**[Contract Number & Contract Name]**

# DESIGN BUILD AGREEMENT

| | |
|---|---|
| **Contract Name:** | **Contract No.** |
| **Contractor Name:** | **City of Atlanta Using Agency:** |
| **Address:** | **Address:** |
| **Phone:** | **Phone:** |
| **Email:** | **Email:** |
| **Authorized Representative:** | **Authorized Representative:** |

**THIS CONSTRUCTION AGREEMENT**, RFP-_____ (this "Agreement") between the City of Atlanta (the "City"), a Georgia Municipal Corporation, and _____ ("Contractor") is entered into and effective on this ____ day of _____, 20___ (the "Effective Date"). City and Contractor may be collectively referred to as the "Parties" or individually as a "Party."

**WHEREAS,** pursuant to City of Atlanta Code of Ordinances ("Code") §2-1189, the Chief Procurement Officer is authorized to enter into this Agreement the design and constructions of the Grove Park Recreation Center Replacement (the "Project") from Contractor on behalf of the City's Department of Parks and Recreation Department ("DPR") and

**WHEREAS,** Contractor has agreed to perform construction services pursuant to this Agreement and provide all Material, Equipment, tools, and labor, necessary to complete the Work described herein (the "Services").

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions hereinafter set forth, the Parties agree as follows:

1. **Interpretation and Intent**.

1.1. This Agreement, together with all exhibits and appendices attached hereto, and all modifications issued after the execution of this Agreement, shall collectively, be referred to as the "Contract Documents." The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

1.2. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, precedence shall be given in the following order[1]:

1. Agreement
2. Exhibit A – Project Criteria
3. Exhibit B – Milestones & Liquidated Damages
4. Exhibit C – Compensation
5. Exhibit D – Legislation
6. Exhibit E – Definitions
7. Exhibit G – Special Conditions
8. Exhibit F – General Conditions
9. Exhibit H – Additional Contract Documents
10. Appendix A – Office of Contract Compliance Requirements
11. Appendix B – Insurance & Bonding Requirements

1.3. If the application of the foregoing procedure fails to resolve the discrepancy, unless Contractor sought and obtained the clarification of the discrepancy prior to entering into this Agreement, the discrepancy shall be resolved by construing the provision in favor of the City and in such a manner as will further the City's best interests and which may impose a more expensive or greater obligation upon Contractor. When Contractor fails to provide notice of a discrepancy and seek clarification, Contractor assumes full responsibility to correct or adjust work performed pursuant to Contract Documents known, or which should have been known, to contain such a discrepancy.

1.4. Capitalized Terms. All capitalized terms used in this Agreement shall have the meaning ascribed to them in the **Exhibit E**.

2. **Authorization**. This Agreement is authorized by legislation adopted by the City's Council and approved pursuant to City Charter Section 2-403 which is attached as **Exhibit D**.

3. **Design Services**.

3.1. Development of Construction Documents. The City's requirements and objectives for the Project are attached hereto as **Exhibit A.3** (the "Project Criteria"). Within the times set forth in the accepted Project Schedule, Contractor shall provide through qualified,

[1] For purposes of this provision, authorized changes to an item in the order of precedence pursuant to a Change Document take precedence over the particular item changed.

licensed design professionals employed by Contractor, or procured from qualified, independent licensed design consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the Construction Documents, including Drawings, Plans and Specifications setting forth in detail all requirements for the construction of the Project in accordance with the Project Criteria, Basis of Design Documents, Applicable Law and any other Contract requirements. The Project Criteria may not be modified, nor may the scope or quality of Services set forth therein be modified, unless implemented through an appropriate Change Document (as defined in the General Conditions). The designer's signature and seal must appear on all Construction Documents.

3.2. Evaluation of Project Criteria. If City so requests, Contractor shall prepare a written evaluation of the Project Criteria, including recommendations to the City for different and innovative approaches to the design and construction of the Project. The Parties shall meet to discuss Contractor's written evaluation of the Project Criteria and agree upon what revisions, if any, should be made to such criteria.

3.3. Development of Project Criteria. If Project Criteria have not been developed prior to the execution of this Agreement, Contractor may be requested to assist City in developing the Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by City to Contractor.

3.4. Interim Design Submittals. Contractor and City shall agree upon any interim design submittals, which may include design criteria, Drawings, Plans and Specifications. Interim design submittals shall be consistent with the Basis of Design Documents as may be revised in accordance with the Contract Documents.

3.5. Design Meetings. The Parties shall have regular design review meetings to review and discuss interim and final design submittals.

3.6. City's Review and Approval. Any design submittals which are required to be submitted to City for City's approval shall be submitted to City in a form approved by the City, which shall state Contractor's reasonable expectation for City's review and response. The determination of whether the review period is reasonable shall be made in the City's sole discretion. If information which City reasonably deems necessary to fully accomplish its review of the subject design submittal is not provided, the applicable review period shall not commence until such information has been furnished to and received by City. During the course of such review, Contractor and City shall proceed in good faith, and Contractor shall make available to City such Persons as City shall reasonably request for the purpose of consultation and explanation of the subject design submittal. On or before the expiration of the review period, City shall prepare and submit to Contractor in writing any comments, suggestions, modifications or objections it may have to the subject design submittal.

3.7. Limitation on City's Review and Approval. City's review, approval, and other determinations regarding design submittals furnished by Contractor will be only for the

following limited purposes: (1) checking for conformity with the any format requirements; (2) confirming that the Construction Documents comply with the Project Criteria; and (3) establishing that the design furnished by Contractor is consistent with the design concept expressed in the Contract Documents. Neither the City's review, approval or acceptance of, nor payment for, the Services required under this Agreement, shall be construed as a waiver of any rights under this Agreement or any cause of action arising out of performance of this Agreement. Contractor shall remain liable to the City in accordance with Applicable Law for all damages caused by Contractor's negligent performance of any of the Services furnished under this Agreement.

4. **Construction Services**. Contractor shall, or shall require Subcontractors engaged by it, to diligently pursue, perform and prosecute the Work to completion, in accordance with the Scope of Work, Specifications, General Conditions, the accepted Project Schedule and all other Construction Documents, and shall, subject to extensions for Force Majeure and adjustments permitted by the terms of this Agreement, cause Substantial Completion and Final Completion to occur on or before the corresponding dates set for Substantial and Final Completion respectively.

5. **Contract Time.**

5.1. Commencement. Contractor shall commence the Work within ten (10) calendar days of Contractor's receipt of the City's Notice to Proceed, unless the Parties mutually agree otherwise in writing.

5.2. Substantial Completion. Substantial Completion of the Project shall be achieved no later than the date established in **Exhibit B**, as the same may be extended pursuant to the provisions of the Contract Documents.

5.2.1. Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved in accordance with the Project Schedule.

5.2.2. A requirement of Substantial Completion of the Work is that Contractor shall conduct performance tests to demonstrate that all of the Project Criteria have been met.

5.3. Final Completion. Final Completion of the Work or identified portions of the Work shall be achieved no later than the date established in **Exhibit B** ("Final Completion Date"), as the same may be extended pursuant to the provisions of the Contract Documents.

6. **Liquidated Damages**. The Parties hereby agree that the City has determined, with certainty and in good faith, liquidated damages applicable to this Agreement. The Parties agree that the Liquidated Damages, as set forth in **Exhibit B**, are estimated as fair compensation. If Contractor fails to meet established Milestones within the times specified therein, or any extensions granted in writing, the Contractor shall pay to City as fixed, agreed, and Liquidated

Damages the sums specified therein. Notwithstanding the foregoing, if applicable, Contractor shall indemnify City against all regulatory fines, penalties and other losses and expenses, if any, associated with such failure to achieve Substantial Completion by the Scheduled Substantial Completion Date. Failure to achieve Substantial Completion by the Scheduled Substantial Completion Date will allow City to terminate the Agreement for cause.

7. **Compensation.** In accordance with **Exhibit D** herein, the City has authorized a total expenditure of up to _____ Dollars and _____ Cents ($_____) under this Agreement (the "Maximum Payment Amount").

8. **Contractor's Responsibilities.**

8.1. Responsibility for Costs. Provided that City shall be in compliance with its payment obligations hereunder, all costs, expenses and expenditures in connection with the permitting, design and construction of the Work, including, without limitation, the amounts owing to the subconsultants, Subcontractors and Suppliers for supervision, transportation, labor, Materials or permits or other matters in connection with the Work, shall be paid by Contractor.

8.2. Supervision and Coordination. Contractor shall manage, direct and cause the permitting, design, construction and equipping of the Work, and shall coordinate the activities of all subconsultants, Subcontractors and Suppliers involved therein. Contractor shall meet with the Designer and other Persons providing design services or construction Work on a regular and frequent basis and as specifically provided herein in order to assure the performance of the Work in accordance with the terms of this Agreement. To the extent Contractor has, obtains, or retains rights under any subcontract pertaining to the Work, Contractor will exercise such rights in accordance with all approval and consent provisions provided to City in this Agreement. Contractor shall ensure that all warranties provided by the Subcontractors, including, without limitation, the architectural, engineering and other design consultants, are consistent with the terms of this Agreement.

8.3. Contractor's Key Personnel and Key Subcontractor.

8.3.1. The following Persons are identified by Contractor as Contractor's Key Personnel under this Agreement:

(a) _____;

(b) _____; and

(c) _____.

8.3.2. The following Persons are identified by Contractor as Key Subcontractors under this Agreement.

(a) _____;

(b) _____; and

(c) _____.

8.4. Removal or Substitution of Contractor Personnel. Contractor shall not transfer, reassign or replace any Contractor Key Personnel or Key Subcontractor without prior written approval from City, except in the case of: (i) retirement, voluntary resignation, involuntary termination for cause in Contractor's sole discretion, illness, disability, or death of such Contractor Personnel during the Term of this Agreement; or (ii) such Contractor Personnel has engaged in willful misconduct or has committed a material breach of this Agreement, in which case removal shall be effectuated by Contractor immediately after Contractor becomes aware of such misconduct or breach. Notwithstanding anything herein to the contrary, within seven (7) Business Days after Contractor's receipt of a notice from City that the continued assignment of any Contractor Personnel under this Agreement is not in the best interests of City, Contractor shall immediately remove such Contractor Personnel.

8.5. Replacement of Contractor Personnel. Following any removal of Contractor Personnel, Contractor will within fifteen (15) Business Days identify in writing to City, a suitable replacement for immediate assignment under this Agreement. Contractor shall assume all costs associated with the replacement of any Contractor Personnel. In the event that a Key Subcontractor was selected from a City prequalified subcontractor list, the Contractor must select a replacement contractor from the prequalified list. If an agreement cannot be reached with or pricing proposals are not submitted from a pre-qualified subcontractor, Contractor may submit another subcontractor(s) for consideration by the City if they meet the qualifications to be provided by the City.

## 9. **Contractor's Representations and Warranties**.

9.1. Design Defects. Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, Drawings, Specifications, and other non-construction services furnished by the Contractor under this Agreement. Contractor shall, without additional compensation, correct or revise any errors or deficiency in the designs, Drawings, Specifications and other non-construction services and perform any necessary rework or modifications including any damage to real personal property, resulting from the design error or omission.

9.2. Professional Standards. The Work will be performed in a professional and workmanlike manner in accordance with the standards imposed by Applicable Law and the practices and professional standards used in well managed operations performing services similar to the Work. Notwithstanding the above, in the event that the Agreement specifies that portions of the Work be performed in accordance with a performance standard, the design services shall be performed so as to achieve such standards.

10. **Record Keeping and Financial Controls**. Contractor acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Contractor shall keep full and detailed accounts and exercise such controls as set forth in **Exhibit F**.

11. **Non-Discrimination and Contracting Opportunity Requirements**. Contractor shall comply with all applicable requirements of the Office of Contract Compliances set forth in **Appendix A**.

12. **Insurance and Bonding Requirements**. Contractor shall procure, maintain during the life of this Agreement (and for the full period of the applicable statutes of limitation and repose, whichever is larger, in the case of completed operations coverage), and pay for, and shall require its Subcontractors to procure, maintain during the progress of their portion of the Work (and for the full period of the applicable statutes of limitation and repose, whichever is larger, in the case of completed operations coverage), and pay for, insurance in the amounts and types set forth in **Appendix B**.

13. **Indemnification**.

    13.1. Design Services. For all engineering, architectural, or land surveying services ("Design Services"), Contractor agrees to protect, defend, indemnify, and hold harmless the City, its agencies and its and their respective officers, directors, employees, advisors, and agents, successors and permitted assigns (collectively, "City Indemnitees") from and against any and all liability, damages, claims, suits, liens, and judgments, for whatever nature, including claims for contribution and/or indemnification, for injuries to or death of any person or persons, or damage to the property or other rights of any person or persons to the extent arising out of and attributed to the negligent acts, errors or omissions of the Contractor. Contractor's obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove shall include any matter arising out of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of product or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations. Contractor further agrees to protect, defend, indemnify, and hold harmless the City Indemnitees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employee of the Contractor arising out of or related to the Design Services.

    13.2. Construction Services. For all construction related services, Contractor shall indemnify and hold City, its agencies and its and their respective officers, directors, employees, advisors, and agents, successors and permitted assigns (collectively, "City Indemnitees"), harmless from any losses, liabilities, damages, demands and claims, and all related costs pursuant to the indemnification provisions contained in **Exhibit F**. In no event shall any indemnification obligation be construed as indemnifying City Indemnitees for the sole negligence of the City Indemnitees.

14. **General.**

14.1. Notices. Any notices under this Agreement shall be deemed delivered: (a) when delivered by hand or courier or by overnight delivery with signature receipt required; (b) when sent by confirmed facsimile with a copy sent by another means specified in this section; (c) when delivered by electronic mail and by certified mail to the addresses specified below or (d) three (3) Business Days after the date of mailing by United States certified mail, return receipt requested, postage prepaid. Any Party may change its address for communications by notice in accordance with this section. All notices shall be in writing and given by postage prepaid registered or certified mail, return receipt requested, addressed as follows:

NOTICES TO CITY

City of Atlanta
Department of Parks and Recreation
160 Trinity Ave. SW
Suite 2200
Atlanta, GA 30303
Facsimile (404) 546-9355
Attention: Commissioner

With a Copy To:
City Attorney
City of Atlanta Department of Law
55 Trinity Avenue S.W.
Suite 5000
Atlanta, Georgia 30303

Department of Procurement
City of Atlanta
55 Trinity Avenue S.W.
City Hall South, Suite 1900
Atlanta, GA 30303-0307
Attention: Chief Procurement Officer

NOTICES TO CONTRACTOR

_____

_____

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14.2. Counterpart Signatures. This Agreement may be signed in two or more counterparts by original, facsimile signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.3. Electronic Signatures. Pursuant to O.C.G.A. §10-12-7, et. seq., as amended, the Agreement may be executed and delivered by the City by electronic transmission. For purposes of this Agreement, any page signed and transmitted electronically shall be treated as an original document, and the electronic signature of any Party thereon, for purposes hereof, shall be considered as an original signature and the document transmitted electronically shall be considered to have the same binding effect as an original signature on an original document.

***[Signatures On Following Page]***

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The Parties hereto by authorized representatives have executed this Agreement as of the Effective Date.

| **CITY OF ATLANTA:** | **[CONTRACTOR]:** |
|---|---|
| _____ | **Signature:** _____ |
| **Mayor** | |
| | **Name:** _____ |
| **Attest:** | **Title:** _____ |
| _____ | |
| **Municipal Clerk (Seal)** | |
| **Approved:** | |
| _____ | |
| **Chief Procurement Officer** | |
| _____ | |
| **Commissioner, Department of Parks and Recreation** | |
| **Approved as to form:** | |
| _____ | |
| **Assistant City Attorney** | |

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# EXHIBIT A

# PROJECT CRITERIA

**EXHIBIT B**

**MILESTONES AND LIQUIDATED DAMAGES**

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**EXHIBIT C**

**COMPENSATION**

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**EXHIBIT D**

**LEGISLATION**

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**EXHIBIT E**

**DEFINITIONS**

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# EXHIBIT F

# GENERAL CONDITIONS

# EXHIBIT G

# SPECIAL CONDITIONS

# EXHIBIT H

# ADDITIONAL CONTRACT DOCUMENTS

# APPENDIX A: OFFICE OF CONTRACT COMPLIANCE REQUIREMENTS

# APPENDIX B: INSURANCE AND BONDING REQUIREMENTS

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