/RFP Organization

This RFQ/RFP consists of seven sections and seven attachments:

SECTIONS	ATTACHMENTS
Section 1: Background	Attachment A: Definition of Terms
Section 2: Project Overview	Attachment B: Scope of Design-Builder Services
Section 3: Firm Fixed Price, Design-Build Services	Attachment C: Qualification Questionnaire
Section 4: Procurement Process	Attachment D: Draft Guaranteed Fixed Price Design-Build Contract
Section 5: Proposal Submission Requirements	Attachment E: Submission Forms
Section 6: Proposal Evaluation and Selection	Attachment F: Pricing Proposal Form
Section 7: Conditions for Proponent	Attachment G: Report of Asbestos Building Surveys

If any ambiguity, conflict, discrepancy or errors in content or statements are discovered between the RFQ/RFP sections and attachments, the contents of the RFQ/RFP attachments take precedence over the RFQ/RFP sections.

1.3 Owner's Objectives

The Owner's objectives for delivery of the project are as follows:

- Provide for the potential of one restaurant and four retail shells that the City of Clarkesville can subsequently lease to new businesses. Provided however, the Owner reserves the right to amend any contract awarded hereunder to include the renovation, rehabilitation, restoration or rebuilding of those additional properties which constitute Phase II or the Project, subject to the remainder of the objectives as stated herein.
- Execute project in a manner that maximizes the uses of Historic Tax Credits and USDA RBDG grant funds.
- Bring plumbing, HVAC, and electrical systems up to code.
- Install fire suppression system as required by Clarkesville Ordinance.
- Provide structures that have a minimum useful life of 50 years taking into account the minimization of capital cost while considering life-cycle costs.
- Achieve project Substantial Completion within time period stated in this RFQ/RFP.
- By selecting the Guaranteed Firm Fixed Price, Design-Build delivery method for the project, the Owner is committed to working in close collaboration with the Design-Builder during the design and construction of Phase I of the Downtown Redevelopment Project. As set forth in Attachment B, the Proponent must adhere to the Owner's requirements and standards that apply to the project's design. Owner will support all interaction with the funding and regulatory agencies and implement this project in a manner to accommodate release of funding.

END OF SECTION

SECTION 2: PROJECT OVERVIEW

2.1 Project Background

In March of 2014 there was a large fire in the Clarkesville downtown square that resulted in the complete destruction of one building and major damage to four additional buildings. The City subsequently purchased the four damaged buildings that were located directly on the square for the purpose of redevelopment. The four damaged buildings previously housed two successful restaurants, two successful retail spaces, three office spaces and two residential spaces. The City's goal is to renovate/rebuild these spaces and lease/sell them to private business owners.

Phase I of the project is the rehabilitation of the two buildings that suffered the least amount of damage. The project buildings are both one story with either full or partial basements. One of the buildings is too large for a single retail space and will be divided into two retail spaces at the street level and two spaces in the basement level. The second building was a former restaurant at the street level and will be rehabilitated to potentially house a restaurant space. Providing restaurant fixtures and equipment is not a part of this RFQ/RFP. The basement level will be stubbed for retail or residential space.

Both buildings were constructed in 1937 and the City is in the process of placing the buildings on the National Register of Historic Places. The historic facades have been uncovered in a previous clean-up and stabilization progress and it is part of this project to retain/repair/rehabilitate the historic facades and store front styles. The City has historic photographs to assist with the façade/store front design.

2.2 Project Budgeting and Funding

The cost for Phase I of this project currently budgeted in a range from \$700,000 to \$800,000. The budget does not include the Owner's other project costs (which are not the responsibility of the Proponent), such as professional advisory services, property or access rights, additional site investigations or environmental studies, certain governmental approvals and non-project taxes. Areas of known Asbestos are located in the floors of both buildings and will not be disturbed. New flooring is to be installed on top of the current flooring. A copy of a Report of Asbestos Building Surveys detailing this information is included in Attachment G. Provided further that the Owner, in the Owner's sole discretion, reserves the right to amend any contract awarded hereunder to include Phase II of the Project, which is currently budgeted in a range from \$1,200,000 to \$1,500,000, subject to the same limitations set forth above for Phase I.

2.3 Project Schedule

As indicated in Section 4, it is anticipated that the Notice To Proceed (NTP) for the Design-Build Contract will be executed based on timing of approved financing but is anticipated to be in the second Quarter of 2015. All Proponents are to include a detailed schedule demonstrating proposed project duration, detailed phases of work, and Owner and 3rd party activities that lead to points of review and approval by the Owner and/or regulatory agencies prior to progressing to subsequent phases. The selected Proponent will commit to complete the project within the time proposed in response to this RFQ/RFP.

END OF SECTION

SECTION 3: GUARANTEED FIXED PRICE DESIGN BUILD SERVICES

3.1 General

Services to be provided by the Design-Builder consist of architectural, engineering and design, permitting, procurement, and construction for the Clarkesville Downtown Redevelopment Project.

Design-Build Services include:

- Develop and maintain a Project Execution Plan, including Project Schedule.
- Develop and refine the architecture and engineering design in collaboration with the Owner.
- Conduct all permitting activities including the development of a permit activity schedule and obtain each permit required to design and construct these improvements. Proponent is to identify any additional easements or rights of way required for proposed project approach.
- Construct all facilities as approved by the Owner. Supervise all subcontractors and Design-Builder forces.
- Warranty all construction and services as required in Design-Build Contract.

3.2 Roles and Responsibilities

Owner: The Owner will cooperate with the Design-Builder and perform its responsibilities in a timely manner to facilitate the Design-Builder's performance of services. Owner's responsibilities include:

- Review submissions and provide comments to Design-Builder in a timely manner. (Proponent will identify Owner and 3rd party activities and durations in overall Project Schedule).
- Furnish existing studies and reliable data and information regarding the project.
- Provide project funding in a timely manner.
- The Owner will complete any and all required Zoning for the site.
- Provide access to the project site.
- Obtain governmental approvals and permits for which the Owner is responsible.

Design-Builder: The Design-Builder will cooperate with the Owner and will provide in a timely manner the services necessary to complete the Project Scope specified in this RFQ/RFP. Design-Builder responsibilities include:

- Preparation of design and construction documents
- All permits required and not provided by the Owner
- Procurement of materials, equipment, and subcontractors
- Maintenance of site security
- Adherence to project site specific health and safety requirements
- Completion of construction of project
- Risk Management associated with Design-Build activities
- Quality Management
- Warranty Services

The roles and responsibilities of the Owner and the Design-Builder are more fully described in the Sample Guaranteed Fixed Price, Design-Build Contract found in Attachment D.

END OF SECTION

SECTION 4: PROCUREMENT PROCESS

4.1 Communications and Owner Contact

On behalf of the Owner, Kirby Glaze and Bill York will act as sole points of contact for this RFQ/RFP and shall administer the RFQ/RFP process. All communications shall be submitted in writing or by email and shall specifically reference the RFQ/RFP. All questions or comments shall be directed to the Owner's contact as follows:

Kirby Glaze or Bill York
4PM, Public Private Partnership Management, Inc.
120 North McDonough Street
Jonesboro, GA 30236

Kirby Glaze's Contact Information: kglaze@4pmcdp.com, 770-401-4990

Bill York's Contact Information: ymconsulting@mindspring.com 770-367-1441

No oral communications from the Owner's contact or other individual is binding. Any request for interpretations of this RFQ/RFP or explanations shall be in writing to the owner's contact in accordance with the procurement schedule. All information given to a Proponent will be furnished to all Proponents via Addendum as placed on the City of Clarkesville's website.

No contact with any City of Clarkesville employee (other than the identified contact), any appointed or elected City of Clarkesville Public Official, or any City contracted consultant or technical advisor regarding this solicitation individually or collectively is allowed during proposal preparation, the evaluation process, or prior to award. A violation of this provision will result in automatic disqualification of Proponent and the Proposal shall be dropped from the evaluation process.

4.2 Procurement Schedule

The anticipated procurement schedule is as follows:

- | | |
|--|----------------|
| • Date of RFQ/RFP Issuance | May 8, 2015 |
| • Pre -proposal Meeting and Tour of Buildings | May 18, 2015 |
| • Deadline for Questions Regarding RFQ | May 22, 2015 |
| • Receive RFQ | May 27, 2015 |
| • Score RFQ | May 27, 2015 |
| • Notify RFQ Responders as to those that Qualified | June 1, 2015 |
| • Deadline for Questions Regarding RFQ/RFP | June 10, 2015 |
| • Receive RFQ/RFP | June 17, 2015 |
| • Present RFQ/RFP Results to Mayor and Council | June 18, 2015* |
| • Complete Contract Negotiations/Issue Notice to Proceed | July 2, 2015 |

* If City elects to interview Individual Contractors before selecting Preferred Contractor, the schedule will be adjusted to provide therefore.

4.3 Pre-proposal Meeting and Site Tour

Owner will conduct a **mandatory pre-proposal meeting and site tour** for those interested in responding to the RFQ/RFP. Responses received from Proponents that do not attend the meeting and the site tour will be rejected as non-compliant and will not be opened.

The pre-proposal meeting will be held at *City of Clarkesville City Hall, 123 N Laurel Drive, Clarkesville, GA 30523* on May 18, 2015 starting at 10:00 AM EST.

The Mandatory Pre-Proposal and site tour will only be open to potential Proponents. At this meeting, Owner will offer information about the Project and the procurement process. Immediately following the pre-proposal meeting, a mandatory project site tour will be conducted for Proponents to familiarize themselves with site conditions and constraints.

Proponents will advise the Owner's Contact three (3) days prior to the pre-proposal meeting and site tour with the names of individuals who will be attending. Due to space constraints, each Proponent's team (inclusive of all members) is limited to a maximum of three (3) attendees at the meeting and site tour.

END OF SECTION

SECTION 5: QUALIFICATION/ PRICING PROPOSAL SUBMISSION REQUIREMENTS

5.1 RFQ Guidelines

5.1.1 Submittal Place and Deadline

Five (5) paper documents (one original and four copies), as well as one (1) electronic version on CD-ROM in PDF format of the Qualification Questionnaire must be received no later than **May 27, 2015 at 2:00 PM EST** addressed to:

Barbara Kesler
City Manager
City of Clarkesville
123 N Laurel Drive
Clarkesville, GA 31603

Each Proponent assumes full responsibility for a timely delivery of its Qualification Questionnaire at the required location. Any Qualification Questionnaire received after the submittal deadline will be deemed unresponsive and returned. The delivered package containing all Qualification Questionnaire documents must note on its face:

“Qualification Questionnaire Enclosed”
City of Clarkesville, Phase I Downtown Redevelopment Project
Procurement Solicitation No.DRP-I-15
Date: May 27, 2015
Time: 2:00 PM EST

5.1.2 RFQ Submission Format

The Qualification Response must not exceed ten (10) total pages (Exclusive of the transmittal letter) (most or all 8½” x 11” paper with 1” or greater margins front and back), excluding the transmittal letter, index or table of contents, front and back covers, title pages/separation tabs, and appendices. The required sections are outlined in Section 5.1.3. Each section shall be clearly labeled with pages numbered and separated by tabs. Eleven (11) point font or larger must be used in Response.

5.1.3 RFQ Submission Content

The content requirements set forth in this RFQ represents the minimum content requirements for the Response. It is the Proponent’s responsibility to include information in its Response to present all relevant qualifications and other materials. All items in all tabs will be included in each copy of the Response. Failure by a Proponent to include all listed items may result in disqualification and rejection of the Response.

Responses must be submitted in the order and format outlined in this Qualification Questionnaire, Attachment C. Each section and subsection of the Questionnaire should be answered beginning on a separate page, and pages should be numbered consecutively with the name of the respondent indicated clearly at the bottom of each page. The sworn signature page should then be placed at the end, after all Questionnaire pages.

Proponents must submit a transmittal letter (maximum two (2) pages not included in page count) on the Proponent’s letterhead. It must be signed by a representative of the Proponent who is authorized to sign such material and to commit the Proponent to the obligations contained in the Response. The transmittal letter may include any information deemed relevant by the Proponent, but will not be used to convey additional information not found elsewhere in the Proposal. The Transmittal Letter must include the name, address, phone number and e-mail

address for the Proponent's Contact and identify who would be the Design-Builder's signatory to any contract documents executed with the Owner including title, address, phone number, and e-mail address.

Each response will be reviewed to determination if it is complete prior to actual evaluation. Failure to provide an accurate, complete and up-to-date response may result in disqualification. The Owner reserves the right to eliminate from further consideration any response that is deemed to not substantially conform to the request for information contained in this Questionnaire. The Owner also reserves the right, during the course of the evaluation process, to request any additional information deemed necessary to supplement and/or clarify the information provided.

Any change in the Team or Key Personnel included in the Response will require City of Clarkesville approval. At a minimum, Key Personnel must include the Project Manager, Design Manager, and Construction Manager. Manager.

All subcontractors, sub-consultants or other firms to be utilized on this project are subject to the approval of the City of Clarkesville. Any subcontractor, sub-consultant or third party selected by the Proponent is deemed approved upon Contract Award.

5.2 RFQ/RFP Guidelines

5.2.1 Submittal Place and Deadline

Five (5) paper documents (one original and four copies), as well as one (1) electronic version on CD-ROM in PDF format of the Pricing Proposal must be received no later than **June 17, 2015 at 4:00 PM EST**, addressed to:

Barbara Kesler
City Manager
City of Clarkesville
123 N Laurel Drive
Clarkesville, GA 31603

Each Proponent assumes full responsibility for a timely delivery of its Pricing Proposal at the required location. Any Pricing Proposal Questionnaire received after the submittal deadline will be deemed unresponsive and returned. The delivered package containing all Qualification Questionnaire documents must note on its face:

"Pricing Proposal Enclosed"
City of Clarkesville, Phase I Downtown Redevelopment Project
Procurement Solicitation No.DRP-I-15
Date: June 17, 2015
Time: 4:00 PM EST

5.2.2 RFQ/RFP Submission Format

The required sections are outlined in Section 5.2.3. Each section shall be clearly labeled with pages numbered and separated by tabs. A maximum of five (5) pages of the total page count may be 11" x 17" tri-fold format for Proposal. Eleven (11) point font or larger must be used in Proposal.

5.2.3 RFQ/RFP Submission Content

The content requirements set forth in this RFQ/RFP represents the minimum content requirements for the Proposal. All items in all tabs will be included in each copy of the Proposal. Failure by a Proponent to include all listed items may result in disqualification and rejection of the Proposal.

All Pricing Proposals should include a Transmittal letter, Executed Copies of the Submission Forms found in

Attachment E, a fully completed Pricing Proposal Form found in Attachment F and schematic drawings as necessary to present the scope of work proposed.

Proponents must submit a transmittal letter (maximum two (2) pages) on the Proponent's letterhead. It must be signed by a representative of the Proponent who is authorized to sign such material and to commit the Proponent to the obligations contained in the Proposal. The transmittal letter must include a concise overview of the key elements of the Proposal and shall not be used to convey additional information not found elsewhere in the Proposal.

The Proponent must notify the Owner of any substantial changes to its Qualification Questionnaire subsequent to submission of the Pricing Proposal and before the selection process is completed and, in the case of a selected Proponent, before execution of the Design-Build Contract.

END OF SECTION

SECTION 6. QUALIFICATIONS/PRICING PROPOSAL EVALUATION AND SELECTION

6.1 General

The Qualification Questionnaires and Pricing Proposals will be reviewed and evaluated by the City of Clarkesville's Selection Committee utilizing the requirements and criteria outlined in this Section. During the evaluation process, written questions or requests for clarifications may be submitted by the City of Clarkesville (in writing) to one or more of the Proponents regarding its Proposal or related matters. Failure to respond in the time allotted to any questions or requests may be grounds for elimination of the Proponent from further consideration. In addition, the City of Clarkesville may require that all or a limited number of Proponents participate in interviews. The location and time of the interviews will be determined at a later date and will be within the allotted project scheduled time.

6.2 Responsiveness

Each Proposal will be reviewed to determine if it is responsive to the RFQ/RFP. Failure to comply with the requirements of this RFQ/RFP may result in a Proposal being rejected as non-responsive.

Qualification Scoring Criteria

Upon the close of acceptance of Qualifications Questionnaires at 4:00 PM EDT, Wednesday, May 27, 2015, but prior to 4:00 PM EDT, Friday, May 29, 2015, the City and its agents shall open the Qualifications Questionnaires and score each submittal. Each Qualifications Questionnaire shall be scored as follows:

	Total Maximum Points
1. Organization.	4
2. Licensing Certifications	4
3. Experience	20
4. References	12
5. Financing Capacity	10
6. Management/Operations	<u>10</u>
Total Maximum Points	60

Once all Qualification Questionnaires are scored each submitting Proponent will be notified of their firms Qualification Score. Proponents receiving a total Qualifications Score of less than 50 do not meet the minimum qualification scoring requirement and will not be considered qualified. Those Proponents scoring below 50 will not be eligible to submit a Price Proposal Package.

Those Proponents whose Qualifications Score is 50 or greater will be eligible to submit a Price Proposal Package. Price Proposal Packages will be opened for evaluation regarding their Guaranteed Fixed Price Design-Build Contract. A sample copy of the proposed type Guaranteed Fixed Price Design- Build Contract the City intends to use with this project is

included as part of this package as Attachment D.

Pricing Proposal Scoring Criteria

Upon the close of acceptance of Pricing Proposals at 4:00 PM EDT, Wednesday, June 17, 2015, but prior to 2:00 PM EDT, Thursday, June 18, 2015, the City and its agents shall open the Pricing Proposals and score each Proposal. Following the opening of the Proposals, such will be scored on a comparative basis. The Guaranteed Fixed Price Proposal will be worth a total of 40 points and will be scored on a comparative basis, i.e. the lowest estimated price (based on the highest price if given as a range), will be awarded the total 40 points, each of the remaining proposals will be awarded a prorated number of points based on the ratio of the offeror's price to the lowest proposed price. For example if Proponent A has the lowest Price Proposal at \$100, Proponent B's Price Proposal is \$110 and Proponent C's Price Proposal is \$120, then Proponent A receives the full 40 points, Proponent B would receive 36 points and Proponent C would receive 33 points.

Other Potential Scoring Criteria

The City may choose other factors such as the work to be performed by local contractors, and dates of commencement and completion to award additional points to a Proponent's combined Qualifications and Pricing Proposals.

The City's decision will be based upon a cumulative scoring factor and not solely upon the lowest cost proposal. Based on the combined scoring on the Qualifications, Pricing Proposal and Potential Bonus Points, the City will select the responsible and responsive offeror or offerors whose proposal or proposals are determined to be in the best interest of the City, taking into consideration the evaluation factors set forth above, as well as factors such as the work to be performed by local contractors and dates of commencement and completion. The maximum points that could be allocated for these categories are as follows:

- Work performed by local subcontractors - 5points
- Dates of commencement and completion - 5points

All Proponents submitting proposals shall be notified in writing of the City's decision, along with their score, and following the final decision all proposals and their scoring shall be available for inspection.

END OF SECTION

SECTION 7. CONDITIONS FOR PROPONENTS

7.1 Owner Authority

Owner is a City in the State of Georgia, or such entity as is defined in Attachment A, and the procurement process for this project is authorized under O.C.G.A. & 36-34-5 and O.C.G.A. Title 36 Chapter 91 Public Works Bidding and by the Owner.

7.2 Conflict of Interest

The State law mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the Owner, including affiliations and business and financial relationships such persons may have with Owner officers.

7.3 Collusion among Respondents

Each respondent, by submitting a proposal, certifies that it is not party to any collusive action or any action that may be in violation of State and Federal law.

7.4 Drug Free Workplace

The Owner, as policy, operates all facilities as a drug-free workplace, and requires that the labor force be drug-free. The Proponent hereby acknowledges this requirement, and asserts that the organization of the Proponent adheres to such policy and practice. The Proponent acknowledges that it may be required to produce certificates affirming its compliance of these requirements of drug-free workplace for duration of agreement term, at execution, or at any time during the term of the agreement. The Proponent shall secure from any sub-contractor hired to work in a drug-free workplace the following written certification: "As a part of the subcontracting agreement with (Proponent's name, sub-contractor's name) certifies to the Proponent that a drug-free workplace will be provided for the sub-contractor's employees during the performance of this contract." The Proponent may be suspended, terminated, or debarred if it is determined that: 1. The Proponent has made false certification hereinabove; or 2. The Proponent has violated such certification by failure to carry out the requirements of Official Code of Georgia Section 50-24-3.

7.5 Fund Appropriation Contingency

The Proponent and the City recognize that the continuation of any contract after the close of any given fiscal year of the City of Clarkesville shall be subject to the approval of the budget of the City of Clarkesville providing the contract is an approved expenditure. The City does not guarantee that the expenditure will be actually adopted each year by Mayor and Council.

7.6 Indemnify and Hold Harmless

Contractor further agrees to indemnify, defend and hold harmless the City against (1) any and all losses, claims, damages, law suits and liabilities for any personal injury, death or property damage arising out of or as a consequence of any work performed pursuant to this contract, (2) any and all expenses related to claims or lawsuits resulting from the above including courts cost and attorney fees, (3) any and all penalties and damages incurred by reason of contractor's failure to comply with any applicable laws, ordinances or regulations.

7.7 Proprietary Information

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the evaluation team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract. All applicable information will be subject to public disclosure in accordance with the Freedom of Information Act, at award of contract, or cancellation of this RFQ/RFP.

The City reserves the right to retain all proposals submitted and to use any ideas in any proposals submitted,

regardless of whether or not that proposal is accepted. Submission of a proposal indicates acceptance by the person submitting the proposal of the terms, conditions and specifications contained in this RFQ/RFP, unless clearly and specifically noted in the proposal submitted and confirmed in a subsequent contract between the City and the contractor selected.

7.8 Rights of the Owner

In connection with this procurement process, including the receipt and evaluation of Proposals and award of the Design-Build Contract, Owner reserves to itself (in its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFQ/RFP, in whole or in part, at any time prior to the execution of the Design-Build Contract, without incurring any obligations or liabilities.
- Modify the procurement schedule.
- Waive deficiencies, informalities & irregularities in a Proposal and accept and review a non-conforming Proposal.
- Suspend and terminate the procurement process or terminate evaluations of Proposals received at any time.
- Waive or permit corrections to data submitted with any Proposal until such time as Owner declares in writing that a particular stage or phase of its review of the Proposals has been completed and closed.
- Hold meetings and interviews and conduct discussions and correspondence with one or more of the Proponents to seek an improved understanding of any information contained in a Proposal.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the responses to the Proposal.
- Seek clarification from any Proponent to fully understand information provided in the Proposal and to help evaluate and rank the Proponents.
- Reject a Proposal containing exceptions, additions, qualifications or conditions not called for in the RFQ/RFP or otherwise not acceptable to the Owner.
- Conduct an independent investigation of any information, including prior experience, identified in an Proposal by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Proponent during the evaluation of the Proponent's Proposal.

7.9 Obligation to Keep Project Team Intact

Proponents are advised that all firms and Key Personnel identified in the Proposal, including the Design-Builder, shall remain on the Project Team for the duration of the procurement process and execution of the project. If extraordinary circumstances require a change, it must be submitted in writing to the Owner Contact, who, at his or her sole discretion, will determine whether to authorize a change. Unauthorized changes to the project team at any time during the procurement process may result in elimination of the Proponent from further consideration.

7.10 Change in Objectives

The City of Clarkesville may materially change the objectives. Such changes may include additions, deletions, or other revisions within the general scope of RFQ/RFP requirements. No changes or adjustments shall be made without a written amendment to this RFQ/RFP. Provided however, the City reserves the right to amend any contract awarded hereunder to include Phase II of the Project without further notice, advertisement or solicitation.

7.11 Addenda

If any revisions to the RFQ/RFP or procurement process become necessary or desirable (in the Owner's sole discretion), the Owner may issue written addenda. **The Owner will not transmit addenda to potential Proponents.** The Owner will post all addenda on the Owner project website at the following address: <http://www.Clarkesvillecity.com> and it is Proponent's responsibility to obtain all addenda prior to submitting its Proposal.

7.12 Exceptions

A respondent taking exception to any part or section of this solicitation shall indicate such expectations in a separate section in the appropriate section of the submitted proposal – such section shall be entitled "Exception of Conditions." Failure to indicate any exception will be interpreted as the respondent's intent to comply fully with the requirements of this RFQ/RFP as written.

7.13 Nonconforming Terms and Conditions

Any proposal that includes terms and conditions that do not conform to the terms and conditions in this RFQ/RFP is subject to rejection as non-responsive. The City of Clarkesville reserves the right to permit the respondent to withdraw non-conforming terms and conditions from its proposal prior to action by the Clarkesville City Council to award a contract.

7.14 Withdrawal of Request for Proposal

The City of Clarkesville retains at all times the right to cancel or withdraw this RFQ/RFP, to refuse to accept a proposal from any respondent, and to modify or amend any portion of this RFQ/RFP.

7.15 Cost of RFQ/RFP Preparation and Submission

Each vendor shall be responsibility for all costs incurred in order to prepare and submit their response to this RFQ/RFP. There is no expressed or implied obligation for the City to reimburse responding firms for any expenses incurred in preparing proposals in response to this request. Materials submitted by respondents are subject to public inspection under the Georgia Public Records Act (Government Code Sec. 6250 et seq.), unless exempt. Any language purporting to render the entire proposal confidential or proprietary will be ineffective and will be disregarded.

7.16 Default

In case of default by the contractor or any other reason deemed appropriate by the City, the City may by providing 30 days written notice cancel this contract and make award to another contractor. The City reserves the right to recover the excess cost by deduction from an unpaid balance or by invoicing the defaulting contractor for any price differences. The submitted proposal must follow the rules and format established within this RFQ/RFP. Adherence to these rules will ensure a fair and objective analysis of all proposals. Failure to complete any portion of this request may result in rejection of a proposal.

END OF SECTION

Attachment A – DEFINITION OF TERMS

The definitions of some of the capitalized terms used in this RFQ/RFP are presented below:

Builder – The Design-Builder or other firm (such as a subcontractor or joint venture partner) that will have responsible charge of construction of the project.

City - Means the City of Clarkesville, Georgia or its Downtown Development Authority, or any special purpose entity created for the purposes of implementing this project to whom the City may choose to transfer its rights and obligations under the Guaranteed Fixed Price Design-Build Contract.

Designer – The Design-Builder or other firm (such as a sub consultant or joint venture partner) that will be providing design professional services and have responsible charge of the design, including preparation of the construction documents.

Design-Builder – The proposed entity that would enter into the Guaranteed Fixed Price, Design-Build Contract with the Owner and would be the single point of accountability to the Owner for delivery of the services and the project.

Design-Build Contract

The Guaranteed Fixed Price Design-Build Contract, including the agreement and all of its attachments, presented as Attachment D to this RFQ/RFP.

Final Completion – As such term is defined in the Guaranteed Fixed Price Design-Build Contract.

Key Personnel – The individuals, employed by Design-Builder or other firm included on the Project Team, who would fill certain key roles in delivery of the project and related services by the Design-Builder, including the following positions: Design-Build Project Manager, Design Manager, and Construction Manager.

Minimum Qualification Requirements – The requirements set forth in Subsection 6.3 of this RFQ/RFP that, as a minimum, must be satisfied by the Proposal to be evaluated and ranked pursuant to the Comparative Evaluation Criteria.

Owner – City of Clarkesville, Georgia

Project – Clarkesville Downtown Redevelopment Project for Washington Street Buildings.

Project Team – The Design-Builder, Key Personnel and any additional firms (such as subcontractors and sub consultants) included in the Proposal.

Proponent – The entity responding to this RFQ/RFP by submitting the Proposal.

RFQ/RFP – Request for Proposals.

RFQ – Request for Qualifications

Substantial Completion – Substantial completion is the date the Owner takes beneficial occupancy of

the facility.

END OF SECTION

Attachment B – SCOPE OF DESIGN-BUILDER SERVICES

The Design-Builder shall be responsible for completing all work in a manner consistent with The Secretary of the Interior's Standards for Rehabilitation of Historic Buildings. To such end the Owner has available for review photographs of the buildings showing the historic facades. All other Scope of Design-Builder services shall be those services specified under Section 6, Contractor's Performance, in the Guaranteed Fixed Price Design-Build Contract included in Attachment D below.

END OF SECTION

Attachment C – Contractor Qualification Questionnaire

General Information:

Responses must be submitted in the order and format outlined in this Questionnaire. Each section and subsection of the Questionnaire should be answered beginning on a separate page, and pages should be numbered consecutively with the name of the respondent indicated clearly at the bottom of each page. The sworn signature page should then be placed at the end, after all Questionnaire pages.

Each response will be reviewed to determine if it is complete prior to actual evaluation. Failure to provide an accurate, complete and up-to-date response may result in disqualification. The City of Clarkesville (the "Owner") reserves the right to eliminate from further consideration any response that is deemed to not substantially conform to the request for information contained in this Questionnaire. The Owner also reserves the right, during the course of the evaluation process, to request any additional information deemed necessary to supplement and/or clarify the information provided.

The Owner reserves the right to accept or reject any or all offers as it believes to be in the best interest of the Owner. The Owner reserves the right to waive informalities in the selection process.

Qualification Questionnaire:

1. ORGANIZATION (If Respondent proposes to provide Design-Build service through a partnership, joint venture or subcontract arrangement between design services and contractor services, each section herein should be completed by the entity providing such portion of the services.)

- 1.1 How many years has your organization been in business as a Design-Build Contractor?
- 1.2 How many years has your organization been in business under its present business name?
 - 1.2.1 Under what other or former names has your organization been known or operated?
 - 1.2.2 As to former names, during what periods of time was the organization so known?
- 1.3 If your organization is a corporation, answer the following:
 - 1.3.1 Date of incorporation:
 - 1.3.2 State of original incorporation:
 - 1.3.3 All other states where incorporated and/or registered to do business and date(s) thereof:
 - 1.3.4 President's name and address:
 - 1.3.5 Vice-president's name(s) and address(es);
 - 1.3.6 Secretary's name and address:
 - 1.3.7 Treasurer's name and address:
 - 1.3.8 Names and addresses of all persons, firms or other entities owning five percent (%) or more of shares:
- 1.4 If your organization, is a limited liability company; answer the following:
 - 1.4.1 Date of organization:
 - 1.4.2 State where initially organized:
 - 1.4.3 All other states where organized and/or registered to do business and date(s) thereof:
 - 1.4.4 Name(s) and address(es) of Managing Member(s):
 - 1.4.5 Names and addresses of all other Members:
- 1.5 If your organization is a partnership, answer the following:
 - 1.5.1 Date and state of organization:
 - 1.5.2 All states in which the partnership is registered to do business and the dates thereof:
 - 1.5.3 Type of partnership:

1.5.4 Name(s) and addresses of all general partner(s):

1.6 If your organization is individually owned, answer the following:

1.6.1 Date of organization:

1.6.2 Name of owner:

1.6.3 State in which the company's home office is located:

1.6.4 All states in which the company is registered to do business and the dates thereof:

1.7 Identify the names and addresses of all current parent, subsidiary and other affiliated entities, and all the officers, managing members, or general partners thereof:

2. LICENSING CERTIFICATION

2.1 Identify all jurisdictions and trade categories in which your organization is legally qualified to do business and indicate all registration or license numbers:

2.2 Identify all jurisdictions, if any, in which your organization's partnership or trade name is filed:

3. EXPERIENCE

3.1 List the categories of work that your organization normally performs with its own forces:

3.2 Claims and Suits. (If the answer to any of the questions below is yes, in whole or in part, please add details):

3.2.1 Has your organization ever failed to complete any work awarded to it? If so, please provide details on a separate sheet.

3.2.2 Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against your organization, including subsidiaries, affiliates or parent companies, or its/their officers? If so, please provide details on a separate sheet.

3.2.3 Has your organization filed any lawsuits or demands for arbitration with regard to design, design-build or construction contracts within the last five years? If so, please provide details on a separate sheet.

3.3 Within the last five years, has any officer or principal of your organization ever been an officer or principal of another organization when it failed to complete a design, design-build or construction contract? If so, please provide details on a separate sheet.

3.4 On a separate sheet, list all current design, design-build or construction projects of your organization,

giving the name and location of each project, owner, architect, contract amount, percent complete and scheduled completion date.

- 3.4.1 State the total value of all work now under contract:
- 3.4.:2 State the total value of all work now actually in progress:
- 3.5 On a separate sheet, list all projects having an initial contract value of at least \$1 million which your organization has performed, as design firm, design-build contractor or general contractor, in the past five (5) years, giving the name and location of each project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces.
- 3.6 On a separate sheet, list all projects having an initial contract value of at least \$1 million which your organization has performed under any other construction delivery method, in the past five (5) years, giving the name and location of each project, the construction delivery method, the owner, architect, contract amount, date of completion, and percentage of the cost of the work performed with your own forces.
- 3.7 State the annual amount of design, design-build or construction work performed during each of the past five (5) years in Georgia:
- 3.8 State the average total annual amount of all design, design-build or construction work performed during each of the past five (5) years by your organization at all locations:
- 3.9 On a separate sheet, list the design, design-build or construction experience and present work commitments of the officers, directors and all key individuals of your organization.
- 3.10 Provide resumes (including actual field experience) attached to this Questionnaire of the principal-in-charge, design professional, project manager, project superintendent and all other personnel key to the performance of this project.
- 3.11 Has your firm ever failed to complete a project by the contract completion date? If so, explain.
- 3.12 Has your firm ever been assessed and/or paid damages for late completion of a contract, whether actual or liquidated? If so, explain.
- 3.13 On a separate sheet, list all projects involving historic rehabilitation or restoration, which your organization has performed, as design firm, design-build firm or general contractor, in the past five (5) years, giving the name and location of each project, owner, architect, contract amount, date of completion and percentage of the cost of the work performed with your own forces. In addition indicate whether or not such project applied for and/or received historic preservation tax credits.
- 3.14 On a separate sheet, list all projects involving historic rehabilitation or restoration, which your organization has performed under any other construction delivery method, in the past five (5) years, giving the name and location of each project, the construction delivery method, the owner, architect, contract amount, date of completion, and percentage of the cost of the work performed with your own forces. In addition indicate whether or not such project applied for and/or received historic preservation tax credits.

4. REFERENCES

- 4.1 List at least five (5) Trade References with names and addresses of persons at each having the most knowledge of dealings with your organization:
- 4.2 List at least two (2) Bank References with names and addresses of persons at each having the most knowledge of dealings with your organization.:
- 4.3 With respect to Payment and Performance Bonds, identify your Surety and state further:
 - 4.3.1 The specific name of your bonding company:
 - 4.3.2 The name and address of your surety bonding agent:
 - 4.3.3 Length of your organization's relationship with (a) your current bonding company and (b) your current agent:
 - 4.3.4 State whether your organization's bonding company has within the past five (5) years, placed any limits on your organization's bonding capacity or declined to issue a payment or performance bond and, if so as to either, please describe all circumstances.
- 4.4 List at least two (2) Historic Restoration/Preservation References with names and addresses of persons at each having the most knowledge of dealings with your organization on projects involving the rehabilitation and/or restoration of historic structures and the application of historic preservation tax credits.

5. FINANCING AND CAPACITY (Applicable to construction services provider only)

- 5.1 Attach current financial statement, including your organization's latest balance sheet and income statement showing at least the following items:
 - 5.1.1 Current Assets (e.g., cash, joint venture accounts, accounts receivable, notes receivable, accrued income, deposits, materials inventory and prepaid expenses).
 - 5.1.2 Net Fixed Assets:
 - 5.1.3 Other Assets:
 - 5.1.4 Current Liabilities (e.g., accounts payable, notes payable, accrued expenses, provision for income taxes, advances, accrued salaries and accrued payroll taxes):
 - 5.1.5 Other Liabilities (e.g., long-term liabilities):
 - 5.1.6 Equity (e.g., capital, capital stock, authorized and outstanding shares, par values, earned surplus and retained earnings):
 - 5.1.7 Name and address of firm preparing the financial statement, and date thereof:

- 5.1.8 Whether the attached financial statement is for the identical organization named on page one of this Questionnaire
- 5.1.9 If not, explain the relationship and financial responsibility of the organization whose financial statement is provided (e.g., parent, subsidiary):
- 5.2 Attach the information requested in Paragraph 5.1 as to any wholly owned subsidiary and as to any entity that owns at least an eighty percent interest in your organization;
- 5.3 Whether, and if so to what extent, will the organization, whose financial statement is provided act as guarantor of the contract for construction.
- 5.4 Identify all persons, firms or other entities that have acted to guarantee, in whole or in any part, any of the project undertakings identified in response to Paragraph 3.5 of this Questionnaire:

6. MANAGEMENT/OPERATIONS (Applicable to construction services provider only)

- 6.1 State whether your organization maintains a written Quality Assurance Program or similar program and, if so, describe that program, how it would operate on this project, and provide a copy of same.
- 6.2 What is your current experience modification rating? Provide a copy of the rating letter as issued by the NCCI for Workers Compensation experience.
- 6.3 State whether your organization maintains a written Drug Policy or similar program and, if so, describe that program, how it would operate on this project, and provide a copy of same.
- 6.4 State whether your organization maintains written policies providing for equal employment opportunity, and for the location and utilization of small, disadvantaged, minority and female business enterprises in the performance of public projects, if so, please describe each of these policies, how they would operate on this project and provide copies of each of same.
- 6.5 Describe the construction management, cost estimating, scheduling and accounting cost control systems, which would be utilized on this project.
- 6.6 Describe systems and methodology used for verifying that quantities estimated by you and your subcontractors are correct.

Attachment D - Draft Guaranteed Fixed Price Design-Build Contract

(The following contract is to serve as the basis for the contractual relationship between the Owner and the Design/Builder. While some provisions of this agreement may be subject to negotiations the final agreement between the parties shall be in substantial compliance therewith.)

GUARANTEED FIXED PRICE DESIGN-BUILD **CONTRACT BETWEEN OWNER AND DESIGN/BUILDER**

This GUARANTEED FIXED PRICE CONSTRUCTION CONTRACT BETWEEN OWNER AND DESIGN/BUILDER is made and entered into by the **CITY OF CLARKESVILL**, a Georgia municipal corporation, or its designee (hereinafter "the Owner") and

_____ (hereinafter "the Design/Builder"). This Contract is executed under seal and shall be effective on the date executed by the last party to execute it.

This Contract is for the construction of a project identified as the Clarkesville Downtown Redevelopment Project (hereinafter "the Project"). A description of the Project is attached hereto as Exhibit "A" and is incorporated into this Contract by express reference.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Owner and the Design/Builder agree:

1.

DEFINITIONS

Wherever used in this Contract or in the Contract Documents, the following terms shall have the meaning indicated which shall be applicable to both the singular and plural thereof:

- (A) **Addenda:** Written or graphic instruments issued prior to the execution of the Contract which modify or interpret the Request for Proposal or the Contract Documents by additions, deletions, clarifications or corrections.
- (B) **Change Order:** Written order to the Design/Builder executed by the Owner and Project Manager after execution of this Contract, directing a change in the work and may include a change in the Contract Price or the time for the Design/Builder's performance, or any combination thereof.

- (C) **Concealed or Unknown Conditions:** Those conditions unforeseen by the parties, or which could not: (i) be reasonably foreseen by the Design/Builder, or (ii) determined through testing, sampling or selective demolition, including, but not limited to, existing soil and subsurface conditions, the condition of any existing structures including the structural elements of such structure, fluctuations in commodity and/or material prices, the removal or dismissal of a subDesign/Builder for failure or inability to perform the work required, changes in regulatory requirements or industry standards not in existence at the time of design, or other such matters. Provided however, the term “Concealed or Unknown Conditions” shall not include, for the purposes of Paragraph 8(A); (i) any condition which could have been reasonably determined through testing, sampling or selective demolition which the Design/Builder recommended or requested and the Owner elected not to perform, or (ii) the existence, removal or remediation of any hazardous materials (such being defined as hazardous wastes or materials, toxic wastes or materials, or other similar substances, petroleum products or derivatives).
- (D) **Conceptual Design:** The drawings and specifications and/or other graphic or written materials, submitted by the Design/Builder in response to the Request for Proposals which show or describe the character and scope of, or relate to, the Work to be performed or furnished by the Design/Builder and which have been prepared by the Design/Builder for Owner.
- (E) **Contract Documents:** This Guaranteed Fixed Price Construction Contract between Owner and Design/Builder, Payment Bond, Performance Bond, Drawings, Specifications and Addenda as such maybe prepared by the Design/Builder and approved by the Owner.
- (F) **Drawings:** The part of the Contract documents which show largely through graphical presentation the characteristics and scope of the Work to be performed and which have been prepared by or for the Design/Builder and approved by the Owner.
- (G) **Final Completion:** That point at which, upon certification in writing by the Architect and Project Manager, the Project is complete in full accordance with this Contract and the Design/Builder has performed all of its obligations to the Owner under this Contract, subject only to those items included in the Final Punch List.
- (H) **Final Punch List:** A list of those items, as determined by the Architect and Project Manager upon final inspection, which require repair, completion or correction, but are of such a nature as to not to interfere with the Owner’s occupancy and normal use of the Project.
- (I) **Shop Drawings:** All drawings, diagrams, illustrations, brochures, schedules, and other data which are prepared by the Design/Builder, a Subcontractor, manufacturer, Supplier or distributor, which illustrate how specific portions of the work shall be fabricated or installed.
- (J) **Specifications:** A part of the Contract Documents consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.
- (K) **Subcontractor:** An individual, firm or corporation having a direct contract with a Design/Builder or with any other Subcontractor for the performance of a part of the work of the Project.

- (L) **Substantial Completion:** That point at which, as certified in writing by the Design/Builder and Project Manager, the Project or a separate and discrete portion thereof is at a level of completion in strict compliance with this Contract such that the Owner or its designee can enjoy beneficial use or occupancy and can use or operate it in all respects, for its intended purpose. Partial use or occupancy of the Project shall not result in the Project being deemed substantially complete, and such partial use or occupancy shall not be evidence of Substantial Completion. All warranties and other guarantees pass to the Owner at the point of Substantial Completion.
- (M) **Suppliers:** Any person, supplier or organization who furnishes materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the Project site.
- (N) **Work:** The entire construction or the various separately identifiable parts thereof required to be performed or furnished under the Contract Documents. Work includes and is the result of performing or furnishing Design Professional Services and Construction required by the Contract Documents.

2.

SCHEDULE

- (A) When Design/Builder delivers the executed Agreements to Owner, Design/Builder shall also deliver to Owner such Bonds as Design/Builder may be required to furnish in accordance with paragraph 22.
- (B) *Design/Builder's Review of Contract Documents:* Before undertaking each part of the Work, Design/Builder shall carefully study and compare those Contract Documents prepared by Owner and check and verify pertinent figures therein and all applicable field measurements. Design/Builder shall promptly report in writing to Owner any conflict, error, ambiguity, or discrepancy which Design/Builder may discover and shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby; however, Design/Builder shall not be liable to Owner for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Design/Builder knew or reasonably should have known thereof.
- (C) *Preliminary Schedules:* Within ___ days after commencement of the Contract (unless otherwise specified in the Contract Documents), Design/Builder shall submit the following to Owner for its timely review:
 - (1) A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
 - (2) A preliminary Schedule of Values for all of the Work which will include line items and prices which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit for the Work; and
 - (3) A preliminary cash flow projection estimating that portion of the Contract Price to be due during each month of performance.
- (D) *Evidence of Insurance:* Before any Work at the Site is started, Design/Builder and Owner shall each deliver to the other, certificates of insurance as required by Article 21 which Design/Builder and Owner respectively are required to purchase and maintain in accordance with Article 21.

- (E) Within _____ days after the Contract, Design/Builder will arrange a conference attended by Owner, the Project Manager and Design/Builder and others as appropriate to establish a working understanding among the parties as to the Work and to discuss the design concepts, schedules referred to above, procedures for processing Applications for Payment, maintaining required records, items required pursuant to paragraph 23 and other matters.
- (F) At least ten days before submission of the first Application for Payment (unless otherwise provided in the Contract Documents), Design/Builder will arrange a conference attended by Design/Builder, Owner and others as appropriate to review for acceptability the schedules submitted in accordance with paragraph 2C. Design/Builder shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Design/Builder until the acceptable schedules are submitted to Owner.
 - (1) The progress schedule will be acceptable to Owner if it provides an orderly progression of the Work to completion within any specified Milestones and the Design/Builder's Time for Performance. Such acceptance will not impose on Owner responsibility for the progress schedule, for sequencing, scheduling or progress of the Work nor interfere with nor relieve Design/Builder from Design/Builder's full responsibility therefor.
 - (2) Design/Builder's Schedule of Values will be acceptable to Owner as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the work.

3.

REPRESENTATIONS AND WARRANTIES OF THE DESIGN/BUILDER

In order to induce the Owner to execute this Contract and recognizing that the Owner is relying thereon, the Design/Builder, by executing this Contract, makes the following express representations to the Owner:

- (A) The Design/Builder is fully qualified to act as the Design/Builder for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Design/Builder for, and to construct, the Project;
- (B) The Design/Builder has become familiar with the Project site and has performed such tests, including destructive testing, as necessary, to determine relevant conditions, and that the Design/Builder is therefore aware of local conditions under which the work on the Project is to be performed and has adjusted his price; including a contingency amount, to account for any local conditions which might affect the cost of such work,
- (C) The Design/Builder has received, reviewed and carefully examined all of the documents which make up this Contract, including, but not limited to, the plans and specifications, and represents that the documents appear to be complete, accurate, consistent, coordinated and sufficient for construction and the cost of work herein.

4.

INTENT AND INTERPRETATION

With respect to the intent and interpretation of this Contract, the Owner and the Design/Builder agree as follows:

- (A) This Contract, together with the Design/Builder's and Surety's performance and payment bonds for the Project, if any, constitute the entire and exclusive agreement between the parties with reference to the Project, and said Contract supersedes any and all prior discussions, communications, representations, understandings, negotiations, or agreements. This Contract also supersedes any price documents;
- (B) Anything that may be required, implied or inferred by the documents, which make up this Contract, or any one or more of them, shall be provided by the Design/Builder for the Contract Price;
- (C) Nothing contained in this Contract shall create, nor be interpreted to create, privity or any other relationship whatsoever between the Owner and any person except the Design/Builder;
- (D) When a word, term, or phrase is used in this Contract, it shall be interpreted or construed first, as defined herein; second, if not defined, according to its generally accepted meaning in the construction industry; and third, if there is no generally accepted meaning in the construction industry, according to its common and customary usage;
- (E) The words "include", "includes", or "including", as used in this Contract, shall be deemed to be followed by the phrase, "without limitation";
- (F) The specification herein of any act, failure, refusal, omission, event, occurrence or condition as constituting a material breach of this Contract shall not imply that any other, non-specified act, failure, refusal, omission, event, occurrence or condition shall be deemed not to constitute a material breach of this Contract;
- (G) The Design/Builder shall have a continuing duty to read, examine, review, compare and contrast each of the documents which make up this Contract, shop drawings, and other submittals and shall give written notice to the Owner and Project Manager of any conflict, ambiguity, error or omission which the Design/Builder may find with respect to these documents before proceeding with the affected work. The express or implied approval by the Owner or the Project Manager of any shop drawings or other submittals shall not relieve the Design/Builder of the continuing duties imposed hereby, nor shall any such approval be evidence of the Design/Builder's compliance with this Contract.
- (H) In the event of any conflict, discrepancy, or inconsistency among any of the documents that make up this Contract, the following shall control:
 - (1) As between figures given on plans and scaled measurements, the figures shall govern;
 - (2) As between large-scale plans and small-scale plans, the large-scale plans shall govern;

- (3) As between plans and specifications, the requirements of the specifications shall govern;
- (4) As between this document and the plans or specifications, this document shall govern.

5.

OWNERSHIP OF THE DOCUMENTS THAT MAKE UP THE CONTRACT

The documents that make up this Contract, and each of them, as well as any other documents furnished by the Owner, shall remain the property of the Owner. The Design/Builder shall have the right to keep one (1) copy of the Contract upon completion of the Project; provided, however, that in no event shall the Design/Builder use, or permit to be used, any portion or all of such Contract on other projects without the Owner's prior written authorization.

6.

DESIGN/BUILDER'S PERFORMANCE

- (A) *Standard of Care.* The standard of care for Design Professional Services performed or furnished under this Agreement will be the care and skill ordinarily used by members of the architectural/engineering profession practicing under similar conditions at the same time and locality.
- (B) *Preliminary Design Phase.* Within ___ (___) business days of this Agreement, Design/Builder shall:
 - (1) Consult with Owner to understand Owner's requirements for the Project and review available data;
 - (2) Advise Owner as to the necessity of Owner's providing or obtaining from others additional reports, data, or services and assist Owner in obtaining such reports, data, or services;
 - (3) On the basis of the Conceptual Documents and Design/Builder's Proposal, prepare preliminary design documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Project;
- (C) *Final Design Phase.* After written acceptance by Owner of the preliminary design phase documents Design/Builder shall:
 - (1) On the basis of the accepted Preliminary Design Phase documents, prepare final Drawings showing the scope, extent, and character of the Construction to be performed and furnished by Design/Builder and Specifications (which will be prepared in general conformance with the Preliminary Design);
 - (2) Provide technical criteria, written descriptions and design data required for obtaining approvals of the State Historic Preservation Office and National Parks Service review and approval the final design of the Project, and assist Owner in consultations with such authorities;
 - (3) Furnish the above documents, Drawings, and Specifications to and review them with Owner within the times indicated in the schedules described in the Conceptual Design; and

- (4) Identify any deviations from other Contract Documents in accordance with paragraph 2(C).
- (D) Design/Builder shall provide competent, suitably qualified personnel to perform the Work as required by the Contract Documents. Design/Builder shall at all times maintain good discipline and order at the Site.
- (E) Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Construction at the Site shall be performed during regular working hours, and Design/Builder will not permit overtime work or the performance of Construction on Saturday, Sunday or any legal holiday without Owner's written consent, which will not be unreasonably withheld.
- (F) Unless otherwise specified in the Contract Documents, Design/Builder shall furnish or cause to be furnished and assume full responsibility for materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the Work.
- (G) All materials and equipment incorporated into the Work shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Contract Documents shall expressly run to the benefit of Owner. If reasonably required by Owner, Design/Builder shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.
- (H) Design/Builder shall adhere to the progress schedule established in accordance with paragraph 2(C) as it may be adjusted from time to time as provided below:
- (1) Design/Builder shall submit to Owner for acceptance proposed adjustments in the progress schedule that will not change the Design/Builder's Time for Performance (or Milestones). Such adjustments will conform generally to the progress schedule then in effect.
 - (2) Proposed adjustments in the progress schedule that will change the Design/Builder's Time for Performance (or Milestones) shall be submitted in accordance with the requirements of paragraph 7(C). Such adjustments may only be made by a Change Order.
- (I) Design/Builder shall give all notices required by and comply with all Laws or Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, Owner shall not be responsible for monitoring Design/Builder's compliance with any Laws or Regulations.
- (J) If Design/Builder performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Design/Builder shall bear all costs arising therefrom.
- (K) Design/Builder shall pay all sales, consumer, use, and other similar taxes required to be paid by Design/Builder in accordance with the Laws or Regulations of the place of the Project which are applicable during the performance of the Work.

(L) Limitation on Use of Site and Other Areas.

- (1) Design/Builder shall confine construction equipment, the storage of materials and equipment, and the operations of construction workers to the Site and other areas permitted by Laws or Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Design/Builder shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work.
- (2) Should any claim be made by any such owner or occupant because of the performance of Work, Design/Builder shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
- (3) To the fullest extent permitted by Laws or Regulations, Design/Builder shall indemnify and hold harmless Owner, Owner's Consultants and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from any claim brought by any such owner or occupant against Owner, or any other party indemnified hereunder to the extent caused by or based upon Design/Builder's performance of the Construction.

(M) *Removal of Debris.* During the performance of the Construction, Design/Builder shall keep the premises free from accumulations of waste materials, rubbish, and other debris resulting from the Construction. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws or Regulations.

(N) *Cleaning.* Prior to Substantial Completion, Design/Builder shall clean the Site and make it ready for utilization by Owner. At completion of Construction, Design/Builder shall remove all tools, appliances, construction equipment, temporary construction and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.

(O) *Loading Structures.* Design/Builder shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Design/Builder subject any part of the Construction or adjacent property to stresses or pressures that will endanger it.

(P) In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Design/Builder is obligated to act to prevent threatened damage, injury or loss. Design/Builder shall give Owner prompt written notice if Design/Builder believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If a change in the Contract Documents is required because of the action taken by Design/Builder in response to such an emergency, a Work Change Directive or Change Order will be issued.

(Q) Design/Builder shall continue the Work and adhere to the progress schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as Design/Builder and Owner may otherwise agree in writing.

- (R) Design/Builder shall:
- (1) Provide assistance in connection with the start-up, testing, refining and adjusting of any equipment or system.
 - (2) Assist Owner in training staff to operate and maintain the Work.
 - (3) Assist Owner in developing systems and procedures for control of the operation and maintenance of and record keeping for the Work.
- (S) Design/Builder warrants and guarantees to Owner that all Construction will be in accordance with the Contract Documents and will not be defective. Design/Builder's warranty and guarantee hereunder excludes defects or damage caused by:
- (1) Abuse, modification or improper maintenance or operation by persons other than Design/Builder, Subcontractors, or Suppliers or any other individual for whom Design/Builder is responsible; or
 - (2) Normal wear and tear under normal usage.
- (T) Design/Builder's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Design/Builder's obligation to perform the Work in accordance with the Contract Documents:
- (1) Observations by Owner;
 - (2) The making of any progress or final payment;
 - (3) The issuance of a certificate of Substantial Completion;
 - (4) Use or occupancy of the Work or any part thereof by Owner;
 - (5) Any acceptance by Owner or any failure to do so;
 - (6) Any review and approval of a Submittal;
 - (7) Any inspection, test or approval by others; or
 - (8) Any correction of defective Construction by Owner.

7.

TIME FOR DESIGN/BUILDER'S PERFORMANCE

- (A) The Design/Builder shall commence the performance of this Contract on issuance of Notice to Proceed and shall diligently continue its performance to and until Final Completion of the Project. The Design/Builder shall accomplish Substantial Completion of the Project on or before _____

(_____) days following the Notice to Proceed.

- (B) The Design/Builder shall pay the Owner the sum of _____ and no/100 Dollars (\$____.00) per day for each and every calendar day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion. Any sums due and payable hereunder by the Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at the time of executing this Contract. When the Owner reasonably believes that Substantial Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Design/Builder an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Design/Builder overcomes the delay in achieving Substantial Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Design/Builder those funds withheld, but no longer applicable, as liquidated damages. Provided however, the Owner shall not be entitled to a claim for any consequential damages in addition to the liquidated damages specified above.
- (C) The Design/Builder shall give notice to the Owner and Project Manager of any decisions, selections or determinations required to be made by the Owner or Project Manager, including a reasonable date by which such decision, selection or determination must be communicated to the Design/Builder to avoid any delay in schedule. Notice shall be deemed given by the Design/Builder in satisfaction of the above requirement, if such is given in writing to each of the above parties. Should the Owner or Project Manager fail to provide such decision, selection or determination within the date so specified the Design/Builder shall be entitled to an extension of the date set forth in subsection (A) above by an amount of time equal to the number of days between the date specified and the actual date such is communicated to the Design/Builder.
- (D) All limitations of time set forth herein are material and are of the essence of this Contract.

8.

GUARANTEED FIXED PRICE AND CONTRACT PAYMENTS

- (A) The Owner shall pay, and the Design/Builder shall accept, _____ **and no/100 Dollars (\$_____ .00)** as full and complete payment for the Design/Builder's timely performance of its obligations hereunder (the "Guaranteed Fixed Price"). The price set forth in this Subparagraph 8(A) shall constitute the Contract Price, which shall not be modified except by Change Order as provided in this Contract. Provided however, it is understood and agreed that said Guaranteed Fixed Price includes a construction contingency allowance (the "Contingency Allowance") in the sum of _____ and no/100 Dollars (\$_____ .00) which may be expended by the Design/Builder with notice to the Owner for those items as set forth in Paragraph 14(C) below. The Design/Builder shall however, report to the Project Manager and Owner, upon the form provided for in Exhibit D, each and every draw upon such contingency and the basis therefore and such contingency may be drawn upon only for direct labor and materials for the Project and may not be applied to or used for general conditions, overhead or profit of the Design/Builder. The Contingency Allowance shall constitute full and complete payment to the Design/Builder for any and all Concealed and Unknown Conditions and the Guaranteed Fixed Price

shall not be amended, changed or increased as a result of such conditions. Any and all balances in the Contingency Allowance at the date of final payment under the terms of this agreement shall be divided _____ (___%) percent to the Owner and _____ (___%) percent to the Design/Builder. The Design/Builder's portion, if any, shall be paid within thirty (30) days of Final Completion.

- (B) For all portions of the Contract, the Design/Builder has prepared and presented to the Owner, or the Owner's representatives the Design/Builder's Schedule of Values apportioning the Contract Price among the different elements of the Project for purposes of periodic and final payment. Should the Guaranteed Fixed Price, as set forth above, include any allowances in addition to the Contingency Allowance such shall be clearly stated on the Schedule of Values and shall be expended in the same manner as the Contingency Allowance set forth above. The Design/Builder's Schedule of Values is attached hereto as Exhibit "C". The Design/Builder's Schedule of Values will be utilized for the Design/Builder's Payment Requests but shall only be so utilized after the Project Manager have acknowledged it in writing.
- (C) The Owner shall pay the Contract Price to the Design/Builder in accordance with the procedures set forth in this Paragraph 8. On or before the first day of each month after commencement of performance, but no more frequently than once monthly, the Design/Builder may submit a Payment Request for the period ending the last day of the previous month. Said Payment Request shall be in such format as attached hereto as Exhibit "E". Therein, the Design/Builder may request payment for ninety percent (90%) of that part of the Contract Price allocable to Contract requirements properly provided, labor, materials and equipment properly incorporated in the Project, and materials or equipment necessary for the Project and properly stored at the Project site (or elsewhere if offsite storage is approved in writing the Owner), less the total amount of previous payments received from the Owner. Any payment on account of stored materials or equipment will be subject to the Design/Builder providing written proof that the Owner has title to such materials or equipment and that they are fully insured against loss or damage. Each such Payment Request shall be signed by the Design/Builder and shall constitute the Design/Builder's representation that the quantity of work has reached the level for which payment is requested, that the work has been properly installed or performed in strict compliance with this Contract, complies with all design guidelines and drawings, and that the Design/Builder knows of no reason why payment should not be made as requested. Thereafter the Project Manager shall review the Payment Request and may also review the work at the Project site or elsewhere to determine whether the quantity and quality of the work is as represented in the payment Request and is as required by this Contract. The Project Manager shall approve in writing the amount, which, in the opinion of the Project Manager, is properly owing to the Design/Builder no later than ten (10) days following receipt of a Payment Request. Provided however, approval by the Project Manager of any Payment Request shall not relieve the Design/Builder of the requirements to comply with the standard of care set forth in paragraph 6 above. The Owner shall make payment to the Design/Builder within ten (10) days following the Project Manager's written approval of each Payment Request. The amount of each such payment shall be the amount approved for payment by the Project Manager less such amounts, if any, otherwise owing by the Design/Builder to the Owner or which the Owner shall have the right to withhold as authorized by this Contract. The Project Manager's approval of the Design/Builder's Payment requests shall not preclude the Owner from the exercise of any of its rights as set forth in Subparagraph 8(F) herein below. The submission by the Design/Builder of a Payment request also constitutes an affirmative representation and warranty that all work for which the Owner has previously paid is free and clear of any lien, claim, or other encumbrance of any person whatsoever. As a condition precedent to payment, the Design/Builder shall, if required by the Owner, also furnish to the Owner properly executed waivers of

lien, in the form attached hereto as Exhibit "F". Furthermore, the Design/Builder warrants and represents that, upon payment of the payment Request submitted, title to all work included in such payment shall be vested in the Owner.

- (D) When payment is received from the Owner, the Design/Builder shall immediately pay all subcontractors, materialmen, laborers and suppliers the amounts they are due for the work covered by such payment. In the event the Owner becomes informed that the Design/Builder has not properly paid a subcontractor, materialman, laborer, or supplier as provided herein, the Owner shall have the right, but not the duty, to issue future checks and payment to the Design/Builder of amounts otherwise due hereunder naming the Design/Builder and any such subcontractor, materialman, laborer, or supplier as joint payees. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.
- (E) Neither payment to the Design/Builder, utilization of the Project for any purpose by the Owner, nor any other act or omission by the Owner shall be interpreted or construed as an acceptance of any work of the Design/Builder not strictly in compliance with this Contract.
- (F) The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or the entire amount previously paid to the Design/Builder due to:
 - (1) The quality of a portion, or all, of the Design/Builder's work not being in accordance with the requirements of this Contract;
 - (2) The quantity of the Design/Builder's work not being as represented in the Design/Builder's Payment Request, or otherwise;
 - (3) The Design/Builder's rate of progress being such that, in the Owner's opinion, substantial or Final Completion, or both, may be inexcusably delayed, and that such amounts as then retained by the Owner are insufficient to cover any damages caused thereby;
 - (4) The Design/Builder's failure to use Contract funds, previously paid the Design/Builder by the Owner, to properly pay Design/Builder's Project-related obligations including, but not limited to, subcontractors, laborers and material and equipment suppliers;
 - (5) Claims made, or reasonably likely to be made, against the Owner or its property, unless security, acceptable to the Owner, is provided by the Contract to cover the amount of any such claim;
 - (6) Loss caused by the Design/Builder;
 - (7) The Design/Builder's failure or refusal to perform any of its obligations to the Owner after notice of such and a reasonable time to perform.

In the event that the Owner makes written demand upon the Design/Builder for amounts previously paid by the Owner as contemplated in this Subparagraph 8(F), the Design/Builder shall promptly comply with

such demand.

- (G) If within ten (10) days from the date payment to the Design/Builder is due as measured from the date such payment is approved by the Project Manager, the Owner, without cause or basis hereunder, fails to pay the Design/Builder any amounts then due and payable to the Design/Builder, the Design/Builder shall have the right to cease work until receipt of proper payment after first providing three (3) days' written notice of its intent to cease work to the Owner.
- (H) When Substantial Completion has been achieved, but not less than thirty (30) days prior to the final date for completion as set forth herein, the Design/Builder shall notify the Owner and Project Manager in writing and shall furnish to the Project Manager a listing of those matters yet to be finished. The Project Manager will thereupon conduct an inspection to confirm that the work is in fact substantially complete. The Project Manager will so notify the Owner and Design/Builder in writing and will therein set forth the date of Substantial Completion. If the Project Manager, through its inspection, fails to find that the Design/Builder's work is substantially complete, and is required to repeat all, or any portion, of its Substantial Completion inspection, the Design/Builder shall bear the cost of such repeat inspections(s) which cost may be deducted by the Owner from any payment then or thereafter due to the Design/Builder. Guarantees and equipment warranties required by this Contract shall commence on the date of Substantial Completion. Upon Substantial Completion, the Owner shall pay the Design/Builder an amount sufficient to increase total payments to the Design/Builder to one hundred percent (100%) of the Contract Price; provided, however, said payment to the Design/Builder by the Owner shall be reduced by any amounts attributable to liquidated damages and by an amount equal to two hundred percent (200%) of the value of each remaining incomplete item as determined by the Owner, correcting and bringing into conformance all defective and nonconforming work, and handling any outstanding or threatened claims. The Owner shall pay any payment due to the Design/Builder under this provision within thirty (30) days after confirmation of substantial completion of the Project Manager.
- (I) When the Project is finally complete and the Design/Builder is ready for a final inspection, it shall notify the Owner and the Project Manager thereof in writing. Thereupon, the Project Manager will perform a final inspection of the Project. If the Project Manager confirms that the Project is complete in full accordance with this Contract and that the Design/Builder has performed all of its obligations to the Owner hereunder and the Project Manager will issue a Certificate of Final Completion, subject only to those items included in the Final Punch List, with final Approval for Payment to the Owner certifying to the Owner that the Project is complete and the Design/Builder is entitled to the remainder of the unpaid Contract Price, less any amount the Owner is entitled to withhold pursuant to this Contract. If the Project Manager is unable to issue its final Approval for payment and is required to repeat its final inspection of the Project, the Design/Builder shall bear the cost of such repeat inspection(s), which costs may be deducted by the Owner from the Design/Builder's final payment.
- (J) If the Design/Builder fails to achieve Final Completion within ____ (____) days of the date of Substantial Completion, the Design/Builder shall pay the Owner the sum of _____ and no/100 Dollars (\$_____.00) per day for each and every calendar day of unexcused delay in achieving Final Completion beyond the date set forth herein for Final Completion of the work. Any sums due and payable hereunder

by the Design/Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner, estimated at or before the time of executing this Contract. When the Owner reasonably believes that Final Completion will be inexcusably delayed, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Design/Builder an amount then believed by the Owner to be adequate to recover liquidated damages applicable to such delays. If and when the Design/Builder overcomes the delay in achieving Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Design/Builder those funds withheld, but no longer applicable, as liquidated damages.

- (K) Prior to being entitled to receive final payment and as a condition precedent thereto, the Design/Builder shall furnish the Owner, in the form and manner required by the Project Manager, with a copy to the Project Manager:
- (1) A General Contractor's Affidavit, Release and Lien Waiver in the form attached hereto as Exhibit "F";
 - (2) If required by the Owner, separate releases of lien or lien waivers from each subcontractor, in the form attached hereto as Exhibit "G";
 - (3) If applicable, consent(s) of surety to final payment;
 - (4) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of the Design/Builder, or expressly required herein, as a part of or prior to Project closeout;
- (L) The Owner shall, subject to its rights set forth in Subparagraph 8(F) above, make final payment of all sums due the Design/Builder within ten (10) days of the Project Manager's execution of a final Approval for Payment.
- (M) The acceptance by the Design/Builder of final payment shall be and shall operate as a release to the Owner of all claims and all liability to the Design/Builder for all things done or furnished in connection with the Work and for every act and neglect of the Owner, Project Manager, and others relating to or arising out of the Work. Any payment, however, final or otherwise, shall not release the Design/Builder or his Sureties from any obligations under the Contract Documents or the Performance Bond and Payment Bond.

9.

PART 2 INFORMATION AND MATERIAL SUPPLIED BY THE OWNER

- (A) The Owner shall furnish to the Design/Builder, prior to the execution of this Contract, any and all written and tangible material in its possession concerning conditions of the structure at the site of the project. Such written and tangible material is furnished to the Design/Builder only in order to make complete disclosure of such material as being in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in

whole, in part, implicitly or explicitly, or at all, and shall have no liability therefore. The Owner shall also furnish, if appropriate, the legal description of the Project site, and any required survey.

- (B) The Owner shall obtain all required authorizations, approvals, easements, and the like excluding the building permit and other permits or fees required of the Design/Builder by this Contract, or permits and fees customarily the responsibility of the Design/Builder.
- (C) The Owner will provide the Design/Builder two (2) copies of the complete Contract, and the Design/Builder shall provide the Owner with three (3) sets of Contract Documents.

10.

CEASE AND DESIST ORDER

In the event the Design/Builder fails or refuses to perform the work as required herein, after notice and a reasonable time to perform, the Owner may instruct the Design/Builder to cease and desist from performing further work in whole or in part. Upon receipt of such instruction, the Design/Builder shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's instructions has been corrected, no longer exists, or the Owner instructs that the work may resume. In the event the Owner issues such instructions to cease and desist, and in the further event that the Design/Builder fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the Owner that the cause of such instruction will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the work with its own forces, or with the forces of another Contractor, and the Design/Builder shall be fully responsible and liable for the costs of performing such work by the Owner. The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Design/Builder.

11.

DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE DESIGN/BUILDER

In addition to any and all other duties, obligations and responsibilities of the Design/Builder set forth in this Contract, the Design/Builder shall have and perform the following duties, obligations and responsibilities to the Owner:

- (A) The Design/Builder is again reminded of its continuing duties set forth in Subparagraph 4(G), which are by reference hereby incorporated in this Subparagraph 11(A). The Design/Builder shall not perform work without adequate plans and specifications, or, as appropriate, approved shop drawings, or other submittals. If the Design/Builder performs work knowing or believing it involves an error, inconsistency or omission in the Contract without first providing written notice to the Project Manager

and Owner, the Design/Builder shall be responsible for such work and pay the cost of correcting same;

- (B) All work shall strictly conform to the requirements of this Contract;
- (C) The work shall be strictly supervised, the Design/Builder bearing full responsibility for any and all acts or omissions of those engaged in the work on behalf of the Design/Builder;
- (D) The Design/Builder hereby warrants that all labor furnished under this Contract shall be competent to perform the tasks undertaken, that the product of such labor shall yield only first-class results, that all materials and equipment provided shall be new and of high quality, that the completed work will be complete, of high quality, without defects, and that all work strictly complies with the requirements of this Contract. Any work not strictly complying with the requirements of this Subparagraph shall constitute a breach of the Design/Builder's warranty;
- (E) The Design/Builder shall obtain and pay for all required permits, fees and licenses customarily obtained by the Design/Builder, except such permits, fees and licenses issued or collected by the Owner. The Design/Builder shall comply with all legal requirements applicable to the Work;
- (F) The Design/Builder shall employ and maintain at the Project site only competent supervisory personnel. Key supervisory personnel assigned by the Design/Builder to this Project are as follows:

NAME	FUNCTION
_____	Construction Manager
_____	Project Superintendent

So long as the individuals named above remain actively employed or retained by the Design/Builder, they shall perform the functions indicated next to their names unless the Owner agrees to the contrary in writing. In the event one or more individuals not listed above subsequently assumes one or more of those functions listed above, the Design/Builder shall be bound by the provisions of this Subparagraph 11(F) as though such individuals had been listed above;

- (G) The Design/Builder, prior to commencing the work, shall provide to the Owner and the Project Manager, and comply with, the Design/Builder's schedule for completing the work. Such schedule shall be in a form acceptable to the Owner. The Design/Builder's schedule shall be updated no less frequently than monthly (unless the parties otherwise agree in writing) and shall be updated to reflect conditions encountered from time to time and shall apply to the total Project. Each such revision shall be furnished to the Owner and the Project Manager. Strict compliance with the requirements of this Subparagraph 11(G) shall be a condition precedent to payment to the Design/Builder, and failure by the Design/Builder to strictly comply with said requirements shall constitute a material breach of this Contract;
- (H) The Design/Builder shall keep an updated copy of the Plans and Specifications at the Project site or local office of the Design/Builder. Additionally, the Design/Builder shall keep a copy of approved shop drawings and other submittals. All of these items shall be available to the Owner and the Project

Manager at all regular business hours. Upon Final Completion of the work, all of these items shall be finally updated and provided to the Owner and shall become the property of the Owner;

- (I) Shop drawings and other submittals from the Design/Builder do not constitute a part of the contract. The Design/Builder shall not do any work requiring shop drawings or other submittals unless the Design Manager and Project Manager shall have approved such in writing. All work requiring approved shop drawings or other submittals shall be done in strict compliance with such approved documents. However, approval by the Design Manager, Project Manager, or the Owner shall not be evidence that work installed pursuant thereto conforms to the requirements of this Contract. The Owner and the Architect shall have no duty to review partial submittals or incomplete submittals. The Design/Builder shall have the duty to carefully review, inspect and examine any and all submittals before submission of same to the Design Manager;
- (J) The Design/Builder shall maintain the Project site in a reasonably clean condition during performance of the work. Upon Final Completion, the Design/Builder shall thoroughly clean the Project site of all debris, trash and excess materials or equipment;
- (K) The Design/Builder shall, at all times, maintain the Project site in a safe manner. From time to time the Design/Builder may be required by the Owner to surrender portions of the Project to tenants of the Owner, or contractors of such tenants, for other work or early occupancy. The Design/Builder shall take such steps, at Design/Builder's expense, as are necessary to reasonably insure the safety of all parties utilizing or frequenting such portions of the Project during Design/Builder's continued work hereunder. Provided however, prior to the surrender of any portion of the premises before Substantial Completion, the Owner shall provide to the Design/Builder evidence that such portion of the premises are covered by Property Casualty and Liability insurance.
- (L) At all times relevant to this Contract, the Design/Builder shall permit the Owner and the Project Manager to enter upon the Project site and to review or inspect the work without formality or other procedure, conditioned upon each such party complying with any and all reasonable safety requirements imposed by the Design/Builder for the safe and secure performance of the work.

12.

INDEMNITY

The Design/Builder shall indemnify, enter and defend, and hold the Owner harmless from any and all claims, liability, damages, loss, cost and expense of every type whatsoever including, without limitation, attorneys' fees and expenses, in connection with the Design/Builder's performance of this Contract, including claims, liability, damage, loss, cost or expense due to sickness, personal injury, disease or death, or to loss or destruction of tangible property, including loss of use resulting there from, to the extent caused by the Design/Builder, or anyone for whose acts the Design/Builder may be liable, regardless of whether such liability, claim, damage, loss, cost or expense is caused in part by the Owner.

13.

THE PROJECT MANAGER

The Project Manager for this Project is Public-Private Partnership Project Management, Inc. (4PM) (the "Project Manager"). In the event the Owner should find it necessary or convenient to replace the Project Manager, the Owner shall retain a replacement Project Manager and the role of the replacement Project Manager shall be the same as the role of the Project Manager specified below. Unless otherwise directed by the Owner in writing, the Project Manager will perform those duties and discharge those responsibilities allocated to the Project Manager in this Contract. The duties, obligations and responsibilities of the Project Manager shall include, but are not limited to, the following:

- (A) Unless otherwise directed by the Owner in writing, the Project Manager shall act as the Owner's agent from the effective date of this Contract until final payment has been made, to the extent expressly set forth in his Contract;
- (B) Unless otherwise directed by the Owner in writing, the Owner and the Design/Builder shall communicate with each other in the first instance through the Project Manager;
- (C) The Project Manager shall review all proposed Change Orders;
- (D) The Project Manager shall be authorized to refuse to accept work which is defective or otherwise fails to comply with the requirements of this Contract. If the Project Manager deem it appropriate, the Project Manager shall be authorized to call for extra inspections or testing of the work for compliance with requirements of this Contract;
- (E) The Project Manager shall review the Design/Builder's Payment Requests and shall approve in writing those amounts which, in the opinion of the Project Manager, are properly owing to the Design/Builder as provided in this Contract;
- (F) The Project Manager shall, upon written request from the Design/Builder, perform those inspections required in Paragraph 8 hereinabove;
- (G) The Project Manager shall be authorized to require the Design/Builder to make changes which do not involve a change in the Contract Price or in the time for the Design/Builder's performance of this Contract consistent with the intent of this Contract, provided such changes are in written order from the Project Manager and are binding on both the Design/Builder and the Owner;
- (H) THE DUTIES, OBLIGATIONS AND RESPONSIBILITIES OF THE DESIGN/BUILDER UNDER THIS CONTRACT SHALL IN NO MANNER WHATSOEVER BE CHANGED, ALTERED, DISCHARGED, RELEASED, OR SATISFIED BY ANY DUTY, OBLIGATION OR

RESPONSIBILITY OF THE PROJECT MANAGER. THE DESIGN/BUILDER IS NOT A THIRD-PARTY BENEFICIARY OF ANY CONTRACT BY AND BETWEEN THE OWNER AND THE PROJECT MANAGER. IT IS EXPRESSLY ACKNOWLEDGED AND AGREED THAT THE DUTIES OF THE DESIGN/BUILDER TO THE OWNER ARE INDEPENDENT OF, AND ARE NOT DIMINISHED BY, ANY DUTIES OF THE PROJECT MANAGER TO THE OWNER.

14.

CLAIMS BY THE DESIGN/BUILDER

Claims by the Design/Builder against the Owner, other than those claims by the Design/Builder arising from the failure of the Owner to make payments pursuant to a Payment Request, as provided for in Paragraph 8 herein, shall be subject to the following terms and conditions:

- (A) All Design/Builder claims against the Owner shall be initiated by a written claim submitted to the Project Manager. Such claim shall be received by the Owner and the Project Manager no later than ten (10) calendar days after the event, or the first appearance of the circumstances causing the claim, and same shall set forth in detail all known facts and circumstances supporting the claim;
- (B) The Design/Builder and the Owner shall continue their performance hereunder regardless of the existence of any claims submitted by the Design/Builder;
- (C) In the event the Design/Builder discovers previously concealed and unknown conditions which could not have been discovered by reasonable inspection, the Design/Builder shall notify the Owner and the Project Manager within ten (10) calendar days after the first appearance of the circumstances. As a condition precedent to the Design/Builder's draw upon the contingency allowance due to concealed and unknown conditions, the Design/Builder must give the Owner and the Project Manager written notice of, on the form provided in Exhibit D, and an opportunity to observe, such condition prior to disturbing it. The failure by the Design/Builder to give the written notice as provided by this Subparagraph 14(C) shall constitute a waiver by the Design/Builder of any rights arising out of or relating to such concealed and unknown condition. Furthermore, any draw upon any other allowance set forth in the Schedule of Values shall likewise be accompanied by written notice of such on the form provided in Exhibit D, ten (10) calendar days prior to such draw for review by the Project Manager.
- (D) In the event the Design/Builder seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the Owner therefore, the Design/Builder shall strictly comply with the requirements of Subparagraph 14(A) above and such claim shall be made by the Design/Builder before proceeding to execute any additional or changed work. Failure of the condition precedent to occur shall constitute a waiver by the Design/Builder of any claim for additional compensation;
- (E) In connection with any claim by the Design/Builder against the Owner for compensation in excess of the Contract Price, other than Change Orders properly submitted pursuant to the provisions of Paragraph 16, any liability of the Owner for the Design/Builder's cost shall be strictly limited to direct cost incurred by the Design/Builder and shall in no event include indirect cost or consequential damages of the

Design/Builder. The Owner shall not be liable to the Design/Builder for claims of third-parties including subcontractors, unless and until liability of the Design/Builder has been established therefore in a court of competent jurisdiction;

- (F) In the event the Design/Builder should be delayed in performing any task which at the time of the delay is then critical, or which during the delay becomes critical, as the sole result of any act or omission by the Owner or someone acting in the Owner's behalf, or by Owner-authorized Change Orders, unusually bad weather not reasonably anticipatable, fire or other Acts of God, the date for achieving Substantial Completion, or, as applicable, Final Completion, shall be appropriately adjusted by the Owner upon the written claim of the Design/Builder to the Owner and the Project Manager. A task is critical within the meaning of this Subparagraph 14(F) if, and only if, said task is on the critical path of the Project schedule so that a delay in performing such task will delay the ultimate completion of the Project. Any claim for an extension of time by the Design/Builder shall strictly comply with the requirements of Subparagraph 14(A) above. If the Design/Builder fails to make such claim as required in this Subparagraph 14(F), any claim for an extension of time shall be waived.

15.

SUBCONTRACTORS

Upon execution of this Contract, the Design/Builder shall identify to the Owner, the Architect and Project Manager, in writing, those parties intended as subcontractors on the Project. The Owner shall, in writing within ten (10) days of such notice, state any objections the Owner may have to one or more of such subcontractors. The Design/Builder shall not enter into a subcontract with an intended subcontractors with reference to whom the Owner objects. All subcontracts shall afford the Design/Builder rights against the subcontractors which correspond to those rights afforded to the Owner against the Design/Builder herein, including those rights of Contract termination as set forth herein below. Provided, however, should the owner object to any subcontractor reasonably capable of performing the work, the Design/Builder shall be entitled to a Change Order based upon the additional cost of any subsequent subcontractor over that of the original subcontractor or any additional time required for the performance of the work resulting from such change.

16.

CHANGE ORDERS AND DRAWS ON ALLOWANCES

One or more changes to the work within the general scope of this Contract, may be ordered by Change Order. The Design/Builder shall proceed with any such changes, and same shall be accomplished in strict accordance with the following terms and conditions:

- (A) Change Order may be requested by the Design/Builder or initiated by the Owner. Provided however, a Change Order may be initiated by the Design/Builder only for changes in the design, specifications or scope of work by the Owner. Changes to the design, specifications or scope of work necessitated by previously concealed and unknown conditions which could not have been discovered by reasonable

inspection, as set forth in Paragraph 14(C), shall be handled by draws upon the contingency allowance as provided for therein and not by Change Order. In addition, any draws upon any other allowance set forth in the Schedule of Values shall be handled as provided in Paragraph 14(C) and not by Change Order. The Project Manager shall review all proposed Change Orders and indicate the need therefor and any change in price or duration of the Agreement. No Change Order shall be effective unless approved by the Owner and the Design/Builder; provided that if the total change order does not exceed two thousand five hundred (\$2,500.00) dollars, the Project Manager may approve the Change Order on behalf of the Owner. The Design/Builder and either the Owner or the Project Manager must sign or initial all Change Orders in order to effect a change in the Contract's terms.

- (B) The execution of a Change Order by the Design/Builder shall constitute conclusive evidence of the Design/Builder's agreement to the ordered changes in the work, this Contract as thus amended, the Contract Price and the time for performance by the Design/Builder. The Design/Builder, by executing the Change Order, waives and forever releases any claim against the Owner for additional time or compensation for matters relating to or arising out of or resulting from the work included within or affected by the executed Change Order;
- (C) The Design/Builder shall notify and obtain the consent and approval of the Design/Builder's surety with reference to all Change Orders if such notice, consent or approvals are required by the Owner, the Project Manager, the Design/Builder's surety or by law. The Design/Builder's execution of the Change Order shall constitute the Design/Builder's warranty to the Owner that the surety has been notified of, and consents to, such Change Order and the surety shall be conclusively deemed to have been notified of such Change Order and to have expressly consented thereto.

17.

DISCOVERING AND CORRECTING DEFECTIVE OR INCOMPLETE WORK

- (A) In the event that the Design/Builder covers, conceals or obscures its work in violation of this Contract or in violation of a directive from the Owner or the Project Manager, such work shall be uncovered and displayed for the Owner's or Project Manager's inspection upon request, and shall be reworked at no cost in time or money to the Owner.
- (B) If any of the work is covered, concealed or obscured in a manner not covered by Subparagraph 17(A) above, it shall, if directed by the Project Manager be uncovered and displayed for the Project Manager's inspection. If the uncovered work conforms strictly to this Contract, the costs incurred by the Design/Builder to uncover and subsequently, replace such work shall be borne by the Owner. Otherwise, such costs shall be borne by the Design/Builder;
- (C) The Design/Builder shall, at no cost in time or money to the Owner, correct work rejected by the Project Manager as defective or failing to conform to this Contract. Additionally, the Design/Builder shall reimburse the Owner for all testing, inspections and other expenses incurred as a result thereof;
- (D) In addition to its warranty obligations set forth elsewhere herein, the Design/Builder shall be specifically obligated to correct any and all defective or nonconforming work for a period of twelve (12) months

following Final Completion upon written direction from the Owner;

- (E) The Owner may, but shall in no event be required to, choose to accept defective or nonconforming work. In such event, the Contract Price shall be reduced by the greater of (1) the reasonable costs of removing and correcting the defective or nonconforming work, and (2) the difference between the fair market value of the Project as constructed and the fair market value of the Project had it not been constructed in such a manner as to include defective or nonconforming work. If the remaining portion of the unpaid Contract Price, if any, is insufficient to compensate the Owner for the acceptance of defective or nonconforming work, the Design/Builder shall, upon written demand from the Owner, pay the Owner such remaining compensation for accepting defective or nonconforming work.

18.

TERMINATION BY THE DESIGN/BUILDER

If the Owner fails to perform its material obligations to the Design/Builder after written notice and a reasonable period to perform, the Design/Builder may terminate performance under this Contract by written notice to the Owner and the Project Manager, given not less than ten (10) days prior to its intent to terminate hereunder. In such event, the Design/Builder shall be entitled to recover from the Owner as though the Owner had terminated the Design/Builder's performance under this Contract for convenience pursuant to Subparagraph 20(A) hereunder.

19.

OWNER'S RIGHT TO SUSPEND DESIGN/BUILDER'S PERFORMANCE

- (A) The Owner shall have the right at any time to direct the Design/Builder to suspend its performance, or any designated part thereof, for any reason whatsoever, or without reason, for a cumulative period of up to thirty (30) calendar days. If the Owner directs any such suspension, the Design/Builder shall immediately comply with same.
- (B) In the event the Owner directs a suspension of performance under this Paragraph 19, through no fault of the Design/Builder, the Owner shall pay the Design/Builder as full compensation for such suspension the Design/Builder's reasonable costs, actually incurred and paid of:
 - (1) demobilization and remobilization, including such costs paid to subcontractors;
 - (2) preserving and protecting work in place;
 - (3) storage of materials or equipment purchased for the Project, including insurance thereon;
 - (4) performing in a later, or during a longer, time frame than that contemplated by this Contract.

20.

TERMINATION BY THE OWNER

The Owner may terminate this Contract in accordance with the following terms and conditions:

- (A) The Owner may, for any reason whatsoever, terminate performance under this Contract by the Design/Builder for convenience. The Owner shall give written notice of such termination to the Design/Builder specifying when termination becomes effective. The Design/Builder shall incur no further obligations in connection with the work and the Design/Builder shall stop work when such termination becomes effective. The Design/Builder shall also terminate outstanding orders and subcontracts. The Design/Builder shall settle the liabilities and claims arising out of the termination of subcontracts and orders. The Owner may direct the Design/Builder to assign the Design/Builder's right, title and interest under termination orders or subcontracts to the Owner or its designee. The Design/Builder shall transfer title and deliver to the Owner such completed or partially completed work and materials, equipment, parts, fixtures, information and Contract rights as the Design/Builder has. When terminated for convenience, the Design/Builder shall be compensated as follows:
- (1) The Design/Builder shall be entitled to payment based on the following:
 - (a) Contract prices for labor, materials, equipment and other services accepted under this Contract;
 - (b) Reasonable costs incurred in preparing to perform and in performing the terminated portion of the work, and in terminating the Design/Builder's performance;
 - (c) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph 20(A) of this Paragraph;
 - (d) An amount equal to ten (10%) per cent of the unpaid balance of the Guaranteed Fixed Price set forth in Paragraph 8 (A) as reasonable profits; provided however, that if it appears that the Design/Builder would have not profited or would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss, if any.
 - (2) These costs shall not include amounts paid in accordance with other provisions hereof. The total sum to be paid the Design/Builder under this Subparagraph 20(A) shall not exceed the total Contract Price, as properly adjusted, reduced by the amount of payments otherwise made, and shall in no event include duplication of payment.
- (B) If the Design/Builder does not perform the work, or any part thereof, in a timely manner, after notice and a reasonable time to perform, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable law, or otherwise commits a violation of a material provision of this Contract, then the Owner, in addition to any other rights it may have against the Design/Builder or others, may, after five (5) days written notice, terminate the performance of the Design/Builder and assume possession of

the Project site and of all materials and equipment of the site and may complete the work. In such case, the Design/Builder shall not be paid further until the work is complete. After Final Completion has been achieved, if any portion of the Contract Price, as it may be modified hereunder, remains after the cost to the Owner of completing the work, including all costs and expenses of every nature incurred, has been deducted by the Owner, such remainder shall be paid to the Design/Builder. Otherwise, the Design/Builder shall pay and make whole the Owner for such cost. This obligation for payment shall survive the termination of the Contract. In the event the employment of the Design/Builder is terminated by the Owner for cause pursuant to this Subparagraph 20(B) and it is subsequently determined by a Court of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under Subparagraph 20(A) and the provisions of Subparagraph 20(A) shall apply.

21.

INSURANCE

The Design/Builder shall maintain insurance at all times this Contract is in effect and for a period of five (5) years after final completion of the Project in an amount not less than One Million Dollars (\$1,000,000.00) for liability coverage and not less than Two Million Dollars (\$2,000,000.00) for property and casualty coverage.

The coverage provided herein shall contain an endorsement providing sixty (60) days written notice to the Owner prior to any cancellation of said coverage. Said coverage shall be written by an insurer acceptable to the Owner and shall be in a form acceptable to the Owner.

22.

SURETY BONDS

The Design/Builder shall furnish separate performance and payment bonds to the Owner. Each bond shall set forth a penal sum in an amount not less than the Contract Price. Each bond furnished by the Design/Builder shall incorporate by reference the terms of this contract as fully as though they were set forth verbatim in such bonds. In the event the Contract Price is adjusted by Change Order executed by the Design/Builder, the penal sum of both the performance bond and the payment bond shall be deemed increased by like amount. The performance and payment bonds furnished by the Design/Builder shall be in form suitable to the Owner and shall be executed by a surety, or sureties, reasonably acceptable to the Owner.

23.

PROJECT RECORDS

All documents relating in any manner whatsoever to the Project, or any designated portion thereof, which are in the possession of the Design/Builder, or any subcontractor of the Design/Builder, shall be reasonably made available to the Owner or the Project Manager for inspection and copying upon written request by the Owner. Furthermore, said documents shall be made available, upon request by the Owner, to any state, federal or other regulatory authority and any such authority may review, inspect and copy such records. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the Project, its design, and its

construction. Said records do not include those documents reflecting the cost of construction to the Design/Builder, except for those records related to any Change Order, Contingency Draw or Allowance Draw, as provided for herein. The Design/Builder shall maintain and protect these documents for no less than four (4) years after Final Completion of the Project, or for any longer period of time as may be required by law or good construction practice.

24.

APPLICABLE LAW

The law is hereby agreed to be the law of the State of Georgia.

25.

SUCCESSORS AND ASSIGNS

Each Party binds itself, its successors, assigns, executors, administrators or other representatives to the other party hereto and to successors, assigns, executors, administrators or other representatives of such other party in connection with all terms and conditions of this Contract. The Design/Builder shall not assign this Contract without prior written consent of the Owner.

26.

All notices, claims or other communications provided for by this Contract shall be in writing and shall be mailed by certified mail to the following Notice addresses:

OWNER

DESIGN/BUILDER

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Such notices, claims and communications shall be deemed to date from date of receipt.

EXHIBIT A

Project Description

EXHIBIT B

List of Contract Documents

EXHIBIT C

Schedule of Values

EXHIBIT D



Request for Change Order, Contingency Draw or Allowance

Project:

Design/Builder:

Design/Builder's Tracking No.:

Reason for Request:

Design/Builder Documentation: Design/Builder acknowledges that with this submittal all back up documentation and verification has been included to support this request.

Authorized Signature for Design/Builder

Amount of Request:

Labor/Materials, etc.:

General Conditions:

Overhead & Profit:

Total:

4PM Recommendation:

**Owner
Approval:**

Owner Approval

Authorized Signature for Owner

Attachment E – SUBMISSION FORMS

Form E-1 – Immigration and Security Form

IMMIGRATION AND SECURITY FORM

(GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT)

Contractor's Name:	
State Entity's Name:	
State Solicitation/Contract No.:	

CONTRACTOR AFFIDAVIT

By executing this affidavit, the undersigned Contractor verifies its compliance with O.C.G.A. §13-10-91, stating affirmatively that the Contractor identified above has registered with and is participating in a federal work authorization program*, in accordance with the applicability provisions and deadlines established in O.C.G.A. 13-10-91.

The undersigned further agrees that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to this contract with the City of Clarkesville, Contractor will secure from such subcontractor(s) similar verification of compliance with O.C.G.A. § 13-10-91 on the attached Subcontractor Affidavit. Contractor further agrees to maintain records of such compliance and provide a copy of each such verification to the City of Clarkesville at the time the subcontractor(s) is retained to perform such service.

EEV / E-Verify™ Company Identification Number

BY: Authorized Officer or Agent Date

Title of Authorized Officer or Agent of Contractor

Printed Name of Authorized Officer or Agent

SUBSCRIBED AND SWORN BEFORE ME ON THIS THE

____ DAY OF _____, 20__

[NOTARY SEAL]

Notary Public

My Commission Expires:

*any of the electronic verification of work authorization programs operated by the United States Department of Homeland Security or any

equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603

IMMIGRATION AND SECURITY FORM

(GEORGIA SECURITY AND IMMIGRATION COMPLIANCE ACT AFFIDAVIT)

Contractor's Name:	
State Entity's Name:	
State Solicitation/Contract No.:	

ADDITIONAL INSTRUCTIONS TO CONTRACTOR: Identify all subcontractors used to perform under this contract. In addition, you must attach a signed and notarized affidavit (third page of this form) from each of the subcontractors listed below. The contractor is responsible for providing a signed and notarized affidavit to the City of Clarkesville within five (5) days of the addition of any new subcontractor used to perform under the identified state contract.

Contractor's Name:	
Subcontractors:	

Form E-2 – Conflict of Interest Statement

CONFLICT/NON-CONFLICT OF INTEREST

CHECK ONE

- To the best of our knowledge, the undersigned firm has no potential conflicts of interest due to any other clients, contracts, or property interest for this project.

OR

- The undersigned firm, by attachment to this form, submits information which may be a potential conflict of interest due to other clients, contracts, or property interest for this project.

COMPANY NAME: _____

AUTHORIZED SIGNATURE: _____

NAME (PRINT OR TYPE): _____

TITLE: _____

Failure to check the appropriate blocks above may result in disqualification of your proposal. Failure to provide documentation of a possible conflict of interest may result in disqualification of your proposal. Should additional information regarding the above items come to the attention of the City of Clarkesville after award, the awarded contract shall be subject to immediate termination.

Form E-3 - Affidavit of Non-Collusion

State of _____) County of _____)

I, _____, being first duly sworn, depose and say that;

he/she is _____ of _____, the Respondent that has submitted the attached proposal;

He/She is fully informed respecting the preparation and contents of the attached proposal and of all pertinent circumstances respecting such proposal; Such proposal is genuine and is not a collusive or sham proposal; Neither said Respondent nor any of its officers, partners, owners, agents, representatives, employees, or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Respondent, corporation, firm, or person to submit a collusive or sham proposal in connection with the contract for which the attached proposal has been submitted or to refrain from proposing in connection with such contract, or has in any manner, directly or indirectly, sought by agreement, collusion, communication, and/or conference with any other Respondent, corporation, firm, or person to fix the price or prices in the attached proposal or of any other Respondent, or to fix any overhead, profit, or cost element of the proposal price or the proposal price of any other Respondent, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Clarkesville or any other person interested in the proposed contract; and the price or prices quoted in the attached proposal are fair and proper and are not tainted by any collusion, conspiracy, connivance, or unlawful agreement on the part of the Respondent or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

Respondent: _____

By: _____ Title: _____

Printed Name: _____ Date: _____

Subscribed and sworn to me this _____ day of _____, 2012.

Notary Public

Commission expires: _____

Attachment F- Pricing Proposal Form

Part I – Respondent shall include conceptual design drawings to include, the front façade of the buildings, any recommended changes to the rear elevations of the buildings, the interior floor plan of both the main floor and basement including all code required entrances and exits, and the location of bathrooms, HVAC and other service areas.

Part II – Respondent shall include a time schedule showing, at minimum, the following proposed milestones (in such order as Respondent proposes):

Preliminary Design Completion

Final Design Completion

Construction Commencement

Construction Completion

Part III – Respondent shall include a proposed fixed price as stated as closely as possible on the attached Schedule of Values. This price shall include all of the Design-Builder’s services as set forth in the Contract. This price, if the proposal is accepted, shall form the basis for the budget upon which the Guaranteed Fixed Price Design-Build Contract shall be negotiated.

Clarkesville Phase I Schedule of Values

Code #	Description	Total Price
010 000	General Conditions	_____
020 000	Existing Conditions	_____
030 000	Concrete	_____
040 000	Masonry	_____
050 000	Metals	_____
060 000	Wood, Plastics, and Composites	_____
070 000	Thermal and Moisture Protection	_____
080 000	Doors & Windows	_____
090 000	Finishes	_____
100 000	Specialties	_____
110 000	Equipment	_____
210 000	Fire Suppression	_____
230 000	Mechanical/Plumbing	_____
260 000	Electrical	_____
270 000	Communications	_____
310 000	Site work	_____
330 000	Utilities	_____
500 000	Contingency	_____
	Design Fees	_____
	Builders Risk	_____
	Bond	_____
	Building Permit	By Owner
		Subtotal _____
		Profit _____
		Total _____

END OF SECTION

Attachment G - Report of Asbestos Building Surveys
(double-click on the Report cover page below to open the full pdf document)

Report of Asbestos Building Surveys
1404 Washington Street (Sharky's)
1416 Washington Street (Parkers Antiques)
1424 Washington Street (Natalie James)



Prepared By
Environmental Associates, Inc.
270 Hollyridge Drive
Roswell GA 30075

Prepared For
Caleb Gaines
Zoning Administrator/Building Inspector
City of Clarkesville
P.O. Box 21 Clarkesville GA 30523

Issue Date
December 22, 2014